



Public & Regulatory Law Update

August 2010

Judicial Council Bill

On 23 August 2010 the Justice Minister Dermot Ahern published the General Scheme of the Judicial Council Bill 2010 (the Bill) following the approval of the Government. It provides for the investigation of allegations of judicial misconduct and for the establishment of a Judicial Council to promote a high standard of conduct among judges. The Bill provides that the Judicial Council will comprise all serving members of the judiciary and its rule will involve promoting:

- excellence in the exercise by judges of their judicial functions;
- high standard of conduct among judges;
- the efficient and effective use of judicial resources;
- continued education among judges; and
- respect for the independence of the judiciary.

An overseeing board comprising representatives of each of the courts will manage the policy of the Council under the overall authority of the Council.

The Bill also establishes a Judicial Conduct Committee with lay participation which will be responsible for the:

- consideration and investigation of complaints;
- preparation and submission to the Board of the Council of draft guidelines concerning judicial conduct and ethics; and
- making of regulations setting procedures for the consideration and investigation of complaints to be laid before both Houses.

In any case where an allegation of misconduct turns out to be well-founded, the disciplinary process will be able to recommend one of a range of sanctions depending on the nature of the breach of judicial ethics involved. The sanctions include the issuing of advice or a reprimand to the judge concerned, a recommendation that the judge follow a specific course of action or the issuing of a recommendation in respect of procedural or organisational change.

The Bill also provides for the Judicial Studies Institute to be put on a statutory footing.



Code of Conduct on Mortgage Arrears: review

On 13 August 2010 the Central Bank and Financial Regulator published a consultation paper on the statutory Code of Conduct on Mortgage Arrears (the Code) outlining proposed new regulations for dealing with those in arrears. It follows on from the July 2010 interim report of the Mortgage Arrears and Personal Debt Expert Group (*for more detail see the Public and Regulatory Law Update, July 2010*).

The Code came into effect on 27 February 2009 and was amended in February 2010 (*for more detail see the Public and Regulatory Law Update, March 2010*). It covers the mortgage lending activities of all regulated entities operating in the State but applies only to mortgage lending activities to consumers in respect of their principal private residence in the State.

The consultation paper has taken the interim report recommendations into account, along with other issues that have arisen since its implementation. The proposed new statutory requirements for mortgage lenders under the Code include:

- Lenders must have a Mortgage Arrears Resolution Process (MARP) framework for handling arrears and pre-arrears cases and an information booklet on the framework available to borrowers.
- Specific information must be provided to borrowers in a clear customer friendly manner when they go into arrears. A Standard Financial Statement must be used by all lenders to obtain financial information from borrowers in arrears or at risk of going into arrears. Lenders must assess each case individually and must base their assessment on the completed Standard Financial Statement.
- Lenders must engage with borrowers who are at risk of going into arrears and must explore all viable options and examine alternative repayment measures.
- Borrowers must not be required to change from a tracker mortgage to another mortgage type.
- Where borrowers are co-operating reasonably and honestly with lenders, lenders must wait at least twelve months before commencing enforcement or repossession proceedings of a primary residence. The twelve month period commences:
 - when the arrears first arose, if a revised repayment arrangement has not been agreed; or
 - when the borrower ceases to adhere to the terms of a revised repayment arrangement and no further arrangements are being entered into.
- Lenders must establish an Arrears Support Unit and draw up procedures for dealing with borrowers in arrears or at risk of arrears. Training must also be provided for staff dealing with such borrowers.
- Lenders must establish an appeals process to consider appeals by borrowers.

Submissions on the proposed changes must be made by 3 September 2010 with a view to publishing the revised Code by November 2010.

Niall O'Brien

Head of Public and Regulatory Law Unit

Beauchamps Solicitors Riverside Two, Sir John Rogerson's Quay, Dublin 2

t: +353 (0)1 4180600

f: +353 (0)1 4180699

e: n.o'brien@beauchamps.ie

w: www.beauchamps.ie

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