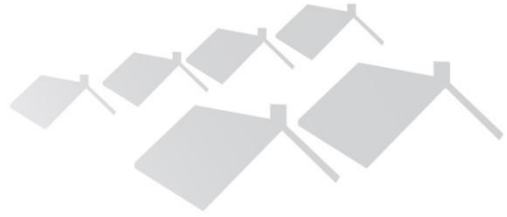


# MARP

LOCAL AUTHORITY  
MORTGAGE ARREARS  
RESOLUTION PROCESS



## Dealing with Mortgage Arrears

### A Guide for Local Authorities



Comhshaol, Pobal agus Rialtas Áitiúil  
Environment, Community and Local Government

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## Definitions

The following are defined for the purposes of this Code.

**Arrears:** arise on a mortgage loan account where a borrower has not made a full mortgage repayment, or only makes a partial mortgage repayment, in accordance with the original mortgage contract, by the scheduled due date.

**Borrower:** includes all parties named on the mortgage loan account.

**Communication:** means the imparting or exchanging of information between a Local Authority and a borrower by speaking, on paper or another durable medium, or using any other medium.

**Durable Medium:** means any instrument that enables a recipient to store information addressed personally to the recipient in a way that renders it accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

**MARP:** means the Mortgage Arrears Resolution Process as described in Section 3 of this Guidance.

**Mortgage to rent:** means where the borrower voluntarily allows the Local Authority to take possession of the primary residence, and the borrower becomes a tenant in that primary residence and this includes the situation where the Local Authority sells the primary residence to a third party and the borrower is a tenant of that third party.

**Not co-operating:** A borrower can only be considered as not co-operating with the Local Authority when

1. any of the following apply to his/her particular case:
  - a) the borrower fails to make a full and honest disclosure of information to the Local Authority, that would have a significant impact on his/her financial situation;
  - b) the borrower fails to provide information, relevant to the borrower's financial situation within the timeline specified by the local authority under Step 2 of the MARP; or
  - c) a three month period elapses:
    - (i) (A) where the borrower has not entered into an alternative repayment arrangement, and during which the borrower:
      - (i) has failed to meet his/her mortgage repayments in full in accordance with the mortgage contract; or

(ii) meets his/her mortgage repayments in full in accordance with the mortgage contract but has an arrears balance remaining on the mortgage;  
or

(B) where the borrower has entered into an alternative repayment arrangement, and during which the borrower has failed to meet in full repayments as specified in the terms of an alternative repayment arrangement; and(

(ii) during which the borrower:

(A) has failed to make contact with, or respond to any communications from the Local Authority or

(B) has made contact with, or responded to communications from the local authority, or a third party acting on the local authority's behalf, but has not engaged in such a way that enables the Local Authority to complete an assessment of the borrower's circumstances;

and

2. the warning letter, required in accordance with Step 1 of the MARP, has been issued to the borrower prior to his/her classification as not co-operating and the borrower has not carried out the action(s) specified in that letter.

**Personal Insolvency Practitioner:** a person authorised, under Part 5 of the Personal Insolvency Act 2012, to act as a personal insolvency practitioner.

**Personal Insolvency Arrangement:** means (a) an arrangement entered into by a debtor, or (b) an arrangement for which a proposal is made, under Chapter 4 of Part 3 of the Personal Insolvency Act 2012;

**Pre-arrears:** A pre-arrears case arises where either:

- a) the borrower contacts the Local Authority to inform it that he/she is in danger of going into financial difficulties and/or is concerned about going into mortgage arrears; or
- b) the Local Authority establishes that the borrower is in danger of going into financial difficulties which may impact on the borrower's ability to meet his/her mortgage repayments.

**Primary Residence:** means a property which is:

- a) the residential property which the borrower occupies as his/her primary residence in this State, or
- b) a residential property which is the only residential property in this State owned by the borrower.

**Record:** means any document, file, telephone call recording or information (whether stored electronically or otherwise) and which is capable of being reproduced in a legible form.

**Repossession:** means any situation where a Local Authority takes possession of a property including, without limitation, by way of voluntary agreement with the borrower, through abandonment of the property by the borrower without notifying the Local Authority, or by Court Order.

**Standard Financial Statement:** is the document which a Local Authority must use to obtain financial information from a borrower in order to complete an assessment of that borrower's case, issued by the Housing Agency to local authorities. This document may be subject to change from time to time, where notified by the Housing Agency.

**Unsolicited personal visit:** means any visit to a borrower's primary residence that has not been requested by, or agreed in advance with, the borrower.

**Voluntary sale:** means the voluntary sale by the borrower of the primary residence in order to repay part, or all, of the mortgage loan.

**Voluntary surrender:** means the voluntary surrender, by the borrower, to the Local Authority, of the primary residence.

**Working day:** means any day except Saturday, Sunday, bank holidays and public holidays.

# 1. Executive Summary

Local Authorities have long led the way in terms of the sympathetic and constructive treatment of borrowers in arrears. However, available data indicates that the number of mortgages in arrears are increasing among both Local Authority borrowers and borrowers from commercial institutions. The impact of the economic downturn has been particularly pronounced in low income groups and socially deprived areas. The effect on Local Authority housing loan arrears has been significant and is continuing to grow in parallel with the trends in the commercial sector. The objective of the Department is to work with Local Authorities to, firstly, contain the growth in arrears, and, secondly, start to reduce levels of arrears.

While section 34 of the Housing (Miscellaneous Provisions) Act 2009 allows Local Authorities to enter into arrangements with borrowers in financial difficulty, to repay the loan, “by such instalments and at such times as the housing authority considers reasonable in all the circumstances” with increasing incidence of arrears, it is important that Local Authorities are adequately supported by the Department and provided with clear guidance on dealing with arrears cases both sympathetically and pragmatically, while maintaining a consistent approach across all Local Authority areas.

These considerations must also be balanced with the need to safeguard the financial position of the Local Authority. In that regard, these revised guidelines, which replace those issued by the Department in August 2012, reflect the Central Bank of Ireland’s most recent *Code of Conduct on Mortgage Arrears* which took effect on 1 July 2013.

The central aspect of the Central Bank’s successive Codes of Conduct is the requirement that all lenders have in place a Mortgage Arrears Resolution Process (MARP). The MARP is intended to set out a framework for dealing with arrears in a timely, efficient and flexible way, which is fair to both the lending authority and the borrower. Local Authorities are now being asked to update the existing MARP for arrears cases in their functional areas.

Some important components of the revised MARP are:

## 1. Arrears Support Officers

The number of such officers required will vary according to the scale of a particular Local Authority and the relative size of its loan book, the number of arrears cases, etc. It is important, however, that all such personnel should have experience in finance and administration. Training in arrears management and associated skills should be given as a priority, where needed. The Department



will also provide training in loans management on an on-going basis. Guidance on the makeup of the Arrears Support Unit will issue to Local Authorities in the near future.

## **2. Information Booklet**

In order to inform borrowers in arrears of the workings of the MARP, an information booklet or leaflet should be made available by each Local Authority, advising borrowers of their responsibilities, options and rights under the MARP. This should be written in clear and concise language, without recourse to jargon or acronyms. The same information should be available via the Local Authority's website together with the downloadable Standard Financial Statement. The amount of information to be provided to borrowers at the outset and during the process has increased under these guidelines.

## **3. Standard Financial Statement**

The Standard Financial Statement, integral to the MARP process, has been included in the Information Booklet which will allow the Local Authority to request all of the financial data of a borrower in order to make a decision on the alternative repayment arrangement which best suits the circumstances of the borrower.

## **4. Non-Cooperating**

The guidelines introduce measures, including exit from MARP that can be exercised by a Local Authority when a borrower is classified as non-cooperating. There is a communication requirement on Local Authorities prior to the classification of a borrower as non-cooperating.

## **5. Appeals Process**

As part of the MARP, an appeals process will need to be put in place for dissatisfied applicants. The composition of the Appeals Panel is laid out in the MARP. The Panel should be made up of personnel not involved in the original MARP decision. Timeframes for the appeals process are detailed in the MARP.

A Mortgage Arrears Processing Handbook has been prepared for use by Local Authority personnel and accompanies these guidelines.

## 2. Guide to Local Authorities on managing mortgage arrears

### 2.1 Introduction

This guidance document sets out how Local Authorities are to treat borrowers in or facing mortgage arrears, with due regard to the fact that each case of mortgage arrears is unique and needs to be considered on its own merits. It sets out the framework that Local Authorities are to use when dealing with borrowers in mortgage arrears or in pre-arrears. All such cases need to be handled sympathetically and positively by the Local Authority, with the objective at all times of assisting the borrower to meet his/her mortgage obligations.

This guidance acknowledges that it is in the interests of both the Local Authority, as the lender, and the borrower to address financial difficulties as speedily and as effectively as circumstances allow.

### 2.2 General Obligations

- Each Local Authority must have at least one person, known as an Arrears Support Officer, with specific responsibility for dealing with arrears and pre-arrears cases.
- Before a Local Authority makes contact with a borrower, it must ensure that it has available all the relevant information that has been supplied to the Local Authority by the borrower.
- Each Local Authority must draw up and implement procedures for dealing with cases of arrears and pre-arrears through a Mortgage Arrears Resolution Process (MARP).
- Each Local Authority must have in place management information systems to capture information on its handling of arrears, pre-arrears and MARP cases, including all alternative repayment arrangements put in place to assist borrowers.
- Appropriate training for frontline staff dealing with borrowers in arrears or in pre-arrears should be provided. All other frontline staff must be made aware of the Local Authority's policy for dealing with arrears and pre-arrears cases and the relevant contact person(s) and process.
- A Local Authority must assist borrowers by ensuring that all requests from borrowers for documentation and information, required for the purposes of applying for State supports in relation to mortgages, are processed within 10 working days of receipt of the request. At the borrower's request and with the borrower's written consent, the Local Authority must liaise with a third party (e.g. Free Legal Advice Centre (FLAC), Money Advice and Budgetary Service (MABS), etc.) nominated by the borrower to act on his/her behalf in relation to his/her arrears situation. This does not prevent the Local Authority from

contacting the borrower directly, in relation to other matters, or issuing communications required under this guidance directly to the borrower. As soon as a borrower goes into arrears, a Local Authority must communicate promptly and clearly with the borrower to establish, in the first instance, why the repayment schedule in accordance with the mortgage contract, has not been adhered to.

- Each Local Authority must pro-actively encourage borrowers to engage with it about financial difficulties which may prevent the borrower from meeting his/her mortgage repayments. This must include a written communication by the Local Authority to all borrowers on at least an annual basis to encourage early contact with the Local Authority if a borrower is in arrears or is concerned that he/she is in danger of going into arrears.
- Local Authorities are restricted for imposing charges and/or surcharge interest on arrears arising on a mortgage account in arrears to which this guidance applies, unless the borrower is not co-operating.

### **2.3 Provision of Information**

Each Local Authority must ensure that:

- a) all communications about arrears and pre-arrears are provided to the borrower in a timely manner.
- b) all information relating to a Local Authority's handling of arrears and pre-arrears cases must be presented to the borrower in a clear and consumer friendly manner, and
- c) the language used in communications must indicate a willingness to work with the borrower to address the situation and should be in plain English so that it is easily understood. Legal and financial jargon must be avoided, where possible.

Local Authorities must assist borrowers by ensuring that all requests for documentation and information, required for the purposes of applying for State supports in relation to mortgages, are processed within ten working days of receipt of the request.

Each Local Authority must ensure that all meetings with borrowers in relation to arrears or pre-arrears are conducted with the utmost privacy.

Each Local Authority must prepare and make available to borrowers, an information booklet providing details of its MARP, which must be drafted in a clear and user friendly manner using plain English language that indicates a willingness to work with the borrower to address the situation and must include:

- an explanation of its MARP, including the alternative repayment arrangements available to borrowers, how these arrangements work, the key features of the arrangements and an outline, in general terms, of the Local Authority's criteria for assessing requests for alternative repayment arrangements;

- a statement that the availability of alternative repayment arrangements (as provided for in Step 4 – Resolution – of the MARP) is subject to an individual assessment of each case and meeting the Local Authority’s criteria;
- information about the potential availability of relevant State supports, such as, mortgage interest relief or Mortgage Interest Supplement;
- a reminder that borrowers who have purchased payment protection insurance in relation to the mortgage account which subsequently went into arrears may wish to make a claim on the policy;
- how data relating to the borrower’s arrears will be shared with the Irish Credit Bureau or any other credit reference agency or credit register, where permitted by contract or required by law;
- relevant contact points (i.e. the dedicated arrears contact points not the general customer service contact points);
- a statement that the borrower may wish to seek assistance from Money Advice and Budgeting Services (MABS) and contact details for the MABS National Helpline and links to relevant website(s) operated by MABS;
- a link to [www.keepingyourhome.ie](http://www.keepingyourhome.ie);
- right of appeal and appeals procedure should the applicant be dissatisfied with the result of their application under the MARP

Each Local Authority must have a dedicated section on its website for borrowers in, or concerned about, financial difficulties which must include:

- the information booklet required under this Chapter ;
- information on the level of charges that may be imposed on borrowers that do not co-operate with the Local Authority;
- a link to any website operated by the MABS that contains information about mortgage arrears;
- a downloadable version of the Standard Financial Statement and guide for its completion.
- a link to [www.keepingyourhome.ie](http://www.keepingyourhome.ie) ; and
- link to any website operated by the Insolvency Service of Ireland, e.g. [www.isi.gov.ie](http://www.isi.gov.ie), which provides information to borrowers on the processes under the Personal Insolvency Act 2012.

The dedicated section on the website must be easily accessible from a prominent link on the Local Authority’s home page.

### 3. Mortgage Arrears Resolution Process (MARP)

The Central Bank's *Code of Conduct on Mortgage Arrears* requires all mortgage lenders to ensure that it has in place a Mortgage Arrears Resolution Process (MARP) as a framework for handling cases as specified below. The following MARP has been designed and updated for use by Local Authorities.

A Local Authority must establish a dedicated Arrears Support Unit (ASU), which must be adequately staffed, to manage cases under the MARP.

A Local Authority must ensure that the MARP framework is applied to the following cases:

- a mortgage account where arrears have arisen on the account and remain outstanding, **91** calendar days from the date the arrears arose; a pre-arrears case;
- where an alternative repayment arrangement put in place breaks down; and
- where the term of an alternative repayment arrangement put in place expires.

"In relation to pre-arrears cases, a Local Authority must apply Provisions..... of the MARP to such cases."

Where a borrower makes a pre-arrears approach to their Local Authority, full information and support should be extended to the individual, and the provisions of the MARP, with the exception of Step 1 below, should be followed.

The MARP comprises of the following steps:

- |                     |                               |
|---------------------|-------------------------------|
| <b>First Step:</b>  | Communication with borrowers; |
| <b>Second Step:</b> | Financial Information;        |
| <b>Third Step:</b>  | Assessment;                   |
| <b>Fourth Step:</b> | Resolution; and               |
| <b>Fifth Step:</b>  | Appeals                       |

These steps are set out in further detail below.

## **FIRST STEP: Communication with Borrowers**

Early and constructive communication between distressed borrowers and their Local Authority (lender) is critical in effective arrears management.

While informal communication in this regard is to be welcomed and encouraged at the earliest possible stage, Local Authorities must initiate written communication with a borrower immediately after the initial payments have been missed.

Thereafter, where a sufficient response has not been received, Local Authorities should continue to communicate with the borrower, in respect of his/her mortgage arrears or pre-arrears situation. Each Local Authority must prepare and implement an approved communications policy.

The local authority must ensure that:

- a) the level of its communication with each borrower is proportionate and not excessive, taking into account the circumstances of the borrowers, including unnecessarily frequent communications are not made;
- b) its communications with borrowers are not be aggressive, intimidating or harassing;
- c) borrowers are given sufficient time to complete an action they have committed to before follow up communication is attempted. In deciding what constitutes sufficient time, consideration must be given to the action that a borrower has committed to carry out, including whether he/she may require assistance from a third party in carrying out the action; and
- d) steps are taken to agree future communication with borrowers.

A communication occurs when a meaningful verbal or written exchange takes place between the borrower or his assigned representatives and Local Authority operational staff (unanswered calls or messages are excluded).

Communications which are not acknowledged or responded to are not counted, nor are abusive or derogatory replies.

### **Payment Outstanding 91 days or more**

When arrears arise on a borrower's mortgage loan account and remain outstanding 91 days from the date that arrears arose, the Local Authority must:

- 1) inform each borrower of the status of the account on paper or another durable medium, within 10 working days. The letter is to include the following information:
  - the date the mortgage fell into arrears;

- the number and total monetary amount of re-payments (including partial repayments) missed;
- the monetary amount of the arrears to date;
- confirmation that the Local Authority is treating the borrower's situation as a MARP case;
- relevant contact points (i.e. the dedicated arrears contact points not the general customer service contact points);
- an explanation of the meaning of not co-operating under the MARP and the implications, for the borrower, of not co-operating including:
  - that a Local Authority may commence legal proceedings for repossession of the property immediately after classifying a borrower as not co-operating; and
  - a warning that not co-operating may impact on a borrower's eligibility for a Personal Insolvency Arrangement in accordance with the Personal Insolvency Act 2012;
- a reminder that borrowers who have purchased payment protection insurance in relation to the mortgage account which subsequently went into arrears may wish to make a claim on that policy;
- how data relating to the borrower's arrears will be shared with the Irish Credit Bureau, or any other credit reference agency or credit register, where permitted by contract or required by law, and the impact on the borrower's credit rating; and
- a link to any website operated by the Insolvency Service of Ireland which provides information to borrowers on the processes under the Personal Insolvency Act 2012.

2) provide the borrower with the information booklet outlining the MARP options.

When a Local Authority is contacted by a borrower in pre-arrears, the Local Authority must provide the borrower with the information booklet detailed above, direct them to the MARP section of their website, and any other information deemed useful.

Where arrears exist on a mortgage loan account, an updated version of the following information must be provided to the borrower on paper or other durable medium, every three months:

- the number and total monetary amount of re-payments (including partial repayments) missed;
- the monetary amount of the arrears to date; and
- relevant contact points (i.e. the dedicated arrears contact points not the general customer service contact points);

In a small number of cases borrowers may be making bi-annual or annual payments on loans. Local Authorities should use their best judgment based upon payment history of the borrower, as to whether the arrears constitute non-payment or just lax payment discipline.

Local Authorities should also apply best judgment, where a partial underpayment occurs, whether the materiality of the underpayment constitutes arrears, or just a rounding up or rounding down exercise on the part of the borrower.

### **Unsolicited personal visits**

- a) A Local Authority may only make an unsolicited personal visit to a borrower's primary residence in the following circumstances:
  - (i) when all other attempts at contact in relation to the borrower's arrears have failed; and
  - (ii) immediately prior to classifying a borrower as not co-operating.
- b) Where a Local Authority wishes to make an unsolicited personal visit they must give the borrower at least five working days' notice, on paper or another durable medium, and must provide the specified timeframe within which it intends to make the visit. The specified timeframe must be no longer than 15 working days from the date of notification (including the five working days' notice).
- c) The Local Authority must ensure that the notice issued of the proposed visit:
  - (i) outlines the importance of engagement between the borrower and the Local Authority, setting out the protections no longer available where a borrower is not co-operating with the Local Authority to address the arrears situation;
  - (ii) explains that the intention of the visit is to discuss the borrower's arrears situation and the next steps for dealing with the arrears;
  - (iii) outlines the contact details for the Local Authority's Arrears Support Unit;
  - (iv) offers the borrower the facility to meet in the council's offices instead of in the borrower's home; and
  - (v) informs the borrower that he/she may have a third party present, if he/she wishes.
- (d) a Local Authority may agree a further personal visit with the borrower in compliance [with this guidance and] provision 3.38 of the Consumer Protection Code 2012

Where three mortgage repayments have not been made in full in accordance with the original mortgage contract and remain outstanding and an alternative repayment arrangement has not been put in place, the Local Authority must notify the borrower, on paper or another durable medium, of the following:

- the potential for legal proceedings for repossession of the property, together with an estimate of the costs to the borrower of such proceedings;
- the importance of taking independent advice from his/her local MABS, or an appropriate alternative; and
- that, irrespective of how the property is repossessed and disposed of, the borrower will remain liable for the outstanding debt, including any accrued interest, charges, legal, selling and other related costs, if this is the case.



## **Non-Cooperating**

### Prior to Classification:

Prior to classifying a borrower as not co-operating, a Local Authority must write to the borrower and:

- a) inform the borrower that he/she will be classified as not co-operating if he/she does not undertake specific actions within at least 20 working days of the date of the letter to enable the Local Authority to complete an assessment of the borrower's circumstances;
- b) outline the specific actions that a borrower must take to avoid being classified as not co-operating;
- c) outline the ongoing actions that a borrower must take to avoid being classified as not co-operating, including a statement that if any of these ongoing actions are not undertaken at any point in the future, the Local Authority may classify the borrower as not co-operating without further warning;
- d) outline to the borrower the implications of not co-operating, including:
  - (i) that the borrower will be outside of the MARP and the protections of the MARP will no longer apply;
  - (ii) that a Local Authority may commence legal proceedings for repossession of the property immediately after classifying the borrower as not co-operating; and
  - (iii) a warning of the impact it may have on the borrower's eligibility for a Personal Insolvency Arrangement;
- e) include a statement that the borrower may wish to seek appropriate legal and/or financial advice, for example from MABS; and
- f) with regard to the potential for legal proceedings, include a statement that, irrespective of how the property is repossessed and disposed of, the borrower will remain liable for the outstanding debt, including any accrued interest, charges, legal, selling and other related costs, if this is the case.

### Borrower Classified as Non-Cooperating

Where a Local Authority has classified a borrower as not co-operating, following a period whereby the borrower has been given the opportunity to co-operate, the Local Authority must notify the borrower on paper or another durable medium that he/she has been classified as not co-operating and inform the borrower of the following:

- a) that legal proceedings can commence immediately;
- b) that the borrower is now outside of the MARP and the protections of the MARP will no longer apply;
- c) other options that may be available to the borrower, such as Voluntary Surrender, Mortgage to Rent or Voluntary Sale and the implications of each option for the borrower and his/her mortgage loan account, including:

- (i) an estimate of the associated costs or charges, where known, and where it is not known, a list of the associated costs or charges;
  - (ii) the requirement to repay outstanding arrears, if this is the case;
  - (iii) the anticipated impact on the borrower's credit rating; and
  - (iv) the importance of seeking independent advice in relation to these options;
- d) the borrower's right to appeal the Local Authority's decision, including that the borrower must make the appeal in writing and set out the grounds for the appeal; and
- e) the borrower's right to consult a Personal Insolvency Practitioner, notwithstanding the fact that the classification as not co-operating may impact on the borrower's eligibility for a Personal Insolvency Arrangement.

## **SECOND STEP: Financial Information**

The Local Authority must use a Standard Financial Statement, available on each Local Authority's website, to obtain financial information from a borrower in arrears or in pre-arrears. This should allow the borrower to give details of all outstanding and potential debts, as well as all sources of income and funds held by the borrower.

In relation to all MARP cases, the Local Authority must:

1. provide the borrower with a Standard Financial Statement at the earliest appropriate opportunity [and direct borrower to relevant section of Local Authority website with downloadable SFS and guide to its completion]and
2. inform the borrower that he/she may wish to seek independent advice to assist with completing the Standard Financial Statement, e.g., from MABS or an appropriate alternative.

The Local Authority may require the borrower to provide supporting documentation to corroborate the information provided in the standard financial statement.

Where the Local Authority imposes a timeline for return of information, including standard financial information, the timeline must be fair and reasonable and it must reflect the type of information requested and whether the borrower may need to obtain the information from a third party.

## **THIRD STEP: Assessment**

A completed Standard Financial Statement must be assessed in a timely manner by the Local Authority's Arrears Support Unit.

The Local Authority's Arrears Support Unit must examine each case on its individual merits, and must base its assessment of the borrower's case on the full circumstances of the borrower including:

- the personal circumstances of the borrower;
- the overall indebtedness of the borrower;
- the information provided in the Standard Financial Statement;
- the borrower's current repayment capacity;
- the borrower's previous payment history; and
- the borrower's current credit rating from the Irish Credit Bureau (ICB).

#### **FOURTH STEP: Resolution**

In order to determine which options for alternative repayment arrangements are viable for each particular case, a Local Authority must explore all options for alternative repayment arrangements offered by that Local Authority. Such alternative repayment arrangements may include :

1. interest only repayments on the mortgage for a specified period of time;
2. an arrangement to pay interest and part of the normal capital element for a specified period of time;
3. deferring, in exceptional circumstances, payment of all or part of the scheduled mortgage repayment for a specified period of time;
4. extending the term of the mortgage to maximum of 35 years and maximum age of 70 of the borrower, depending on the type of loan, the remaining term and the circumstances of the individual borrower;
5. changing the type of the mortgage, depending on the type of loan, the remaining term and the circumstances of the individual borrower; and
6. adding arrears and interest to the principal amount due.; at the interest rate applicable to the parent mortgage

In the case of scenarios 1, 2 and 3 outlined above, these are short term arrangements. A short term arrangement is one that initially is put in place for a period not exceeding 12 months but may be extended incrementally for up to a cumulative 36 month period. If a borrower's circumstances have not improved sufficiently after 3 years to allow them to revert to the original terms of the loan, this suggests that a long term arrangement might be more appropriate.

Short term arrangements may be cancelled by agreement between the parties if the circumstances of the borrower improve before the end of the agreed period of the arrangement.

Scenarios 4, 5, and 6, are long term solutions.

A Local Authority must document its considerations of each of the aforementioned options examined, taking account of the Standard Financial Statement submitted and including the reasons why the option(s) offered to the borrower is/are appropriate and sustainable for his/her

individual circumstances and why the option(s) considered and not offered to the borrower is/are not appropriate and not sustainable for the borrower's individual circumstances.

Where an alternative repayment arrangement is offered by the Local Authority, the Local Authority must advise the borrower to take appropriate independent legal and/or financial advice and provide the borrower with a clear explanation, on paper or another durable medium, of how the alternative repayment arrangement works, including:

- the reasons why the alternative repayment arrangement(s) offered is/are considered to be appropriate and sustainable for the borrower as documented by the Local Authority, including demonstrating, by reference to the borrower's individual circumstances, the advantages of the offer for the borrower and explaining any disadvantages;
- the new mortgage repayment amount;
- the term of the alternative repayment arrangement;
- the implications arising from the alternative repayment arrangement for the existing mortgage including the impact on:
  - the mortgage term,
  - the balance outstanding on the mortgage loan account, and
  - the existing arrears on the account, if any;
- a statement that the alternative repayment arrangement may impact on the borrower's mortgage protection cover;
- the frequency with which the alternative repayment arrangement will be reviewed, the reason(s) for the reviews and the potential outcome of the reviews, where:
  - circumstances improve,
  - circumstances worsen, and
  - circumstances remain the same;
- details of any residual mortgage debt remaining at the end of an alternative repayment arrangement and owed by the borrower;
- how interest will be applied to the mortgage loan account as a result of the alternative repayment arrangement;
- how the alternative repayment arrangement will be reported by the Local Authority to the Irish Credit Bureau and the impact of this on the borrower's credit rating;
- the timeframe within which the borrower must accept or decline the offer.

The Local Authority's Arrears Support Unit must monitor the alternative repayment arrangement that is put in place for a MARP case on an ongoing basis, and formally review the appropriateness of that arrangement for the borrower at least every 6 months, and at least 30 days before the alternative repayment arrangement comes to an end. As part of the review, the Arrears Support Unit must check with the borrower whether there has been any change in his/her circumstances in the period since the arrangement was put in place, or since the last review was conducted. Where

there has been a change in that borrower's circumstances, the Local Authority must request an updated Standard Financial Statement from the borrower and must consider the appropriateness of that arrangement for the borrower.

A Local Authority must carry out a review of an alternative repayment arrangement at any time, if requested by the borrower.

**Other Options:**

If the Local Authority does not offer an alternative repayment arrangement, for example, where it is concluded that the mortgage is not sustainable and an alternative repayment arrangement is unlikely to be appropriate, the Local Authority must provide the reasons, on paper or another durable medium to the borrower. In these circumstances, the Local Authority must inform the borrower of the following:

1. other options available to the borrower, such as Voluntary Surrender, Mortgage to Rent or Voluntary Sale and the implications of each option for the borrower; and his/her mortgage loan account including:
  - an estimate of associated costs or charges where known and, where not known, a list of the associated costs or charges;
  - the requirement to repay outstanding arrears, if this is the case,
  - the anticipated impact on the borrower's credit rating, and
  - the importance of seeking independent advice in relation to these options;
2. the borrower's right to appeal the decision of the Local Authority not to offer an alternative repayment arrangement to the Local Authority Appeals Panel;
3. that the borrower is now outside the MARP and that the protections of the MARP no longer apply;
4. that legal proceedings may commence three months from the date the letter, is issued or eight months from the date the arrears arose, whichever date is later, and that, irrespective of how the property is repossessed and disposed of, the borrower will remain liable for the outstanding debt, including any accrued interest, charges, legal, selling and other related costs, if this is the case;
5. that the borrower should notify the Local Authority if his/her circumstances improve;
6. the importance of seeking independent legal and/or financial advice;
7. the borrower's right to consult with a Personal Insolvency Practitioner;
8. the address of any website operated by the Insolvency Service of Ireland which provides information to borrowers on the processes under the Personal Insolvency Act 2012; and
9. that a copy of the most recent standard financial statement completed by the borrower is available on request.

If a borrower is not willing to enter into an alternative repayment arrangement offered by the Local Authority, the Local Authority must inform the borrower on paper or another durable medium of the following:

- a) other options available to the borrower, such as Voluntary Surrender, Mortgage to Rent or Voluntary Sale, and the implications of these for the borrower and the borrower's mortgage loan account, including:
  - (i) an estimate of the associated costs or charges where known and, where these are not known, a list of the associated costs or charges;
  - (ii) the requirement to repay outstanding arrears,
  - (iii) the anticipated impact on the borrower's credit rating, and
  - (iv) the importance of seeking independent advice in relation to these options;
- b) the borrower's right to appeal the Local Authority's decision on the alternative repayment arrangement to the Local Authority Appeals Panel;
- c) that the borrower is now outside the MARP and that the protections of the MARP no longer apply;
- d) that legal proceedings may commence three months from the date the letter is issued, or eight months from the date the arrears arose, whichever date is later, and that, irrespective of how the property is repossessed and disposed of, the borrower will remain liable for the outstanding debt, including any accrued interest, charges, legal, selling and other related costs, if this is the case;
- e) that the borrower should notify the Local Authority if his/her circumstances improve;
- f) the importance of seeking independent legal and/or financial advice;
- g) the borrower's right to consult with a Personal Insolvency Practitioner;
- h) the address of any website operated by the Insolvency Service of Ireland which provides information to borrowers on the processes under the Personal Insolvency Act 2012; and
- i) that a copy of the most recent Standard Financial Statement completed by the borrower is available on request.

A Local Authority's' Arrears Support Unit must formally review the borrower's case, including the Standard Financial Statement, immediately, where a borrower ceases to adhere to the terms of an alternative repayment arrangement.

### **FIFTH STEP: Appeals**

Each Local Authority must have an appeals process to enable a borrower to appeal in relation to a decision of the Local Authority, including:

- a. where an alternative repayment arrangement is offered by a Local Authority and the borrower is not willing to enter into the alternative repayment arrangement;

- b. where a Local Authority declines to offer an alternative repayment arrangement to a borrower; and
- c. where a Local Authority classifies a borrower as not co-operating,
- d. and for this purpose must establish an Appeals Panel to consider and determine any such appeals submitted by borrowers.

The Appeals Panel must include a person independent of any dealings with the borrower in question.

A Local Authority must have in place a written procedure for the proper handling of appeals. At a minimum, this procedure must provide that:

- the Local Authority Appeals Panel will only consider written appeals;
- the Local Authority must acknowledge each appeal on paper or another durable medium within 5 working days of the appeal being received;
- the local authority must provide the borrower with the name of one or more individuals appointed by the Local Authority to be the borrower's point of contact in relation to the complaint until the Appeals Panel adjudicates on the appeal;
- The Local Authority must provide the borrower with a regular written update on the progress of the appeal, at intervals of not greater than 20 working days; and
- The Local Authority must consider and adjudicate on an appeal within 40 working days of having received the appeal;
- The Local Authority must notify the borrower on paper or another durable medium, within 5 working days of the completion of the consideration of an appeal, of the decision of the Appeals Panel and explain the reasons for the decisions and the terms of any offer being made; and
- The Local Authority must also inform the borrower of his/her right to refer the matter to the Financial Services Ombudsman and must provide the borrower with the contact details of that Ombudsman.

## **4. Repossessions**

Where a borrower is in mortgage arrears, the Local Authority may only commence legal proceedings for repossession of a borrower's primary residence, where:

- the Local Authority has made every reasonable effort under this Guidance to agree an alternative arrangement with the borrower, or his/her nominated representative; and
- at least 8 months from the date the arrears arose has expired; or the borrower has been classified as not co-operating and the Local Authority has issued the required notification .

Notwithstanding, the above, where a borrower is in mortgage arrears, a Local Authority may apply to the courts to commence legal proceedings for repossession of a borrower's primary residence::

- in the case of a fraud perpetrated on the Local Authority by the borrower; or
- in the case of breach of contract by the borrower other than the existence of arrears.

A Local Authority, or its legal advisors, must notify the borrower on paper or another durable medium immediately before it applies to the Courts to commence legal proceedings for the repossession of the primary residence.

Where legal proceedings have commenced, a Local Authority must continue to maintain contact with the borrower or his/her nominated representative. If an alternative repayment arrangement is agreed between the parties before an Order for Possession is granted, the Local Authority must seek an order from the court to put the legal proceedings on hold for the period during which the borrower adheres to the terms of the alternative repayment arrangement.

Where a Local Authority has disposed of a property which it has repossessed, the Local Authority must notify the borrower on paper or another durable medium of the following information, and of his/her liability for:

- the balance of outstanding debt, if any, on the mortgage loan account;
- details and amount of any costs arising from the disposal which have been added to the mortgage loan account; and
- the interest rate to be charged on the remaining balance, if any.

The information specified above must be provided to the borrower in a timely manner following the completion of the disposal.

## **5. Voluntary Surrender of Property**

In some instances, borrowers will become aware of the unsustainability of their loans and may opt to voluntarily surrender their property to the Local Authority. In these instances, the process needs to be pursued with extreme sensitivity and understanding.

A binding definition of unsustainability does not exist for the commercial sector under the Central Bank's Code of Conduct for Mortgage Arrears. In such circumstances, it might be counter-



productive to define it for the Local Authority sector. However, the following rule of thumb may prove useful.

A loan may be deemed unsustainable if the full interest is not serviceable on a long term basis. Short term arrangements may allow for partial payments on loans, even where the full interest is not being met, for a period of up to 36 months cumulatively. If the balance on the loan is increasing rather than remaining static or decreasing, after a period of incremental short term extensions exceeding 36 months, then the loan appears to be underperforming and might be considered unsustainable.

The following extract is from a voluntary repossessions protocol in place in a Local Authority and may be used as a guide.

When engaging with account holders, the Local Authority official should outline the various options facing the account holder if they remain in default of the account. However, care should be taken to advise the householder that they are required to seek independent legal advice before arriving at any decision regarding whether they surrender the house.

If, having obtained independent legal advice, the borrower consents in writing to surrender the house, it is at the discretion of the Local Authority as to whether they accept surrender of the property or not.

## **5.1 Formal Agreement**

1. In the event of the Local Authority accepting surrender of the property, the Local Authority will enter into a formal agreement with the householder whereby the householder consents in writing to transfer the house to the Local Authority's ownership.
2. It should be clarified that the Local Authority will then be the sole owner of the dwelling and the householder will forfeit all rights regarding the dwelling.
3. It should be made clear in this agreement that by voluntarily surrendering the property, the householder acknowledges the Local Authority's right to dispose of the property as they see fit.
4. For their part, the Local Authority agrees to place the relevant householder on the housing waiting list providing they fulfil all other criteria for eligibility for Local Authority housing.
5. In instances where the householder surrendering the property has availed of a Shared Ownership Loan, the previous leasing arrangement under that Scheme ceases.

6. It shall be included in the agreement that in the event of any loss being sustained by the Local Authority arising from any subsequent sale of the property, the Local Authority reserves the right to pursue any sum outstanding.

## **5.2 Register of Houses Surrendered**

As part of this process Local Authorities should set up a separate register which would include details for all houses surrendered.

# **6. Records and Compliance**

Local Authorities must be able to demonstrate to the Courts, if required, that it is in compliance with this Guidance.

Local Authorities must maintain full records of all the steps taken, and all of the considerations and assessment required by this Guidance, and must produce all such records to the Courts, upon request.

Local Authorities must maintain records of all communications with borrowers in mortgage arrears and in pre-arrears. Such records must be readily accessible and capable of being reproduced in legible form and in a timely manner. Such records may include contemporaneous notes of meetings.

Local Authorities must maintain records of all Arrears Support Unit telephone calls made to or from a borrower in relation to his/her arrears or pre-arrears.

Local Authorities must maintain an up-to-date record of all appeals considered. This record must contain the details of each appeal, a record of the grounds on which the appeal was considered and the decision made on the appeal.

All records required by, and demonstrating compliance with this guidance, must be retained by the Local Authority for 6 years. In addition, all records relating to a borrower must be retained for 6 years from the date the relationship with the borrower ends.

## **6.1 Importance of up-to-date arrears data**

In order to identify and manage emerging arrears cases, each Local Authority should have in place adequate data capture and analysis tools, to quickly identify problem cases and react to them within the time parameters set out in the MARP.

It should be noted that payment practices have evolved over the years that render accounts technically in arrears where a significant risk does not exist. Borrowers paying on an annual or bi-annual basis where the terms of the loan specify monthly or quarterly payments, may be in arrears for some periods, and be prepaid in others. This practice should be discouraged and reversed where possible. However, cases where the payment history of the borrower suggests a sound credit history, and the amount outstanding is not excessive, the authority should exercise pragmatism and defer pursuit of the arrears unless they exceed 12 months or €500.

The same pragmatism should be applied where small loans fall into arrears for less than 12 months but the amount outstanding does not exceed €300. Reminders may be sent out in the normal manner, but triggering of the MARP may be deferred until 12 months have elapsed, at the discretion of the arrears management team.

## **7. Impacts on Mortgage Protection Insurance (MPI).**

Generali Pan European (GPE) and Marsh Ireland examined the impact on MPI of a range of scenarios involving adjustments to mortgages and produced the following guidance.

GPE is interested in increasing the sum at risk when it is caused by circumstances that are not of the mortgage holder's direct choosing.

GPE cannot support 'anti-selection' whereby the mortgage holder's liability is increased in circumstances where the person knows that they will become ill or die.

Ideally, as GPE will pay a death claim or disability claim based on the current capital value / monthly repayment, then any increases or decreases in the capital amount of the loan should be mirrored by an additional premium or a decrease in premium.

A short term arrangement is one that, initially is put in place for a period not exceeding 12 months, but may be extended incrementally for up to a cumulative 36 month period. If a borrower's circumstances have not improved sufficiently after 3 years to allow them to revert to the original terms of the loan, this suggests that a long term arrangement might be more appropriate. A short-

term agreement is one which is deemed to be fixable within the agreed period rather than the postponement of a long term arrangement. Under these circumstances the MPI treatment of the long term arrangement supplants the treatment of the short term arrangement. Any such move from a short term to a long term arrangement must be similarly notified to Marsh Ireland via a new notification template, a copy of which is included in the accompanying handbook.

The administration process required that:

- at renewal date, the Local Authority will calculate premiums based on the capital value outstanding, regardless of whether that balance is due to a short-term or permanent arrangement; or
- where a house is repossessed, the Local Authority can receive a proportionate refund on that year's premium.

Details of each short-term or permanent arrangement must be immediately communicated to Marsh Ireland using the agreed template.

