

MORTGAGE ARREARS RESOLUTION PROCESS

Introduction

The Central Bank's Code of Conduct on Mortgage Arrears (CCMA) sets out the framework that lenders must use when dealing with borrowers in mortgage arrears or in pre-arrears. It requires lenders to handle all such cases sympathetically and positively, with the objective at all times of helping people to meet their mortgage obligations. Since January 2011, under the CCMA, lenders must operate a Mortgage Arrears Resolution Process (MARP) when dealing with arrears and pre-arrears customers. A revised version of the CCMA came into effect in July 2013. It now contains a detailed definition of what constitutes 'not co-operating' with the lender and strong provisions on what happens if you are declared 'not co-operating' – which can include immediate commencement of repossession proceedings.

The 4 steps of the MARP are covered in detail below. They are: communication; financial information; assessment; and resolution. There is also an appeals process under the CCMA, but this is now outside the MARP. If these steps have been exhausted and the lender intends to repossess your home, they must then adhere to the CCMA rules governing repossession proceedings – see 'Repossession' below.

Read more at www.citizensinformation.ie website and in the Central Bank's Consumer Guide. The Money Advice and Budgeting Service (MABS) has published booklets about the MARP and about appealing under the CCMA.

Personal Insolvency Arrangements and MARP

Under the personal insolvency system, people applying for a Personal Insolvency Arrangement must declare that they have co-operated with their mortgage lender under the MARP for at least 6 months and have been unable to agree an alternative repayment arrangement.

Communication

A mortgage arrears problem arises as soon as you fail to make a full mortgage repayment or only make a partial mortgage repayment on the date it is due.

If the arrears remain outstanding 31 days from this date, the lender must inform you in writing of the status of the mortgage account. This letter must include full details of the payment(s) missed and the total amount now in arrears. It must also explain that your arrears are now being dealt with under the MARP; the importance of co-operating with the lender; the consequences of non-cooperation; and the impact of missed repayments or repossession on your credit rating.

The lender must also send you an information booklet including details on the MARP (see our website), relevant contact points for arrears issues and details of websites with mortgage arrears information, such as mabs.ie and keepingyourhome.ie. (You must also get this if you are in pre-arrears.)

For as long as you are in arrears, the lender must give you a written update of the status of your account every 3 months.

If an alternative repayment arrangement has not been set up, and you miss a third repayment (full or partial), the lender must tell you the following in writing:

- The potential for legal proceedings and loss of your property, and an estimate of the costs to you of such proceedings
- The importance of taking independent advice from the Money Advice and Budgeting Service (MABS) or an appropriate alternative
- That even if your property is sold, you will remain liable for any outstanding debt, including any accrued interest, charges, legal, selling and other related costs.

Level of communication

Under the CCMA, each lender's Board must agree a communications policy, which ensures that the level of communications with borrowers is proportionate and not excessive; communications are not aggressive, intimidating or harassing; borrowers get enough time to complete agreed actions (with help if needed) before any further communication; and steps are taken to agree future communications. Communications must not be unnecessarily frequent.

The lender may make an unsolicited visit to your home only if other attempts to contact you have failed and you are about to be classified as not co-operating. You must get at least 5 business days' notice and you can opt to meet in the lender's office instead. You can choose to have a third party with you. The lender's letter announcing the visit must explain the implications of not co-operating.

Financial information, assessment

Financial information

Lenders must provide a **Standard Financial Statement (SFS)** to obtain financial information from a borrower in arrears or in pre-arrears, so that they can assess your financial position and identify the best course of action. The Central Bank has developed an [industry standard format \(pdf\)](#) for the standard financial statement (SFS). All lenders must use this SFS. The Central Bank has a [consumer guide \(pdf\)](#) to completing an SFS. MABS has also published a [detailed guide to the SFS \(pdf\)](#).

When providing the financial statement, the lender must ensure that you understand the MARP process. It must offer to help you to complete the SFS and mention sources of independent advice, such as MABS. It must give you enough time to assemble the information and complete the SFS, and must give you a copy of the completed statement.

You may be required to provide supporting documentation to verify the information in the SFS.

Assessment

The lender must pass the completed SFS to its Arrears Support Unit (ASU) for assessment.

The lender's ASU must assess the completed SFS in a timely manner and examine your case on its individual merits. The ASU must base its assessment of your case on your full circumstances. These include your personal circumstances; overall indebtedness; information provided in the standard financial statement; current repayment capacity; and previous payment history.

Before completing the assessment, it may agree a temporary alternative repayment arrangement if a delay would make your situation worse.

Resolution

When the assessment is complete, the lender must explore all options for [alternative repayment arrangements](#). These options may include:

- Term extension
- Restructure with long term reduced payments
- Deferred interest
- Short term interest only payments
- Short term reduced repayments
- Moratorium

The lender may require you to change from an existing tracker mortgage to another mortgage type if it concludes that none of the options that include keeping your tracker are appropriate or sustainable for you. It may offer you an alternative arrangement that requires you to change from your tracker mortgage if you can afford the alternative arrangement and it is sustainable.

Information and advice on alternative arrangements

When the lender is offering an alternative repayment arrangement, they must give you a clear written explanation of the arrangement. As well as the basic details of the new repayment amount and the term of the arrangement, the lender must explain its impact on the mortgage term, the balance outstanding and the existing arrears, if any.

The lender must also give details of:

- how interest will be applied to your mortgage loan account as a result of the arrangement;
- how the arrangement will be reported to the Central Credit Register and the impact of this on your [credit rating](#); and information on your right to appeal the lender's decision, including how to submit an appeal.

The lender must also advise you to take appropriate independent legal and/or financial advice.

Mortgage Arrears Information and Advice Service

As part of the [Mortgage Arrears Information and Advice Service](#), your participating lender will pay €250 for a consultation with an accountant of your choice drawn from a panel composed of members of recognised accountancy bodies including the Institute of Chartered Accountants Ireland, the Association of Certified Chartered Accountants, the Institute of Incorporated Public Accountants and the Institute of Certified Public Accountants. You can find out more about this in the [protocol document \(pdf\)](#) on keepingyourhome.ie, along with a [list of participating accountants](#).

If an alternative arrangement is agreed

The lender must monitor the arrangement on an ongoing basis and formally review its appropriateness for you at least every 6 months. This review must include checking with you whether your circumstances have changed since the start of the arrangement or since the last review.

If you cease to adhere to the terms of an alternative repayment arrangement, the lender's Arrears Support Unit (ASU) must formally review your case, including the Standard Financial Statement, immediately.

If an alternative arrangement is not agreed

It may not be possible for you and your lender to agree on an alternative repayment arrangement. If the lender is not willing to offer you an alternative repayment arrangement, they must give the reasons in writing. If they do offer an arrangement, you may choose not to accept it.

In both of these cases, the lender must inform you in writing about other options, including voluntary surrender, trading down or voluntary sale, and the implications for you of each option. They must also inform you that you are now outside the MARP, and that repossession proceedings can follow after 3 months – see 'Repossession proceedings' below.

The lender must also tell you what happens about any debt outstanding after repossession or sale. It must tell you about [personal insolvency options](#); the importance of taking independent advice; and your right to appeal or complain.

Appeals and complaints

Under the revised CCMA effective from July 2013, the appeals process is now separate from the MARP. However, if you are refused an alternative repayment arrangement, or you reject the arrangement being offered, you must get 3 months before the lender can start repossession proceedings – see 'Repossession proceedings' below. Even though you are now outside the MARP, you can appeal the decision to the lender's Appeals Board under the CCMA if:

- You are not willing to accept the alternative repayment arrangement being offered
- You are not offered an alternative arrangement
- You are classified as not co-operating

The lender must allow you a reasonable period to consider submitting an appeal. This must be at least 20 business days from the date you receive notification of the ASU's decision.

The Appeals Board will be made up of 3 of the lender's senior personnel who have not yet been involved in your case. At least one member of the Appeals Board must be independent of the management team and must not be involved in lending matters.

There must be a written procedure for handling appeals, to include:

- Only written appeals will be considered
- Appeals will be acknowledged in writing within 5 business days of being received
- The lender must give you the name of one or more people who will be your point of contact in relation to the complaint until the Appeals Board has ruled on it

The appeal must be decided within 40 business days of being received. The lender must write to you within 5 business days of this, to convey the decision of the Appeals Board and explain the terms of any offer being made. The lender must also inform you of your right to refer the matter to the [Financial Services Ombudsman](#) and must give you the Ombudsman's contact details.

The lender must give you written updates on the progress of the appeal at least every 20 business days. MABS has published a [booklet on appeals \(pdf\)](#).

Complaints

If you are not happy with the lender's treatment of your case, or if you feel they have not complied with the CCMA, you can complain to the lender under [the Central Bank's Consumer Protection Code](#). If you are not happy with the outcome of an appeal or complaint, you can refer to the [Financial Services Ombudsman](#).

Repossession proceedings

The lender must not apply to the courts to commence legal action for repossession of your property until every reasonable effort has been made to agree an alternative arrangement and a specified time period has elapsed.

In general, if you are co-operating with the lender, they must wait at least 8 months from the date your arrears were classified as a MARP case - see 'Communication' above - before applying to the courts.

This 8-month period does not apply if you do not co-operate with the lender; or if you perpetrate a fraud on the lender; or if there is a breach of contract by you other than the existence of arrears - in such cases, repossession proceedings can be started immediately. However, before you can be classified as not co-operating, your lender must first write to you and warn you that this might happen and tell you what steps you need to take to avoid being classified as not co-operating.

For co-operating borrowers, if your lender does not offer you an alternative repayment arrangement, or if you do not accept an alternative repayment arrangement being offered, your lender must write to you as outlined in 'Resolution' above. As regards repossession, this letter must state:

- That you are now outside the MARP, and that its protections no longer apply
- That legal proceedings may start 3 months from the date that the letter is issued or 8 months from the date the arrears arose, whichever date is later

The 3 months will give you time to consider other options, such as voluntary surrender , [voluntary sale \(pdf\)](#) or a [Personal Insolvency Arrangement](#). You can also appeal the lender's decision under the CCMA's appeals process, described above.

The lender or its legal advisers must notify you in writing immediately before applying to the Courts to start any legal action on repossession. Read more in the [MABS factsheet on facing repossession \(pdf\)](#).

Your property may be repossessed either by voluntary agreement or by court order - see [our document on repossession](#). Even if court proceedings are started, the lender must still try to maintain contact with you to seek an agreement on repayments, and must put legal

proceedings on hold if agreement is reached.

The lender must explain to you that, if the property is sold and the sale price does not cover the amount you owe, you are still liable for the rest of the amount you owe.

If your property is repossessed and sold, the lender must write to you promptly with the following information:

- Balance outstanding on your mortgage loan account
- Details and amount of any costs arising from the disposal which have been added to the account
- Interest rate to be charged on the remaining balance

Warning – This is a variable rate loan: The payment rates on this mortgage may be adjusted from time to time.

Warning – Your home is at risk if you do not keep up repayments on a Mortgage or any other loan secured on it

Warning – If you do not meet the repayments on your loan, your account will go into arrears. This may affect your credit rating, which may limit your ability to access credit in the future.