Mortgage Arrears and Personal Debt Expert Group

Interim Report

5th July 2010

Contents

Section 1: Introduction

This is the interim report of the Mortgage Arrears and Personal Debt Expert Group. The Group was established by the Government in February 2010 and was charged with making recommendations to the Minister for Finance on options for improving the current situation for families with mortgage arrears on their principal private residence and with personal debt (the full terms of reference for the Group are included further on in this Section). The Group comprises a diverse range of stakeholders including Government, State Agencies, Regulators, Consumer Advocates and Industry. This is an interim report. It makes a range of recommendations across its terms of reference and also identifies a number of areas for further review.

Section 2 lists the interim recommendations. Section 3 together with this 'Introduction' provides the context to the work of the Group by way of an economic commentary and the Government's response leading to the formation of the Group.

Section 4 directly addresses specific proposals with respect to the Financial Regulator's Code of Conduct on Mortgage Arrears including amendments to address proposals on the key question of mortgage arrears resolution set out in Section 5.

Sections 6 sets out the views of the Group on the ongoing work of the Department of Social Protection on Mortgage Interest Supplement Scheme (MIS) and the report concludes with Section 7 which refers to the ongoing work of the Law Reform Commission and others in seeking to bring forward comprehensive reform of personal insolvency regulations in Ireland.

Background

The Renewed Programme for Government published on 10th October 2009 included a range of commitments by Government in relation to *Protecting the Family Home* including a commitment that "*the existing statutory Code of Conduct on Mortgage Arrears and the recently agreed protocol between the Irish Bankers Federation (IBF) and the Money Advice and Budgeting Service (MABS) on debt default will be further reviewed with a view to expanding the options available for dealing with debt* *situations, including for example, the use by banks and lenders of more flexible mechanisms to avoid foreclosure in appropriate circumstances.*"

The *Renewed Programme for Government* also included a number of related commitments to "reform debt enforcement in light of the deliberation of the Law Reform Commission".

Arising from these commitments, the Government decided in November 2009 that, as an initial step (i) all relevant material in Departments should be brought together in consideration of this matter and (ii) external input should be by way of consultation with relevant external organisations. An Interdepartmental Group was established to take forward this initial phase of work for the purpose of collecting information and examining options in relation to the matter of indebtedness and mortgage arrears.

Subsequently, the Government agreed to establish an Expert Group on Mortgage Arrears and Personal Debt, under the Chairmanship of Mr. Hugh Cooney, an insolvency accountant, and this was announced by the Minister for Finance, Mr. Brian Lenihan, T.D., and the Minister for Communications, Energy and Natural Resources, Mr. Eamon Ryan T.D., in February 2010.

The membership of the Group is listed at Appendix A and includes the Head of Financial Regulation, as well as representatives from the Economic Social Research Institute, the Irish Banking Federation, the Free Legal Advice Centres, the Law Reform Commission, two independent consultants, and senior officials from the Departments of Finance; Taoiseach; Justice and Law Reform; Environment, Heritage, and Local Government; Communications, Energy, and Natural Resources; and Social Protection.

The terms of reference set out below reflect the commitments made by the Government both in the *Renewed Programme for Government* and in subsequent Government decisions relating to the issues of mortgage arrears and personal debt. They include an examination of measures to assist those in mortgage arrears to keep possession of their family home with reference to the measures adopted in other jurisdictions.

The initial focus of the Group was on exploring the feasibility of a range of possible options for improving the level of mortgage support to homeowners in difficulty. Recommendations in this interim report are based on factual information gathered by the Group and take into account the findings of existing reports referred to in the terms of reference. The Group intends to make a further report to the Minister by end September addressing a number of outstanding issues.

Consultation Process

The Group has engaged in a consultation process which included a large number of submissions and presentations (list at Appendix B) including representatives of the mainstream lenders, sub-prime lenders, organisations supporting home owners in difficulties and independent experts. The Group would like to thank all those who made submissions which have been a very helpful input to the Group's work.

These submissions have assisted the Group in preparation of this interim report and have also raised a number of issues which the Group will consider further in the next phase of its work.

Terms of Reference of the Mortgage Arrears and Personal Debt Group

- Having regard to the commitments in the Renewed Programme for Government to protect the family home and help those in personal debt to make recommendations to the Minister for Finance on options for improving the current situation for families with mortgage arrears and personal debt. Such recommendations to be issued on a rolling basis as appropriate.
- To bring together the latest information held by relevant government departments and elsewhere on mortgage arrears and personal debt.
- To consult with experts both within and outside the group where necessary regarding latest facts regarding the mortgage arrears and personal debt problem.
- To make recommendations to the Financial Regulator in relation to the Code of Conduct on mortgage arrears.
- To take account of the proposed Review of the Operational Protocol between the IBF and MABS and to submit observations and recommendations to that Review.

- To examine the state support schemes and to make recommendations as appropriate for improvement having taken into account Mortgage Support Schemes in operation in other jurisdictions.
- To have regard for the ongoing deliberations by the Law Reform Commission on personal debt. In particular, to consider how to reform personal insolvency and bankruptcy regulations and to establish as far as possible how non-judicial settlement proceedings can be formulated.
- To take account of the report on indebtedness by the Joint Committee on Social and Family Affairs together with the ESRI report on negative equity in the Irish housing market.

Section 2: Interim Recommendations

The following are the interim recommendations from the Group. These recommendations are made on the assumption that lenders continue to provide the full range of forbearance measures and support to borrowers who find themselves in arrears and financial distress and the Group recommends that the lenders continue to do so.

Early recognition of a problem with mortgage arrears can contribute to a successful resolution. Availing of independent advice is important as those who avail of such advice are more likely to resolve their arrears difficulties.

However, the Group recognises that forbearance is not always the right option. For some borrowers the size of debt and the reasons that contributed to the household falling into arrears mean that the borrower is unlikely to be able to repay the debt, even with forbearance. It is intended that options for these borrowers will be considered in the next phase of the Group's work.

Underlying principles

1. Any solution should, in so far as it is feasible and appropriate be aimed at assisting borrowers remain in their homes.
2. Repossessions should be minimised but it is acknowledged that in some cases, voluntary surrender may be the best option for both borrower and lender.
3. The borrower and the lender must act in good faith at all times.
4. Arrangements should be based on a thorough assessment being made by both the borrower and the lender of the borrower's ability to pay.
5. Arrangements should discourage any changes in behaviour by borrowers leading to an increase in arrears.
6. The start and termination of any State support should, in all cases be based on ability to pay and linked to an observable event, e.g. significant change in household circumstances due to unemployment or disability. Suitability and appropriateness of accommodation to meet a distressed borrower's needs should be a consideration in relation to possible transfer into longer term housing support.

Recommendations

The principal recommendations from the interim report are:

Mortgage Arrears Charges and Penalty Interest

1. Lenders must not apply penalty interest or arrears charges to borrowers who are taking part in the Mortgage Arrears Resolution Process (MARP).

Code of Conduct on Mortgage Arrears (CCMA)

2. The CCMA should be admissible in legal proceedings.
3. The one-year moratorium on legal action in the CCMA should not be extended.
4. The CCMA when amended, should apply to Credit Unions. The Department of Environment, Heritage and Local Government should update the recent guidance provided to housing authorities based on the existing CCMA to fully reflect the amended CCMA.

The CCMA should be amended to:

5. Facilitate the implementation of a standard industry-wide MARP (see recommendations 22 to 34).
6. Require that lenders do not encourage borrowers to change mortgage products, such as low cost trackers, if it would put the borrowers at a financial disadvantage and must not use forbearance measures or the MARP to transfer borrowers to less favourable terms.
7. Require increased and improved communication with borrowers (see recommendations 10 to 21).
8. Provide specific instructions on how, when and what to communicate to the borrower.
9. Apply as soon as a borrower first contacts a lender concerning possible repayment difficulties (pre-arrears cases).

Communication

10. Borrowers are encouraged to contact their lender at an early stage before an arrears problem develops.

11. All stakeholders working with borrowers in arrears or pre-arrears should agree a common high-level message in their communication.
12. The Citizen's Information Bureau / Money Advice Budgeting Services website (www.keepingyourhome.ie) must be the main information portal for all communication with borrowers and with links to and from other sites.
13. All lenders must have a dedicated section of their website for borrowers in financial difficulty.
14. All 'at risk' mortgage holders must receive a periodic mailing from their lender concerning options for dealing with financial distress, encouraging early action by borrowers etc.
15. Lenders must be required to inform borrowers of the implications of loan rescheduling or modification for their credit record.
16. Lenders must be required to publish all their current loan rates on their website.
17. Lenders must be required to publish all approved charges which they are applying to arrears for those who are not co-operating with the MARP.
18. Lenders must be required to provide information about State supports to borrowers in distress and provide assistance in applying for such supports in the MARP.
19. Lenders must ensure that written communication with borrowers does not discourage engagement with the lender. Standards must be considered in this area under the CCMA.
20. Lenders must prepare an information booklet explaining their MARP (see below).
21. The Financial Regulator and National Consumer Agency should prepare an information booklet explaining the CCMA.

Mortgage Arrears Resolution Process (MARP)

22. All lenders must develop a MARP to provide a framework for handling arrears and pre-arrears cases. They should publish the MARP procedures.
23. All lenders must publish the types of forbearance that are available under MARP and the guidelines they are employing for decision making on which approach is appropriate for typical sets of financial circumstances.
24. Under the MARP, lenders must agree appropriate forbearance with each borrower following an assessment of the full circumstances and characteristics

of each borrower. However, where it is concluded that the mortgage is unsustainable then forbearance is unlikely to be appropriate and voluntary surrender may be necessary.

25. The CCMA 12 month protection from legal action should not apply to borrowers who refuse to co-operate with the MARP.
26. A Standard Financial Statement (SFS – Appendix C) should be developed for use by all lenders and MABS. This should be used to assess a borrower's financial position and to identify a best course of action.
27. Borrowers, lenders and State bodies should take the necessary steps to ensure that all appropriate documentation to corroborate the SFS is made available.
28. MARP agreements and the SFS information must be subject to periodic review by the lender and the borrower.
29. All lenders must establish a centralised and dedicated Arrears Support Unit (ASU) to manage pre-arrears and arrears cases under the MARP.
30. ASUs must maintain appropriate contacts with MABS and the Departments of Social Protection and Environment, Heritage and Local Government to ensure effective communication on arrears and pre-arrears cases.
31. Lenders must provide training and issue regular internal communication to front line staff on how to deal with borrowers in financial difficulty.
32. Lenders must proactively carry out regular assessments of existing customers to identify those experiencing or likely to be at risk of financial distress in order to target communication efforts to offer assistance and encourage participation in the MARP.
33. Lenders must put in place management information on case handling under the MARP and report to the Financial Regulator on a quarterly basis.
34. The complaints handling procedures of the Consumer Protection Code should apply to the CCMA including the decisions of the ASU relating to the application of the lender's MARP.

Credit Reporting

35. The Irish Credit Bureau should expand its database for its members to include all loans including personal guarantees.

36. The Group welcomes the Financial Regulator's announcement of a review of credit reporting arrangements in Ireland, including the proposal for compulsory reporting by all lenders.

Data

37. The Financial Regulator should amend its quarterly public report on mortgage arrears to record, amongst other things, the number of mortgages that have been rescheduled.

Mortgage Interest Supplement (MIS)

38. The Department of Social Protection should introduce an alternative and more equitable approach to achieving the MIS objectives and maintaining its sustainability in light of changes in the economic climate and the mortgage market. This should cover issues such as:

- No legal action should be taken by the lender while MIS is being paid and the borrower is cooperating with the lender.
- The ban on paying MIS to a couple where one person is in full-time employment should be removed and a revised means test developed.
- The current rule which excludes the payment of MIS when a house is for sale should be suspended.
- The State should not provide MIS where the lender is charging interest above the market rate.
- MIS should only be payable where no capital is being repaid.
- MIS should be paid directly into the mortgage account of the borrower.
- Lenders should agree forbearance options with borrowers for a period of six months and ensure the SFS is completed before the State shares the responsibility by providing MIS support to the borrower.
- An overall time limit for MIS should be considered to ensure that the scheme does not act as a disincentive to seeking or retaining work.
- The scheme should remain as a short term income support.
- Where a borrower's situation is or becomes unsustainable, they should be facilitated, if necessary, in applying for social housing appropriate to their needs.

Recommendations on Money Advice and Budgeting Service (MABS)

39. The recommendations from the ongoing review of the demand for MABS services should be considered for implementation as soon as possible.

Personal Debt

40. Urgent consideration should be given to the effective implementation, in the shortest possible timeframe, of measures for the comprehensive reform of both judicial bankruptcy proceedings and the establishment of a non-judicial debt settlement process.

41. In this context the recommendations to be contained in the Final Report of the Law Reform Commission on *Personal Debt Management and Enforcement,* expected later this year, will be crucial to the reform process.

Areas for further work

Our interim recommendations are focused on actions/solutions that effectively address immediate priorities and are capable of implementation in a relatively short time frame. The Group are reviewing further initiatives/potential longer term solutions reflecting submissions made to the Group and a review of practices in other jurisdictions. Further work is required to fully evaluate these proposals and their applicability or otherwise in an Irish context.

The Group, in the next phase of its work, will also give consideration to broader structural changes such as loan modification and options for borrowers with unsustainable mortgages.

Implementation

The Financial Regulator has committed to act swiftly to consult on amendments to the CCMA and take other actions to implement the recommendations of the Group where it is in a position to do so. In the meantime, the Group encourages lenders to take immediate steps to start to implement the above recommendations.

Section 3: Context

The Economic and Housing Market Background

The current economic and housing market downturn follows a period of boom. Average national new house prices peaked in quarter 2 2007 at €331,947, with national average second hand prices having peaked earlier in quarter 3 2006 at €389, 871. The most recent data shows that by quarter 4, 2009 average house prices were significantly lower than their peak values, 32 per cent lower for new houses and 37 per cent lower for second hand houses[1]. Other data releases indicate that the fall in house prices has continued.

Economic growth was accompanied by increases in private sector credit and a substantial rise in the level of gross personal indebtedness, primarily due to increased borrowing for housing purposes. Household debt increased from 68.9 per cent of personal disposable income in 2000 to over 150 per cent in 2007. Although over the last two years there has been some moderation the ratio remains over 140 per cent.

Entry to EMU in 1999 brought about lower interest rates and competition in the mortgage market also brought about discounted interest rates as lending institutions competed to attract customers. Department of Environment, Heritage and Local Government statistics show that the number of mortgage loans approved peaked at around 120,000 in 2005. Accompanying this was a large increase in the level of residential mortgage debt outstanding, from over €49 billion in December 2003 to €113.3 billion in March 2010[2]. The housing market boom also saw substantial financial product development. Mortgages products with terms longer than the traditional 20 years were introduced. Tracker mortgages were introduced[3]. According to Kelly (2009) tracker rate mortgages account for an estimated 60 per cent of the outstanding variable rate mortgage stock[4].

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[1] Department of Environment Housing Statistics

[2] Central Bank data, level of mortgage debt outstanding adjusted for securitisation. This data refers to mortgages for principal private residence.

[3] Mortgages where the interest charged equals the main ECB refinancing rate plus a premium set at inception.

[4] Kelly, J., (2009), Opening Remarks at the Joint Oireachtas Committee on Social and Family Affairs, April 29th, (available at www.centralbank.ie).

Loan-to-value ratios (LTVs) began to increase and borrowers were able to access 100 per cent mortgages compared to the previous maximum of 92 per cent for most borrowers[5]. Higher loan-to-value ratios mean that recent borrowers, particularly first time buyers, are more exposed to the risk of negative equity. In 2008, 22 per cent of repeat buyers had an LTV of 91 per cent and over, compared with 14 per cent in 2004.[6] What is most noticeable is the high proportion of first-time buyers (FTB) with a very high loan-to-value ratio. In 2007 and 2008 around one in four first-time buyers had a loan-to-value ratio of 100 per cent. In contrast to repeat buyers, less than 20 per cent of first-time buyers have an LTV of 70 per cent or below.

Lending criteria moved from income multiples to a limit based on the ratio of mortgage service cost to income. Addison-Smyth, McQuinn and O'Reilly, (2009), model the availability of mortgage credit and find evidence of excess credit in the Irish market, especially since 2004, contributing to the rise in house prices[7]. Interest only mortgages were also introduced. Finally, lenders began to target the subprime mortgage sector and a number of specialist subprime lenders began to lend in the Irish mortgage market. IBF figures for mainstream lenders allow the sub-prime share of the market to be estimated at 2 per cent but share of repossessions at 43 per cent and share of arrears cases (90 + days) at over 20 per cent[8].

Negative Equity

The housing market downturn means that some households find that they owe more on their mortgage than their houses are worth. In other words they are in negative equity. For many households negative equity will not have a significant impact as they will continue to pay their mortgage. However, it does reduce the households' options if they face other difficulties as the release of housing equity is no longer available to reduce or clear outstanding unsecured debt. Negative equity can have an adverse impact on spending as consumers feel that they no longer have access to housing equity. Homeowners facing negative equity may increase precautionary saving. Negative equity is likely to dampen mobility as the housing market recovers.

[5] Mortgage value as a percentage of property value at the inception of the mortgage contract.

[6] Annual Housing Statistics Bulletin

[7] Addison-Smyth, D., K.McQuinn and G. O'Reilly, 2009, "Modelling Credit in the Irish Mortgage Market" Central Bank and Financial Services Authority of Ireland Research Technical Paper 9/RT/09, November.

[8] IBF calculations

Those in negative equity may wait to move until house prices recover sufficiently to repay their outstanding mortgage. Negative equity can affect labour market mobility with workers “locked in” to a location as they are reluctant to sell and realise a loss.

Recent ESRI research estimates the number of mortgage borrowers in negative equity. House price declines to date, coupled with the anticipated price decline in 2010 would take the number of borrowers up to 250,000[9]. Although this represents a large number of households in absolute terms it is a small proportion of the stock of households in Ireland.

The ESRI analysis indicates that higher loan to value ratios, interest only mortgages and longer mortgage terms contribute to the high numbers in negative equity. The research finds that those who borrowed at, or close to the peak, namely 2006 and 2007, with a high loan-to-value ratio are more likely to be in negative equity. First time buyers are also likely to be over represented in this group.

Mortgage Repayment Pressures

The downturn in activity has been accompanied by a decline in incomes and a sharp rise in unemployment. From a recent low of 4.0 per cent in quarter 4, 2006 the unemployment rate has risen to over 12 per cent in quarter 4, 2009.

Various measures of housing affordability show the extent to which households borrowed to purchase a home. The ratio of house price to income increased sharply from 1995 to a peak in 2006 when new house prices were over 7 times an individual’s personal disposable income. Although lower interest rates and lower house prices have lead to some improvement in recent times, the cost of servicing a mortgage as a proportion of disposable income rose substantially over the boom period[10].

Income, house price and loan data used to construct these measures are macro averages and so do not capture the distribution of affordability across different income

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[9] Duffy, D, “Prospects for the Housing Market”, Paper presented at IBF/Accenture Conference: Delivering a Sustainable Mortgage Market, April 2010. The numbers are an update of the analysis in David Duffy, 2010, "Negative Equity in the Irish Housing Market," *The Economic and Social Review*, vol. 41(1).

[10] Department of Environment *Annual Housing Bulletin*

groups. This distribution can be very important. For example, a rise in interest rates could have a much more severe impact on sections of the economy not represented by the national average, e.g. those on low to moderate incomes and/or those who have stretched themselves financially to buy a dwelling.

In response to the economic crisis the ECB has cut interest rates, bringing the official rate to an historic low of 1.0 per cent. Given weak growth prospects for the Euro area and the absence of any significant inflationary pressures, it seems unlikely that the ECB will consider raising interest rates until early 2011. However, Irish mortgage interest rates for variable rate products have increased, even in the absence of an ECB rate hike. These increases reflect the fact that bank funding for lending purposes is linked to euribor or market rates rather than ECB interest rates.

Growing Arrears

The recession and rising unemployment have contributed to severe difficulties for households. In the housing market this is evidenced by the rise in the number of mortgages reported to be in arrears and properties abandoned, surrendered or repossessed. Since September 2009 the Financial Regulator has published quarterly residential mortgage arrears and repossessions statistics, see Table 1, showing a steady rise in mortgage arrears over the nine month period. At the end of quarter 1, 2010, 32,321 mortgages were in arrears for over 90 days or 4.1 per cent of outstanding residential mortgages. These figures relate to financial institutions regulated by the Financial Regulator and so do not include the number of local authority mortgage holders in arrears. Evidence suggests that the number of such households facing difficulties in meeting repayments may also be on the rise, although it is worth noting that, in general, the amount of outstanding debt per household is considerably lower among local authority borrowers. In addition, local authority borrowers continue to enjoy the benefit of very low interest rates with an effective variable rate that currently stands at over 100 basis points below the average variable rate available in the market.

Table 1: Residential Mortgage Arrears and Repossessions Statistics

	Q3 2009	**Q4 2009**	**Q1 2010**

Total residential mortgage loans outstanding at end of quarter	794,609	792,893	791,047
Arrears			
Arrears, of which	26,271	28,603	32,321
> 91 days and < 180 days	8,504	9,418	10,504
> 180 days	17,767	19,185	21,817
Arrears, where			
Formal demand has been issued (but where Court proceedings have not been issued)	4,525	5,906	5,463
Court proceedings have been issued to enforce debt/security on a mortgage	3,302	3,232	3,077
Court proceedings			
Cases where legal proceedings have been issued to enforce debt/security on a mortgage, during the quarter	481	233	161
Court proceedings concluded, during the quarter	230	375	225
Repossessions			
Residential properties repossessed on foot of an Order during this quarter	31	27	26
Residential properties voluntarily surrendered/abandoned during this quarter	79	74	65
Residential properties disposed of during the quarter	22	35	32
Residential properties in possession at end of quarter (cumulative)[1]	331	397	456

[1]Cumulative residential properties in possession at the end of a quarter is based on the stock of properties in possession at the end of the previous quarter plus any properties repossessed or abandoned during the quarter less properties disposed of during the quarter. Thus, the number of properties in quarter 4 2009 is calculated by (331+27+74)-35=397.
Source: Financial Regulator

Current arrears levels are in an environment of historically low interest rates. Mortgage rate increases may lead to higher numbers of borrowers experiencing arrears. Government support through Mortgage Interest Supplement (MIS) has increased dramatically. Currently more than 16,700 households are in receipt of MIS, representing expenditure by the State of nearly €64 million in 2010. These numbers represent a substantial increase over the two year period since the housing market and economy started to contract. The numbers receiving MIS stood at 4,111 at end 2007 with associated expenditure of €12.2 million.

Regular statistics on arrears were not available prior to September 2009. However, it was reported that at the end of June 2008, 13,931 mortgage accounts (1.44 per cent of residential accounts) were over 3 months in arrears and that this compared to 11,252 accounts over 3 months in arrears (1.21 per cent) at the end of December 2006.[11] In addition, there are those borrowers who have entered into a restructuring arrangement with the lender. Again, statistics are not available but it is estimated that approximately 30,000 mortgage holders have entered into arrangements with their lender.[12]

Despite the downturn in the housing market and the economy the growing number of mortgages in arrears has, to date, not translated into a substantial increase in repossessions. These statistics are in contrast to the perception that significant numbers of houses are being repossessed and is also in contrast to the experience in some other economies where the number of repossessions is high, the UK for example. The number of legal proceedings issued in each quarter has fallen substantially over the period. However, there is evidence of the difficulties being faced by households in the number of households voluntarily surrendering or abandoning their properties over the last nine months.

The backdrop for the next few years suggests that economic factors may contribute to a worsening of the mortgage arrears situation. The need to restore and maintain economic competitiveness will maintain downward pressure on incomes. Although some recovery in economic output is anticipated in the short term recovery in employment tends to lag any such upturn and so it is expect that the unemployment rate will remain above 13 per cent into 2012.

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[11] Financial Regulator, "Findings of Arrears and Repossessions Handling Procedures Examination" Press Release, 16 December 2008.

[12] Irish Banking Federation, "Banks Supporting Homeowners and SMEs" speech to Leinster Society, Chartered Accountants Ireland, February 10th, 2010.

Section 4: Code of Conduct on Mortgage Arrears (CCMA)

Introduction

This section includes recommendations to the Financial Regulator to amend the CCMA. It is proposed that the Financial Regulator will consult very shortly on the changes required to the CCMA to implement the recommendations of this section and, also, to implement the proposed Mortgage Arrears Resolution Process (MARP) described in Section 5.

Background

The CCMA was introduced by the Financial Regulator as a statutory code in February 2009. It supplemented a number of provisions relating to arrears management contained in its Consumer Protection Code and builds on the provisions of the Irish Banking Federation's (IBF) voluntary Code of Practice on Mortgage Arrears. The single most significant clause in the CCMA was the introduction of a 6 month moratorium on making an application to the courts to commence enforcement of any legal action on repossession of the primary residence from the time the arrears first arise. This was subsequently extended to 12 months in the updated version of the CCMA published in February 2010.

Recommendations to the Financial Regulator

The provisions of the CCMA should reflect the steps in the MARP outlined in Section 5. Specifically, the following steps should be included:

- The level of contact with a borrower in arrears needs to be appropriate. The Financial Regulator should include in the revised CCMA specific instructions as to how, when and what to communicate to the borrower.
- Lenders must not require the borrower to give up their low cost tracker or other existing product if to do so would put the borrower at a financial disadvantage. This must be publicly communicated by all lenders.
- The lenders must inform the borrower of the implications of rescheduling and/or modification for the borrower's credit record.

- Lenders must make all their current loan rates available on their websites.

- Lenders must be obliged to highlight the potential availability of State supports such as mortgage interest relief or mortgage interest supplement and must assist borrowers applying for same by ensuring that all requests for documentation and information are processed promptly.

- The CCMA first applies when a borrower misses a payment. However the practices established by the CCMA should apply as soon as a borrower first contacts the lender even if they are not in arrears (a 'pre-arrears' scenario).

    - Consideration must be given to ways to further encourage the borrower to engage with their lender about an arrears problem. This could include:

        - Make the best point of contact clear to the borrower – whether that is at a branch or Head Office.

        - Frontline staff must be trained in dealing with pre-arrears and arrears cases.

        - A prominent link on each lender's home page dedicated to dealing with borrowers who are struggling to meet their financial commitments.

        - All borrower meetings must be conducted with utmost privacy.

- Lenders must consider proactively contacting customers whom they believe to be at risk of going into arrears. For example, customer profiling can identify those falling into arrears.

- Lenders must specify their criteria for rescheduling

    - A borrower who is actively engaging in a resolution process must be made aware of the guidelines which the lender will use in assessing requests for rescheduling. This must be in a format appropriate to customers, i.e., not a detailed internal procedure/document. It must set out the options open to a borrower, e.g. interest only, payment holiday, etc. as well as how the lender will process/handle the case.

- The lenders must include all of the tools for dealing with struggling borrowers (set out in detail in Section 5 of this report).
- The complaints handling procedures of the Consumer Protection Code should apply to the decisions of ASU concerning application of the lender's MARP and compliance with the CCMA.
- The lenders must be obliged to publish all approved charges which they are applying to arrears
    - Under Section 149 of the Consumer Credit Act, 1995 the Financial Regulator must approve all charges, including third party charges, relating to arrears. Lenders should ensure that details of these charges are publically available (for example, on websites).
- Letters to borrowers in arrears should be appropriately written.
- The one year moratorium on application to the courts to commence enforcement of any legal action on repossession of a borrower's primary residence is adequate and should not be extended
    - The Group reviewed the possibility of extending this moratorium, and have concluded that there is no real advantage to extending it beyond 12 months and that there are real disadvantages.
    - As lenders are not initiating legal action against borrowers who are facing up to the issue, such an extension would not benefit those who require assistance.
    - An extension may discourage borrowers from addressing their problems promptly which would be counterproductive in terms of the aims of the CCMA.
    - For some borrowers, the mortgage may prove unsustainable and the sooner the issue is addressed the better.

Other Recommendations

- Lenders must not impose arrears charges or penalty interest on customers who are participating in the MARP. Implementation of the recommendation is not possible under the CCMA and the Group understand that the Financial Regulator is studying whether immediate action is possible under Section 149 of the Consumer Credit Act 1995 or whether legislative change is needed. In any event all lenders are encouraged to cease imposing such charges immediately.

- The CCMA should be admissible in legal proceedings.

- The amended CCMA should apply to Credit Unions and on a voluntary basis to housing authorities.

Section 5: Mortgage Arrears Resolution Process (MARP)

Purpose

The purpose of this recommended Mortgage Arrears Resolution Process (MARP) is to set out a future direction for supporting those experiencing significant mortgage arrears. This includes consideration of the various roles, rights and responsibilities of the borrower, the lender and the State.

An essential element is how lenders should communicate and engage with mortgage arrears customers, in addition to how they should proactively assess the current repayment capacity of those in arrears or at risk of going into arrears, using a Standardised Financial Statement (SFS – Appendix C). The use of a SFS will enable lenders to consistently assess customers' situations in order to determine the most appropriate resolution to the arrears situation.

Lenders should operate an agreed common process for addressing individual mortgage arrears cases which should be mandated under the Financial Regulator's Code of Conduct for Mortgage Arrears (CCMA) and which should apply to Credit Unions and applied voluntarily to housing authorities.

Key Steps in the Mortgage Arrears Resolution Process

This section sets out the five key steps in the mortgage arrears resolution process that should be applied by all lenders to all types of primary residential mortgage holders in arrears. In certain circumstances it may also be necessary for the lender to apply these steps to pre-arrears customers who are identified as being under severe financial strain.

1.	2.	3.	4.	5.
Communication	Financial Information	Assessment	Resolution	Appeals Mechanism

Step 1: Communication

The Group has identified a range of communication requirements and is recommending a range of updates to the Code of Conduct on Mortgage Arrears (CCMA) in this regard. These recommendations are set out in detail in the broader review of the CCMA set out in Section 4:

- All stakeholders need to agree a common message, use it and emphasise it in all communication about the issue.
- Citizen's Information Bureau (CIB)/Money Advice Budgeting Service (MABS) website www.keepingyourhome.ie should be the main portal or key site promoted for all information about arrears. All other sites such as www.helpinghomeowners.ie, www.itsyourmoney.ie should be interlinked to maximise the scope of available information on arrears.
- All 'at risk' mortgage customers should get periodical mailings about options available if under financial stress.
- Customers should be encouraged to engage with their lender at an early stage when or before an arrears problem develops.
- Lenders must have a dedicated section on their websites for customers in or concerned about financial difficulties and this section must contain contact points (i.e. not the general customer service contact points). This information, e.g. about how the lender will deal with the borrower, options such an interest only, payment holiday etc., should be easily accessible on their home page and links should be provided to the CIB/MABS website www.keepingyourhome.ie. This information, including contact points, should also be made available in paper form.
- Lenders must provide training for frontline staff for dealing with these issues and where it is not possible to train all staff, e.g. in a branch, the staff should be aware of the relevant contact persons and procedures.
- Lenders must pro-actively carry out regular assessments of existing customers with a view to identifying those suffering or anticipated to suffer financial stress.
- Lenders must attempt to engage with customers early and monitor accounts for signs of potential distress. For example, customers could be profiled, e.g. year of

mortgage draw down, Loan to Value (LTV), First Time Buyer (FTB), etc. Customers identified as high risk of default can then be monitored or addressed.

- Lenders must have internal communication with their staff to reinforce messages about their approach to arrears. This should minimise issues where staff are not aware of policies/approaches for dealing with customers in arrears.

Step 2: Financial Information

The Group proposes the following additional 'information' requirements:

- All arrears borrowers (and ideally 'at risk' borrowers) should complete a Standard Financial Statement (SFS) to include full and honest disclosure of:
  - income and expenditure details (discretionary and non-discretionary); and
  - assets (financial and non-financial) and liabilities (loans and other).

- When compiling and assessing the SFS the lender must advise the borrower that they may wish to avail of independent advice such as MABS support.

- The Irish Credit Bureau should expand its database for its members to include all loans including personal guarantees. The Group welcomes the Financial Regulator's announcement of a review of credit reporting arrangements in Ireland, including the proposal for compulsory reporting by all lenders.

- The SFS (Appendix C) should form the basis of assessment for the lender and other relevant parties (e.g. to inform any statutory assessment of housing need, or MIS support).

- Borrowers, lenders and State bodies should take the necessary steps to ensure that all appropriate documentation to corroborate the SFS is made available.

- When assessing SFS, lenders may request appropriate corroboration from other bodies such as the Revenue Commissioners or other lenders, with customer permission when necessary.

- When State agencies are assessing SFS they may request all appropriate documentation from the lender including original loan agreements, subject to borrower consent when necessary.

Step 3: Assessment

The Group proposes that the following assessment process be established on a common basis across the industry:

- The completed SFS is assessed by a centralised and dedicated Arrears Support Unit (ASU) within each lender's organisation.
- A standard set of procedures should be developed and utilised by all ASUs which focus on the merits and types of forbearance, if any, or any other relief granted to customers.
- No arrears charges or penalty interest are charged to any owner occupier borrower who is genuinely endeavouring to meet obligations.
- Appropriate reference points and working relationships and practices should be established between lenders, MABS, the Department of Social Protection and the Department of the Environment, Heritage and Local Government.
- The borrower's SFS will be subject to periodic review.
- Lenders should put in place management information on case handling under the MARP and report to the Financial Regulator on a quarterly basis.

Step 4: Resolution

The Group proposes that a formal 'Mortgage Arrears Resolution' process be established and should apply from the time a third repayment is missed by the borrower. This process is underpinned by the 'underlying principles' set out in Section 2 and would be without prejudice to any other forbearance arrangement that may already have been entered into by the lender with the borrower, such as an 'interest only' arrangement, which would be treated as an ongoing arrangement for the purpose of the resolution process. The resolution process should be subject to relevant checks, balances and procedures for each borrower category and each resolution option proposed.

The Resolution process should consist of the following elements:

- The Standard Financial Statement (SFS – Appendix C) will be the basis for assessing what approach will be taken to dealing with the borrower's arrears by the lenders centralised 'Arrears Support Unit' (ASU).
- An ASU assessment enables the determination of the next course of action having regard to the full circumstances and characteristics of each individual borrower.
- In general this decision will determine whether a temporary rescheduling arrangement of the mortgage involving standard forbearance should apply. Advanced forbearance mechanisms (such as loan modification rather than simply loan rescheduling), will be examined by the Group in the next phase of its work.
- The ASU may also decide (or the borrower may suggest) that the mortgage is unsustainable in the long term and that forbearance is unlikely to resolve the matter. In these circumstances either a voluntary surrender of the property may take place or the lender may agree that the borrower put the property up for sale. In the next phase of its work, the Group will consider additional measures to support borrowers in this situation.
- Where the borrower refuses to abide by the decision of the resolution process and all appeals have been exhausted, the lender may pursue standard legal repossession proceedings against the borrower in the courts.
- Where the borrower refuses to engage or co-operate with the process or is seen to conceal income or assets to avoid payment, the ASU may decide in conjunction with the borrower's advisor (if any) that the arrears resolution process will no longer apply. The 12 month moratorium on legal proceedings will be suspended and the lender may take legal proceedings for repossession in the normal manner.
- The complaints handling procedures of the Consumer Protection Code should apply to the decisions of the ASU concerning application of the lender's MARP and compliance with the CCMA.

Forbearance measures

In accordance with the CCMA the lender must take responsibility to explore forbearance options with the borrower. All lenders should publish the types of forbearance that are available under their MARP and the guidelines they are employing for decision making on which approach is appropriate for typical sets of financial circumstances. These could include one or more of the following alternative repayment measures:

- An arrangement on arrears could be entered into whereby the amount of monthly repayment may be changed, as appropriate, to help address the arrears situation.

- Deferring payment of all or part of the instalment repayment for a period might be appropriate where, for example, there is a temporary shortfall of income.
- Extending the term of the mortgage could be considered in the case of a repayment loan - although this may not make a significant difference to the monthly repayments.
- Changing the type of the mortgage (e.g. to interest only) might be appropriate if this could give rise to a reduction in the level of monthly mortgage outgoings.
- Capitalising the arrears and interest could arise where there is insufficient capacity over the short term to clear the arrears but where repayment capacity exists to repay the capitalised balance over the remaining term of the mortgage. This measure may be considered where a pattern of repayment has been established and where sufficient equity exists.

Furthermore, the lender will not use the circumstances of a borrower transferring to or between forbearance arrangements as an opportunity to put the borrower at a financial disadvantage. Similarly, this position should apply to a borrower in receipt of MIS.

The appropriateness of these measures must be determined by the factors of each individual arrears case following preparation and assessment of SFS. The borrower must be advised to take appropriate independent advice.

Further Work

The Group will be conducting further work on advanced forbearance measures including loan modification and will be examining approaches to manage shortfalls in cases of unsustainable mortgages.

Step 5: Appeals Mechanism

After completing the SFS and attempting to agree a resolution, if a borrower is not in agreement with the proposed approach, he / she has the right to seek review by a separate unit within each lender's organisation. Such a unit is to be established separate to the ASU, and the membership will consist of senior personnel whose role will be to independently review the decision being contested by the borrower.

In the event that following a review of the relevant appeal by the appeals unit, the customer is still in disagreement, where for example, it has endorsed the original decision taken by the ASU, the borrower will have recourse to an additional independent appeals mechanism with respect to the operation of the MARP and the application of the CCMA. The Group proposes this should be the Financial Services Ombudsman (FSO).

Section 6: Mortgage Interest Supplement

The Group is aware that a review of the Mortgage Interest Supplement scheme (MIS) has been ongoing and is nearing completion. It has consulted with the MIS Review Group and is aware that fundamental changes are being proposed. Within this context, and on the basis that the current forbearance policies continue, the Group sets out its views below on how the MIS scheme might operate in the future.

MIS provides significant Government support for assisting homeowners in difficulty with mortgage repayments. Its growing importance is evident by the 282% growth in the number of people who are now availing of the scheme which has increased from 4,111 at end 2007 to over 16,700 in May 2010. This growth is similarly reflected in expenditure on the scheme which increased substantially from €12.2m in 2007 to projected expenditure of €63.9m in 2010, an increase of 424% over the same period. The Group has taken into account the pressures on Government expenditure and, within that context, has sought to ensure that a balanced approach to MIS is put forward whereby expansion of the scheme in some instances is offset by more effective approaches which will deliver savings in other areas.

MIS is only one element in the proposed range of measures for improving supports for homeowners and it must be seen in the wider context where strong forbearance policies now exist and lenders are far more willing to engage with borrowers. The Group is aware that for those who may have long term unsustainable mortgages, the provision of long term State support may achieve little as the individual will continue to carry large debt arrears while the State is paying interest to the lender without any return for money advanced. The Group will return to this issue in the next phase of its work and will also keep MIS under review.

The basic purpose of MIS, when established, was to ensure that a person who suffered a short-term loss of income would not have the family home repossessed due to an inability to meet the mortgage repayment. The objective of the scheme is to:

"*provide short-term income support to eligible people who are unable to meet their mortgage interest repayments in respect of a house which is their sole place of residence*".

The Group considers that the provision of short term income support remains valid and represents a significant and valuable State support to private home owners. However, the initial responsibility rests with the lender and the borrower using the forbearance options available. The Group is also concerned that some people may be unable to sustain their mortgages even with MIS support and, in such cases, arrangements must be put in place to ensure that people who have longer term housing needs are assessed by the housing authorities for housing appropriate to their needs.

The Group considers at this stage that an alternative approach to achieving the scheme's objectives is warranted in the light of changes in the economic climate, the mortgage market and in particular the need to meet the objective of providing income support on a short-term basis only while longer term housing needs are met in a more appropriate manner. The Group also recognise that there are difficulties with the way in which the scheme is operating at present. These difficulties include an unprecedented increase in the number of customers presenting for assistance and other issues such as an unduly rigid and complex application process, a lack of transparency and an apparent inconsistency in decisions.

The Group recognises that in order to improve the efficiency and effectiveness of the scheme there are significant legislative, policy and operational issues involved in achieving a more transparent and accessible process. However, it recommends that the Department should move ahead as quickly as possible in developing a revised scheme. The revised scheme should have stronger and more effective links with the mortgage lenders and better data to ensure effective analysis and scheme monitoring. As the Government has already decided to transfer the Community Welfare Service to the Department of Social Protection, this provides an opportunity to centralise the administration of the scheme. These changes would help deliver a more effective customer service by having clarity, speed and consistency in approach and decision making.

In considering an alternative approach, the Group requests the Government to consider the following options:

- The Group considers that all legal action by the lender should be postponed while MIS is being paid to the lender where the borrower is adhering to the agreed arrangement with the lender. No legal action should be taken during the period for which MIS is being paid.

- The Group considers that removing the ban on paying MIS to a couple where one person is in full-time employment would be fair in the current economic situation. While having regard to the need to ensure control on Government expenditure, the Group considers that a revised MIS means test based on ability to pay be developed that will include those who suffer an observable and material change in their household income, for example through unemployment or disability.

- The Group proposes that the current rule which excludes the payment of MIS when a house is for sale should be suspended given the current market, where it is difficult to dispose of properties.

- In order to ensure that MIS is assigned for the purpose for which it was granted, the Group proposes that MIS should be paid directly into the mortgage account of the borrower and the lending institution should be notified of any change in circumstances. The borrower must undertake to notify the Department of any change in their financial circumstances. The lending institution should notify the Department of any changes it becomes aware of which may affect the borrowers MIS entitlement.

- Given the scale and cost of Government support in this area, the Group considers that the State should not provide support above market rates of interest. Payments from the State are risk-proof and therefore high rates of interest because the loan is at higher risk of default are not justified. In addition, as set out above, the payment of MIS directly into the mortgage account removes any additional risk of non-payment. Therefore, the Group considers that lenders should offer a rate of interest based on the average standard variable rate or the person's existing rate whichever is lower. The position of people on normal fixed rates will need to be taken into account. The lender should not accrue any additional charge above that rate for the period for which MIS is payable. This would set the principle of sharing the costs and risks of MIS on a more equitable basis between borrower, lender and the State.

- Under the current scheme MIS recipients are not required to engage with their lenders before applying for MIS and some are failing to avail of any forbearance measures. In these cases, the taxpayer is directly subsidising the borrower and the lender from the first day of difficulty. The Group considers that the lender must take initial responsibility for those who are experiencing mortgage difficulties and the borrower must engage with the lender. Furthermore, in the context of a long-term financial commitment such as a mortgage, and the range of forbearance options available, it is not unreasonable to expect borrowers to take responsibility for an initial period before the taxpayer is expected to subsidise the mortgage. Therefore, the Group considers that an initial period of six months delay should apply after which the State will share the responsibility by providing MIS support to those eligible.

- Evidence suggests that payment of MIS may impact on behaviour in terms of seeking or retaining employment. It may also provide an unnecessary subsidy to lenders and prolong the individual's debt in cases where the where the long-term future of the mortgage is unsustainable. Therefore, in addition to the six months forbearance period, the Group suggests that an overall time limit be considered for MIS. However, after this period of time, and if the housing need persists, the person should be assessed by the housing authorities for housing appropriate to their needs.

- The assessment for MIS must take the size of the mortgage into consideration as it would be inappropriate for the State to be paying excessive amounts of interest if the person could avail of alternative accommodation at a more reasonable cost.

- MIS should not be payable in respect of any part of a mortgage that is guaranteed as the responsibility rests with that guarantor.

- Current research shows that some MIS recipients are paying the capital on the mortgage while the State covers the interest payment. To ensure that MIS recipients are not placed under undue financial stress, the Group considers that MIS should only be payable where a forbearance arrangement has been agreed with the lender and upheld by the borrower and no capital is being repaid.

- The Group considers that MIS should only be provided in cases where there is a realistic expectation that assisting the borrower will ensure that they can sustain the mortgage in the longer term. Otherwise, the borrower is accruing further debt while the taxpayer is providing costly support which will not ultimately benefit the borrower. Prior investigation and complete analysis of all financial commitments as recommended in relation to the SFS will assist in making this decision.

- Where a borrower's situation is unsustainable, either before or following a period of MIS they should be facilitated, if necessary, in applying for social housing or other long term housing supports appropriate to their needs.

- The Group considered linking MIS to current rent supplement limits as a way of limiting expenditure and ensuring consistency across State housing supports. However, given the fall in rents, this is not viable as rents have fallen significantly but mortgage payments are based on the person's original mortgage. The Group recognises that rent limits do however have a role to play in determining the MIS reasonability test. However, in the longer term, the overall sustainability of the mortgage must be kept in mind, and the introduction of a time limit will ensure that the longer term housing needs of the person/household will be met in an appropriate way.

In conclusion, the Group has sought to achieve an overall approach to MIS that is fair to all parties, the State, the borrower and the lender and that responsibility for tackling mortgage arrears is shared amongst all parties. Given the scale of the State support in this area, it has also sought to ensure that any expansion of MIS, as in the case of the couple household with one partner in employment, is warranted and sustainable.

Money Advice and Budgeting Service (MABS)

The Group agrees that the role of MABS is hugely important in assisting those who are experiencing personal debt and mortgage difficulties. There are currently some 277 people employed, equivalent to 234 full-time posts, in MABS with a budget of some €18 million.

Although anecdotal evidence would suggest that there is pressure on the services, the latest data from the Department of Social Protection indicates that the average waiting time is currently 4.5 weeks. This data is subject to fluctuation and does not reflect fully the additional 19 staff provided to the organisation in late 2009. The Department has stated that it is satisfied the additional resources provided to MABS will assist them to meet the demand for services while recognising that there are pressures in certain services. It is also recognised that this must be kept under review, and the Citizen's Information Board, to whom MABS report, are currently conducting an overall review of the support available.

The Group recognises that MABS currently does not have the capacity or resources, to take on new work such as valuation of assets, or financial advice. This would require additional skills for money advisors and, given the extra work involved, would require significant additional resources. Also, if there was to be a requirement for mandatory referral to MABS they would not have capacity within current resources. This matter and any subsequent recommendations will be considered further in the context of the Group's future work plan.

Section 7: Personal Debt

The Group has not in the time available to it, been in a position to consider in any great detail issues relating to non-mortgage personal debt.

However, the Group is informed of the ongoing work of the Law Reform Commission (LRC) on Personal Debt Management and Debt Enforcement and the research reports of the Free Legal Advice Centres (FLAC) on debt enforcement of 2003 and 2009 that have helped inform this work. The Commission produced a very extensive Consultation Paper in September 2009 and an Interim Report in May 2010. The Group understands that the Commission will publish a Final Report before the end of 2010 containing recommendations on the comprehensive long term reform of the system of personal insolvency law and procedures for the enforcement of judgments in Ireland.

The Group recommends that urgent consideration be given by the responsible Government Departments and relevant organisations to the implementation, in the shortest possible timeframe, of measures for the comprehensive reform of both judicial bankruptcy proceedings contained in the Bankruptcy Act 1988 and the establishment of an effective and cost efficient non-judicial debt settlement process.

The Group believes that the recommendations to be contained in the Final Report of the Law Reform Commission on *Personal Debt Management and Enforcement,* expected later this year, will be crucial to the reform process.

The Group also recognises, in regard to personal debt, the existence and valuable contribution of the Irish Banking Federation - Money Advice and Budgeting Service Operational Protocol (IBF/MABS Protocol) on dealing with debt arrears, the ongoing review of this Protocol and the work being done to extend it to other branches of the credit industry.

The Group notes the discussion of the Irish system of credit reporting in the Law Reform Commission's Consultation Paper[13] and Interim Report.[14] The Group also notes that the Department of Finance is currently examining the credit reporting system in Ireland so as to inform the Minister for Finance of any issues that need to be addressed in this area and of any measures required to be taken. The Department of Finance foresees that it will conduct a consultation with the relevant stakeholders as part of this process. The Group welcomes the examination of this area by the Department, in recognition of the important role that credit reporting plays in strongly supporting responsible lending practices and so helping to prevent default and over-indebtedness. The Group also notes the publication by Central Bank and Financial Services Authority of Ireland of *Banking supervision: our new approach* which sets out the shortcomings of the current credit reporting system.

The Group is of the view that, in order to encourage meaningful engagement between debtor and creditor, that creditors should be obliged to suggest that the debtor seek independent money advice from Money Advice and Budgeting Service (MABS) or from licensed debt management companies as appropriate. In this regard the Group notes the recommendations of the LRC that a system for the regulation of money advice undertakings should be introduced in Ireland.[15] The Group welcomes the indication from the Department of Finance that this matter is under examination and that the introduction of any legislative measures will be considered as part of the examination process.

Debtors should also be encouraged to obtain legal advice from the Legal Aid Board, Free Legal Advice Centres or a private solicitor as appropriate.

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13 Law Reform Commission *Consultation Paper on Personal Debt Management and Debt Enforcement* (LRC CP 56-2009) at 192-208.

14 Law Reform Commission *Interim Report on Personal Debt Management and Debt Enforcement* (LRC 96-2010) at 43-44.

15 Law Reform Commission *Consultation Paper on Personal Debt Management and Debt Enforcement* (LRC CP 56-2009) at 245-251; Law Reform Commission *Interim Report on Personal Debt Management and Debt Enforcement* (LRC 96-2010) at 34-39.

The Group recommends that pending the comprehensive reform of the personal insolvency system in Ireland, that the following measures to address the problems of personal indebtedness be adopted and facilitated:

- The extension of the IBF/MABS Protocol to a wider group of creditors as an important step towards ensuring that an individual's debt difficulties can be addressed in a standardised, mutually-satisfactory and holistic manner.[16]

- That the monitoring and review of the operation of the Protocol should continue so as to make the operation of the Protocol more consistently effective for all and to enhance the positive effect on creditor/debtor relationships and systems.[17]

- The universal use of a Standard Financial Statement in preparing and sustaining debt management plans in terms of the verification of income, assets and expenditure is critical to the success of the non-legal methods for managing personal debt difficulties. This can contribute to reduction of the costs of the State in running court proceedings related to personal debt.

- In completing the Standard Financial Statement for the individual debtor, the personal circumstances of the debtor must be taken into account to enable a minimum living standard to be provided for while attempts are being made to repay debt.

- The introduction of a Pre-Action Protocol in consumer debt claims. This would require a creditor to engage with a debtor in a meaningful manner to agree a repayment plan and to send to a debtor a pre-litigation notice or "warning letter" in advance of any legal proceedings being brought against him/her. This Pre-Action Protocol could be based on the Model Rules of Court provided in the Law Reform Commission's Interim Report.[18]

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16 See Law Reform Commission *Interim Report on Personal Debt Management and Debt Enforcement* (LRC 96-2010) at 45-46.

17 See (LRC 96-2010) at 46-47.

18 See (LRC 96-2010) at 53-57; Appendix C.

- That the terms of all codes and protocols should be expressly admissible in legal proceedings concerning personal debt.[19]

[19] For a discussion of this issue, see (LRC 96-2010) at 49-52.

Appendix A

List of Group Members

Name	Organisation
Mr. Hugh Cooney (Chairman)	KPMG
Mr. Brendan Burgess	Independent Consultant
Dr. David Duffy	Economic and Social Research Institute (ESRI)
Mr. Matthew Elderfield	Financial Regulator
Mr. Pat Farrell	Irish Banking Federation (IBF)
Mr. Tom Foley	Independent Consultant
Mr. Paul Joyce	Free Legal Advice Centre (FLAC)
Ms. Patricia T. Rickard-Clarke	Law Reform Commission
Dr. John Thompson	Department of Finance
Mr. Brendan Fox (Group Secretary)	Department of Finance
Mr. Niall O'Sullivan	Department of Finance
Mr. Declan Keane	Department of Finance
Mr. Philip Nugent	Department of Environment, Housing, and Local Government
Mr. Brendan Mac Namara	Department of Justice and Law Reform
Dr. Orlaigh Quinn	Department of Social Protection
Mr. John Shaw	Department of the Taoiseach
Mr. Stephen O'Connor	Department of Communications, Energy, and Natural Resources

Appendix B

List of Submissions

- Alf Quirke
- Allied Irish Banks (AIB)
- Bank of Ireland
- Bill Holohan
- Clúid
- Debt Plan Ireland
- Department of Environment, Heritage and Local Government
- Department of Social Protection
- Educational Building Society (EBS)
- Focus Ireland
- Future Group
- GE Money
- Genworth Financial
- Irish Congress of Trade Unions (ICTU)
- Karl Deeter
- K McConnell (Bloxhams)
- Money Advice Budgeting Service (MABS)
- Moodys
- Oireachtas Joint Committee on Social and Family Affairs
- Permanent TSB
- Prevention of Family Home Repossession Group
- Respond
- Start Mortgages
- Ulster Bank

Appendix C

Sample Standard Financial Statement (SFS)

Bank Ref.:________________________ Mortgage Loan Account No's:___________________

Branch: __________________________

Personal Details and Employment Details:

Account Holder (1)		**Account Holder (2)**	
First Name		First Name	
Surname		Surname	
Address		Address	
Daytime Contact Number	Mobile Number	Daytime Contact Number	Mobile Number
Email Address		Email Address	
Date Of Birth (DD/MM/YYYY)		Date of Birth (DD/MM/YYYY)	
Marital Status		Marital Status	
No. And Age of Dependants		No. And Age of Dependants	
Occupation		Occupation	
Employer Name & Length of Service		Employer Name & Length of Service	
Employer Address		Employer Address	

Annual Gross Basic Income	Annual Gross Basic Income

What is your current employment status?

Employment Status	**Account Holder (1)**	**Account Holder (2)**
PAYE Full Time		
PAYE Part Time		
Self Employed		
Unemployed		

I confirm that the above property is my/our:

Principal Dwelling House (PDH)	
Buy to Let (BTL)	
Holiday Home (HH)	

Savings/Investments/Other Assets:

Details of Asset (e.g. cash deposits, investment property, family home, shares)	Financial Institution (e.g. Credit Union)	Balance/Value	Monthly Income (e.g. rental income, dividends)
1.			
2.			
3.			
4.			

If you possess any properties which are currently on the market, please provide the following information:

Estate Agent: ____

Current Asking Price & Length of Time on the Market:
____

Financial Commitments

Lender (e.g. Credit Union, Building Society)	Purpose (e.g. credit card, car loan, mortgage)	Balance	Expiry Date	Monthly Repayment	Repayment Type(e.g. interest only/ Capital & Interest)
1.		€			
2.		€			
3.		€			
4.		€			

Given that your homeloan is your main priority, please detail any revised repayment arrangements with other lenders:
____

____
_

____
_

____
_

Incomings and Outgoings: Weekly/Monthly (Circle one)

Number of People Living in Household: ___

Source of Income (Weekly/Monthly)

(A) Working	€
Net Salary/Wages (1)	
Net Salary/Wages (2)	
Part-Time Work	

Bonuses	
Overtime	
Car Allowance	
Child Allowance	
Other Allowance	
Rental Income	
Pensions	
Monthly/Weekly Maintenance Receivable	
Monthly/Weekly Total Contribution from other household members	
Monthly/Weekly Investment Income	
Monthly/Weekly Total Income	

(B) Not Working	**€**
Unemployment Benefit	
Social Welfare Benefits	
Child Benefit	
Mortgage Interest Subsidy	
Monthly/Weekly Maintenance Receivable	
Monthly/Weekly Total Contribution from other household members	
Monthly/Weekly Investment Income	
Monthly/Weekly Total Income	

Outgoings (Weekly/Monthly)	€
Mortgage	
Car Loan	
Credit Card	
Childcare/Maintenance	
TV Licence/Cable/Satellite	
School/College Fees	
Electricity	

Food	
Clothes/Footwear	
Travel Expenses	
Gas	
Mobile Phone	
Car Tax/Insurance	
Petrol	
Medical Costs	
Entertainment Costs	
Property Tax/Water/Refuse	
Other	
(If yes please specify)	
Monthly/Weekly Total Outgoings	

Difference between total income and total outgoings:	

Reason for this Review (please specify and provide background as appropriate): ____________________

____

____

____

If your monthly expenditure exceeds your monthly income, please outline your plan to address this shortfall: ____

____

____

____

Please provide any other information which you believe to be relevant to above: ______________

____

____

____

Declaration:

- I declare that the information provided to the mortgage lender as above is true and accurate.
- I hereby authorise the mortgage lender to make any appropriate enquiries with my solicitor, accountant other mortgage lender or credit reference bureau in respect of this assessment and any aspect thereof.
- I declare that I have never previously been insolvent and have never made arrangements with creditors and have never been involved in any court proceedings for debt.

Account Holder (1): _______________________

Account Holder (2): ______________________

Date: ___/___/___