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YOUR FUTURE
IN FINANCE

QFA Loans

LEVEL 7

Certificate in Professional Financial Advice

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Step 1

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The Education Team are with you every step of the journey and we wish you every success in your exam.

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QFA Loans

2024/2025 Textbook

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Introduction

Chapter 1 provides a general introduction and overview of the topics that will be discussed in more detail throughout the manual. The different types of financial service providers in the Irish market and the main regulatory bodies within the Irish market are introduced.

An overview of the various pieces of legislation and codes impacting on housing loans and consumer credit in the Irish market is provided. These regulations and codes form the cornerstone of how financial service providers interact with their customers from the beginning to the end of the customer relationship. In addition, the law of contract is outlined as consumer credit arrangements form legal agreements and it is important to understand them.

Learning Outcomes – after studying this chapter you should be able to:
describe the various loan needs of an individual;
give a description of the different types of loans granted to consumers;
outline the key obligations imposed on credit institutions, mortgage credit intermediaries, mortgage intermediaries and credit intermediaries by legislation and statutory codes; and,
understand and discuss the main elements of a valid contract.

Chapter weightings	Number of questions which may appear		
In the exam, questions are taken from each chapter based on the following approximate chart:	Chapter	Minimum	Maximum
	1	4	6

1.1 Loan as a Financial Need

Most individuals, from time to time, will have various personal financial needs, that is, a need to take some action to safeguard or enhance their own financial well-being and/or that of their dependants and attain some particular financial objective.

Financial needs arise from a client's particular financial plans or objectives. These financial plans and objectives can be either general in nature, for example, to be financially secure in retirement, or very specific.

Example

An individual wants to be able to pay off his outstanding home loan in 10 years. It is estimated that the capital outstanding at that time will be € 34,000.

The client therefore needs to accumulate a sum of € 34,000 over the next 10 years.

This is an example of a specific financial plan or objective.

Personal financial planning is the process by which a client is helped to achieve, as far as possible, their financial plans and objectives through the efficient management of their financial resources and the proper use of suitable financial products.

The main **personal financial needs** are:

Savings

A need to accumulate a lump sum from regular surplus income, either to meet some particular anticipated expenditure or commitment, or to build up a general *rainy-day* fund.

Investment

A need to invest a lump sum to earn an investment return, consistent with the level of investment risk, term, and access to capital acceptable to the client.

Protection

A need to provide financially for certain unpredictable events, such as ill health or death, which will cause the interruption or total cessation of earned income.

Retirement Funding

A need to accumulate funds or benefits to provide a replacement income in retirement, having reached retirement and being no longer working.

Loans

A need to borrow a capital sum to meet some item of expenditure, for which there is not enough capital at this time and/or where capital available will not be used for this purpose.

1.2 Individual Loan Needs

In relation to client loan needs, the objective is to match, as far as possible, the most appropriate loan products (particularly in relation to term and cost of borrowing) to the client's loan needs and financial resources.

Different forms of client loan needs might include:

- A young person who needs a loan of € 10,000 to buy a car.

- Someone who needs a temporary overdraft to deal with some unexpected item of expenditure, for example, expensive car repairs.

- Someone who wants to buy certain goods or services on their credit card and wants to spread repayments over a few following months, for example, buying Christmas gifts.

- A client who needs a loan to buy an apartment or home in which to live. This type of loan is referred to as a housing loan.

- A client who needs a loan to purchase a property, to be let out, as an investment.

These different loan needs vary by three main factors:

1. **The scale or level of loan required**; for example, a credit card balance carried forward might be for hundreds of euro, while a loan to purchase a house or apartment could well be € 200,000 or considerably more.

2. **The term or period for which the loan may be required**; for example, from a few months in the case of an overdraft or credit card, to 25-30 years, or possibly longer, in the case of housing loans.

3. **Cost**; the rate of interest charged on different loans varies from high rates (possibly 7% to 12%+ per annum) on short-term unsecured smaller loans such as personal loans to much lower rates on longer term secured larger loans, such as home loans.

   In general, lenders charge lower rates for secured loans, for example, a housing loan secured by a legal mortgage on a property, than for unsecured loans, for example, a credit card balance or personal loan.

The main reason for this difference is that if the borrower defaults on a secured loan, the lender becomes legally entitled to enforce the security to repay the loan advanced. For example, they can repossess a house which has been mortgaged to the lender and sell it to clear off the mortgage.

> *The primary meaning of the term **mortgage** is that the person taking out the loan on a piece of land or property pledges that land or property to the lender as security for the debt.*
>
> *It is important to note that the legal meaning of the word **mortgage** does not actually refer to a loan. It refers to the act of <u>conveying the interest</u> in the property to the lender **as security** in return for a loan.*

In everyday terms, individuals tend to use the word mortgage whilst actually referring to the loan. For example, a borrower may ask, “How much will the repayments be on my mortgage?”

Key Learning Point

Individuals throughout their life have different loan needs. The size, cost and length of time for which a loan is granted, depend on a number of factors. Some individuals raise finance and offer security against the loan.

The most common form of security is a loan secured by way of a **legal mortgage** on a property. A mortgage is NOT the actual loan but is the act of conveying the interest in a property to a lender in return for a loan.

1.2.1 Different Forms of Loans

There are several different types of loans, some of which we will examine in this manual. These include:

Housing Loans

Housing Loans are defined in the Consumer Credit Act, 1995. They are typically loans secured on an individual's principal residence.

A housing loan is an agreement for the provision of credit to a person on the security of a mortgage of a freehold or leasehold estate or interest in land, for the purpose of enabling the person to:

- Have a house constructed on the land as the principal residence of that person or that person's dependants; or
- Improve a house that is already used as the principal residence of that person or that person's dependants; or
- Buy a house that is already constructed on the land for use as the principal residence of that person or that person's dependants; or
- Enable a person to obtain credit on the security of a mortgage of a freehold or leasehold estate or interest in land on which a house is, or is to be, constructed where the person to whom the credit is provided is a consumer.

Note: the final part of the definition of a housing loan DOES NOT require the *consumer* to use the property as their principal private residence. This means that individuals who purchase a residential investment property are treated as a *consumer* for the purposes of the Consumer Credit Act and afforded the same protections as an owner-occupier.

Lifetime Loan

A type of housing loan offered to individuals over the age of 60 to unlock the value in their home by means of a loan. No loan repayments are made for the duration of the loan, but the loan is repayable in full, with interest, once the individual ceases to live in the property or dies.

Home Reversion Agreements

A property transaction, rather than a loan where an older homeowner, in order to access a lump sum, sells a reversionary interest in part of his home, to a financial institution (a home reversion firm) at a significantly discounted value.

Cash Loans

Short- to medium-term cash loans, for example, *personal loans* provided by a bank. These types of loans are normally unsecured.

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Credit Sale Agreements

A consumer purchases goods now from a retailer with the aid of a loan provided by a finance company. Ownership of the goods passes to the consumer at the outset.

Hire Purchase Agreement

A consumer agrees to hire goods from a finance company over a period (at least three months). At the end of this period, the consumer will have an option to purchase the goods in question from the finance company, provided the consumer has made all payments required under the agreement. However, the consumer is not obliged to purchase the goods.

Personal Contract Plan (PCP Loans)

A PCP is a form of hire purchase agreement, normally for the purchase of a motor vehicle. The individual does not own the vehicle until the final payment has been made. With a PCP, repayment is broken down into three parts: the deposit, the monthly repayments, and the guaranteed minimum future value (GMFV). The GMFV is the amount an individual will be required to pay at the end of the agreement to transfer ownership of the vehicle into their name.

Conditional Sale Agreement

Like a hire purchase agreement but with one important difference. Transfer of ownership of the goods from the finance company to the consumer is obligatory when certain conditions of the agreement have been fulfilled, for example, if all payments required of the consumer under the agreement have been paid by the consumer.

Key Learning Point

There are different terms used in relation to the provision of loans.

Some terminology has very precise meaning when used within certain legislation, which might differ from its meaning when used in common parlance.

It is important to note these differences especially where it relates to consumer protection. For example, the definition of a *consumer* changes within different Codes and Acts.

1.3 The Development of the Irish Residential Market

As a loans adviser, it is important to understand the cyclical nature of the property market and the genesis of some of the legislation, government intervention, and lending criteria currently in place.

In the 20 years prior to the 1990s, the Irish residential property market was relatively stable with limited growth in residential house prices. There were many reasons for this, which included:

- Residential mortgage finance was mainly the preserve of building societies that operated conservative lending policies. Typically, building societies insisted that residential mortgage applicants saved a percentage of the purchase price – usually 10% – and saved with the building society for a year before buying a residential property.

- Typically, residential mortgage loans were based on low multiples of the salary earned by the applicant. The usual multiple was 2.5 times the salary of the wage earner. For joint applications, the multiple was typically 2.5 times the salary of the higher wage earner and one times that of the other applicant.

- During this period, the relatively poor Irish economic performance coupled with high interest rates and high unemployment tempered credit demand for residential mortgage lending.

- During the early 90s, the average house price was 3.6 times household income whereas, by 2007, this had risen to 7.4 times household income.

During the period 1995 – 2008, several significant changes to the residential mortgage market occurred:

- A dramatic improvement in the performance of the Irish economy saw the era between 1995 and 2008 known as the Celtic Tiger years. Ireland enjoyed a period of rapid economic growth, with the Irish economy expanding at an average rate of 9.4% per annum between 1995 and 2000. The economy continued to grow at an average rate of 5.9% per annum until 2008. During this period, there was effectively full employment, with the population increasing above the natural trend due to substantial immigration. These factors led to increasing credit demand for residential mortgage loans.

- The Irish housing loan market became much more competitive with the existing Irish banks entering the residential mortgage market in a serious way for the first-time and a few new foreign banks establishing operations in Ireland. With these new entrants in the market, the supply of residential mortgage lending increased and competition in the Irish market intensified.

- Mortgage brokers and intermediaries began to play an active role. Mortgage intermediaries introduced potential residential mortgage borrowers to lenders who paid them a commission for the introduction. Mortgage brokers also educated borrowers on the pros and cons of the various products on offer from the Irish banks, thus creating a more educated borrower.

- The increased competition led to several other changes:

    - The *loan-to-value* (LTV) ratios on the mortgage loans began to increase with some lenders allowing 100% LTVs in certain circumstances. Traditionally, borrowers could not borrow more than 90% of the value of the residential property they wished to purchase.

    - The traditional income multiple formula for determining the amount to be lent was replaced by the *nets formula*. Under this formula, applicants could obtain a mortgage loan with repayments equal to a percentage of their after-tax income, typically 35%. In some cases, that percentage was higher. As the price of property continued to rise, so did the percentage of net income that applicants could have as a mortgage repayment.

    - Investors obtained interest-only loans, with a view to repaying the capital on selling the property (with substantial equity) as house prices continued to rise.

2008 saw the domestic Irish banking sector experience systemic failure which had enormous consequences for the industry, its customers, and the economy it serves.

Developments since 2008

Since 2008, the banking sector worked through a fundamental restructuring programme, with banks adapting their business models to regain viability. These actions helped to restore market confidence in the Irish banking system.

The financial crisis, the economic recession and the austerity measures introduced to repair the fiscal deficit had profound impacts right across society. By March 2013, the price index for all residential properties nationally had fallen to 44.9% of its April 2007 peak; however, by April 2024, the national index was 9.5% above its previous peak. In April 2024, Dublin residential property prices were 1.7% higher than their February 2007 peak, but Dublin apartments were still 14.3% lower than their April 2007 peak. The volume of transactions in 2023 has increased to almost 60,000 from less than 25,000 in 2013. The number of new dwellings completed has increased from less than 5,000 in 2013 to 32,695 in 2023, which was 10% more than in 2022. 35.6% of new dwellings completed in 2023 were apartments but 71.9% of properties built in Dublin were apartments. Many of these are in build-to-rent schemes and are not available for purchase. However, as interest rates have risen significantly since mid-2022, the investment funds which invested in apartment schemes have withdrawn from the market as they can find higher returns elsewhere. This is likely to lead to a material reduction in apartment construction in the coming years.

Housebuilding collapsed after the crisis and is still at around half the rate necessary to meet demand. The Housing Commission estimates a “housing deficit of between 212,500 and 256,000 homes” and demand at more than 50,000 units per annum. The housing shortage has exacerbated rental inflation; the Daft.ie national rent index was 76% higher in April 2024 than in February 2008, its pre-crisis peak. These have been significant contributors to the financial distress which many Irish individuals and families are experiencing.

The financial crisis resulted in increasing mortgage arrears, in both the *private dwelling home* (PDH) and *buy-to-let* (BTL) loan portfolios. Builders could no longer get credit to build while landlords could not afford the capital and interest repayments when the interest-only period ended. This, combined with higher taxes and reduced tax relief, forced landlords out of the market, thus reducing the rental stock available.

The scale of the deepening Irish residential mortgage crisis required mortgage lenders to reorganise and develop new operational processes. It has required mortgage lenders to up-skill and retrain their staff with new, specialist skill sets so that they can effectively engage with their distressed mortgage customers with the necessary skill, care and diligence.

In recent years:

- A shortage of housing supply has resulted in prices rising beyond affordable levels for many first-time buyers;
- Refugees from Ukraine and elsewhere have added to demand for accommodation;
- Rents have increased as a result of excess demand and reduced supply;
- A lack of supply has also impacted the availability of social housing causing a homelessness crisis; and
- Funds, particularly pension funds, were buying apartment blocks with the result that many newly built apartments were let immediately and were not available for purchase.

A number of authoritative reports into the Irish banking crisis have been published, which include:

- The Irish Banking Crisis, Regulatory and Financial Stability Policy, 2003-2008 by the Governor of the Central Bank of Ireland, published May 2010;
- A preliminary report on the Sources of Ireland’s Banking Crisis by Klaus Regling and Max Watson, published May 2010;

- The Commission of Investigation into the Banking Sector, Misjudging Risk: Causes of the Systemic Banking Crisis in Ireland by Peter Nyberg, published April 2011.

- Report of the Joint Committee of Inquiry into the Banking Crisis, published in January 2016.

Since 2015 the Central Bank has conducted annual reviews to ensure mortgage lending criteria are maintained at appropriate and affordable levels. It completed a fundamental review of the mortgage measures in October 2022.

You are encouraged to read the reports to deepen your understanding of the factors that led to the crisis.

1.4 The Mortgage Process

In the following chapters, we will discuss housing loans and the mortgage process. To understand fully the mortgage process, one must also understand its component parts.

There are three elements in the mortgage process:

a) A **booking deposit** of a nominal amount € 5,000 - € 10,000 is paid when the borrowers' initial offer to purchase a property is accepted by the vendor. This is usually paid to the estate agent.

b) Contracts are typically signed after a satisfactory property valuation/survey has been carried out and the Lender has issued a Loan Offer to the purchasers in relation to the specific property.

c) The purchasers will be required to pay the remaining part of their deposit – sometimes referred to as their 'balance of funds' – at Completion when they finalise the purchase transaction with their Solicitor and receive the keys of the property. This is typically made up of savings or in some instances a gift from family/parents or for qualifying new homes the Help-To-Buy scheme can also be utilised here.

The chart on the following page outlines in brief a typical mortgage process.

Client	Mortgage adviser
Makes an initial loan enquiry with a bank or through a mortgage credit intermediary.	Issue terms of business letter to client (if new to entity). Fact-find client needs. Outline loan process, costs and documentation required to process loan application further. Possibly arrange approval in principle (AIP).
Finds a suitable property, places a booking deposit.	Advise clients on specific upfront and ongoing costs involved in purchasing property.
Applies for formal loan approval by providing all necessary supporting documentation.	Formal mortgage application is completed, review of all supporting documentation carried out. Issue terms of business letter to client.
Meets with a solicitor to carry out conveyancing and investigation of the property title.	Record solicitor's details as the lender will send legal documentation to them regarding the mortgage. The solicitor investigates the property title.
Meets with mortgage adviser to review loan needs and decide on a loan product.	Review product options with client and outline why you recommend a specific lender and product. Provide the client with the written *reasons why* letter.
Suitable product is chosen and mortgage application is processed.	Ensure all upfront costs are reviewed, balance of funds is evident and advise client on timescales and process.
Reviews insurance requirements and understands costs etc.	Advise client on insurance needs (both life insurance, buildings insurance, and other related insurances).
Formal loan offer is issued, and insurance is arranged.	Meet and review loan offer and insurance products with client, explain the general and specific conditions contained therein.
Signs purchase contracts on the property. Signs the loan offer and review interest rates.	Meet and review interest rates and costs with client. Ensure all insurances are in place and check for anticipated closing date.

The solicitor must now undertake further work which includes requesting the loan cheque from the lender. The solicitor also certifies the title of the property and closes the purchase. When the solicitor has completed all the legal work, the borrower can then move into their new property.

1.5 Regulatory Bodies

1.5.1 Central Bank of Ireland

Financial services providers in Ireland are regulated by one or more of regulatory bodies, depending on the activities they carry out. The Central Bank is the main regulatory body for financial services providers.

The Central Bank regulates the activities of, amongst others:

- Credit institutions;
- Credit servicing firms;
- Credit unions;
- Debt management firms;
- Life insurance and general insurance providers and intermediaries;
- Mortgage intermediaries;
- Mortgage credit intermediaries;
- Retail Credit & Home Reversion Firms.

The main purpose of this regulation is to ensure a fair financial services market for consumers and provide consumers with the confidence that their deposits and investments are safe.

The Central Bank monitors and enforces consumer protection through its Consumer Protection Code and Code of Conduct on Mortgage Arrears. The Central Bank has introduced conduct of business rules and sets minimum competency requirements for firms and their employees.

1.5.2 Competition and Consumer Protection Commission

Under the European Union (Consumer Mortgage Credit Agreements) Regulations, 2016, the CCPC has a statutory responsibility to promote measures that support the education of consumers in relation to responsible borrowing and debt management, in particular in relation to mortgage credit agreements.

1.5.3 Financial Services and Pensions Ombudsman

For the purposes of this module, we will only discuss the role the FSPO plays in dealing with complaints made about regulated financial services providers.

A complaint about a Financial Services Provider can be made to the FSPO if it is being made by a ‘consumer’.

For the purposes of the Financial Services and Pensions Ombudsman, a consumer is any private individual or any business, club, charity, partnership, or trust with a turnover of less than € 3 million per year.

<u>Financial Services and Pensions Ombudsman Complaints Process</u>

The Consumer Protection Code states that a regulated entity must have a written complaints procedure in place and attempt to resolve a complaint from a client ***within 40 business days*****.**

If the consumer is not satisfied with the explanation or response, they must submit the **final response letter** to the FSPO with the completed complaints form.

Key Learning Point

A consumer cannot refer a complaint to the FSPO unless he/she has previously communicated the complaint to the relevant financial services provider and given the provider a reasonable opportunity to deal with the complaint. The individual must be in receipt of a *final response letter* from the financial services provider.

1.6 Legislation and Codes Impacting on Housing Loans and Consumer Credit

There are many pieces of legislation which impact on the provision of housing loans and credit to consumers. Some relate only to credit institutions and others relate to both credit institutions and credit intermediaries.

In this section, we will look briefly at the different types of legislation. However, each piece of regulation or legislation and its relevance is also placed in context throughout the textbook.

1.6.1 Consumer Credit Act, 1995 (CCA)

The **Consumer Credit Act, 1995**, is an important piece of legislation and brought in strict regulations for all regulated entities, that is, banks, building societies, mortgage intermediaries, etc.

The Consumer Credit Act, when introduced, led to greater transparency for the consumer regarding personal and housing loans.

For the purposes of the Consumer Credit Act, a consumer is defined as:

> *"…a natural person (i.e. an individual and not a company) acting outside the person's business, i.e. acting personally for themselves and not as part of their business."*

The Act imposed specific requirements on credit institutions, credit intermediaries and mortgage intermediaries, in relation to their dealings with a consumer. These requirements related mainly to interest rates, consumer contact, arrears, endowment policies, fixed and variable interest rates, and documentation that must be provided by the borrower and lender.

The Consumer Credit Act, 1995 also regulates many aspects of the provision and advertising of credit, housing loans, hire purchase and hire agreements to consumers. For this purpose, a consumer is defined as 'a natural person' acting for the purposes of obtaining the credit outside his or her trade, business, or profession, that is, for his or her own personal use.

The Act provided for a system of regulation of mortgage intermediaries and credit intermediaries.

Provisions of the Consumer Credit Act, 1995 in relation to the content and termination of credit agreements do not apply to credit agreements which are subject to the European Communities (Consumer Credit) Regulations, 2010.

1.6.2 Consumer Protection Code, 2012 (As Amended)

The Code applies to the regulated activities of regulated entities operating in the State including:

- Financial services providers authorised, registered or licensed by the Central Bank; and
- Financial services providers authorised, registered or licensed in another EU or EEA member state when providing services in this State on a branch or cross-border basis.

Key Learning Point

Note that the definition of consumer for the purposes of the Consumer Protection Code is much broader than the definition of consumer under the Consumer Credit Act 1995. The Consumer Protection Code provides protection to more than just ‘individuals’ acting outside their normal trade and profession.

We will refer to the Code, and its relevance in context throughout the textbook.

The Code increases protection for consumers in relation to loans in the following key areas:

1.6.2.1 Provision of Consumer Credit

Several provisions within the Consumer Protection Code deal with the provision of mortgage credit (that is, housing loans). These provisions apply to all mortgage credit sought or obtained by personal consumers (as defined in the Code), whether in relation to a principal private residence or an investment property.

The Code defines a mortgage as any loan secured by a property.

Therefore, under the Consumer Protection Code, the same protection is offered to an individual who purchases a property as their main residence as to those who purchase a property for investment purposes.

1.6.2.2 Arrears Handling

When it comes to handling arrears, that is, when an individual fails to make their loan repayment on time, the Consumer Protection Code 2012 has introduced protections for consumers in relation to credit card, personal loans, and housing loans.

1.6.2.3 Vulnerable Consumers

Regulated entities must now identify vulnerable consumers and provide those consumers with the necessary arrangements or assistance to facilitate their dealings with the regulated entity.

The Code defines a vulnerable consumer as an individual who:

> 1. *"...has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example, hearing impaired or visually impaired persons); and/or*
>
> 2. *has limited capacity to make their own decisions and who require assistance to do so (for example, persons with intellectual disabilities or mental health difficulties)."*

The Central Bank provides the following examples as evidence of a vulnerable customer:

	Categories of vulnerable consumers	Examples of vulnerabilities
1	Capable of making decisions but their particular life stage or circumstances should be considered when assessing suitability.	Age, poor credit history, low income, serious illness, bereaved, etc.
2	Capable of making decisions but require reasonable accommodation in doing so.	Hearing-impaired, vision-impaired, English not first language, poor literacy.
3	Limited capacity to make decisions (temporary/permanent)	Mental illness/intellectual disability.

Consumers falling into Category 1 should have their circumstances considered as part of the knowing the consumer and suitability requirements.

For Categories 2 and 3 advisers must provide those identified as vulnerable consumers with *'such reasonable arrangements or assistance that may be necessary to facilitate their dealings with that advisor.'*

1.6.2.4 Transparency

The Consumer Protection Code requires advertisements to provide information that is balanced. For example, where advertisements outline the benefits of a product or service, they must also outline the risks.

Errors and Complaints Resolution

Regulated entities have specific timeframes in which to resolve errors affecting consumers and are required to undertake ongoing analysis of errors and complaints to identify any potential patterns.

Key Learning Point

It is important to note that many provisions in the Consumer Protection Code, 2012, build on requirements contained in the Consumer Credit Act, 1995. The Consumer Protection Code, 2012 ***does not replace*** the Consumer Credit Act, 1995. Both work in tandem depending on the type of consumer and the specific requirements that apply.

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1.6.3 European Mortgage Credit Directive, 2014

In 2014, the European Mortgage Credit Directive (MCD) was introduced to promote a more harmonised mortgage credit market and increased levels of consumer protection. Ireland transposed the directive and introduced the European Union (Consumer Mortgage Credit Agreements) Regulations, 2016, in March 2016.

The main objective of the EU directive was to ensure that consumers are well informed and understand the real cost of taking on a mortgage.

The EU directive did **not** cover:

- Equity release credit agreements;
- Credit agreements where the credit is granted by an employer to its employees, free of interest or at a lower than market interest rate;
- Credit agreements free of interest and without other charges, except for those to recover costs directly related to the securing of the credit;
- Credit agreements in the form of an overdraft facility and where the credit must be repaid within one month;
- Credit agreements that are the outcome of a court settlement; and,
- Credit agreements that relate to the deferred payment, free of charge, of an existing debt.

The main provisions of the directive included:

- **Pre-contractual information.** Specific information needs to be provided to consumers at the pre-contractual stage including the identity, status, capacity, and remuneration of any credit intermediary involved in the application. Lenders are obliged to provide information to consumers in a prescribed form, the European Standardised Information Sheet (ESIS), to assist consumers in comparing lenders and products. In Ireland, we already provide reasons why and terms of business letters under previous codes and regulations.
- **Creditworthiness assessments.** Lenders are required to carry out a rigorous assessment of the proposed borrower’s income, expenses, and financial and economic circumstances before granting credit. The remuneration of staff involved in such assessments cannot be made contingent on the number of applications approved.
- **Conduct of business rules.** Lenders and their intermediaries must act honestly, fairly, transparently, and professionally, taking account of the rights and interests of consumers. Member states are required to ensure that lenders and their intermediaries possess and maintain an appropriate level of knowledge and competence concerning the manufacturing, offering, or granting of credit agreements.
- **Passporting of credit intermediaries.** Once authorised in their home member state, a credit intermediary will have the right to operate in any member state.
- **Arrears and foreclosure.** Member states will have to adopt measures to encourage creditors to exercise reasonable forbearance before foreclosure proceedings are initiated.

It is important to note that whilst the aim of the directive was to harmonise the mortgage credit market across the EU, provisions of the directive allowed for national discretions to be implemented. In other words, individual countries would have discretion to implement or not implement regulations under certain sections of the directive.

Many of the elements of the MCD, introduced in 2014, were already in place and in practice in Ireland as they were previously introduced under various codes and previous directives. However, the new regulations formalised these practices.

1.6.4 European Union (Consumer Mortgage Credit Agreements) Regulations, 2016

Following the introduction of the EU directive, the Irish Government transposed the directive and introduced the *European Union (Consumer Mortgage Credit Agreements) Regulations, 2016*, into Irish law, with effect from 21st March 2016.

The rules under the regulations include:

- Increased consumer information through the provision of a standardised information sheet detailing the mortgage offer (see Chapter 6);

- Mandatory requirements for the calculation of the annual percentage rate of charge (APRC) (see Chapter 4);

- A requirement on lenders to conduct a creditworthiness assessment prior to offering a loan (see Chapter 4);

- Cooling off periods to provide further time to decide and compare products;

- Right to repay loans early; however, it is at the discretion of the member state to allow creditors to charge for early repayment to recover any losses directly arising as a result of the early repayment;

- A passport regime for credit intermediaries who, subject to their authorisation, appropriate level of knowledge and skills, holding professional indemnity insurance and being of good standing, will have a right to operate in any member state under the freedom of establishment and freedom of services provisions;

- Member states will be required to adopt measures and apply reasonable forbearance when dealing with consumers in serious payment difficulties;

- Member states must also ensure that reliable valuation standards are put in place;

- Lenders must notify consumers who take out a foreign currency loan of the impact of exchange rate fluctuations and advise borrowers if the rates breach certain specified limits. “A foreign currency loan means a credit agreement where the credit is (a) denominated in a currency other than that in which the consumer receives the income or holds the assets from which the credit is to be repaid, or (b) denominated in a currency other than that of the EEA Member State in which the consumer is resident”.

The final requirement noted above will have a major impact especially on individuals who are paid in foreign currency (for example, sterling) and who wish to hold their mortgage in that currency. For example, in the northern part of Ireland, cross border workers whose property is based in the Republic, but who earn their salary in sterling are finding it increasingly difficult to obtain sterling currency mortgages.

1.6.5 Family Home Protection Act, 1976

Prior to the *Family Home Protection Act, 1976*, coming into force, an individual whose sole name was on the property deeds could sell a family home without informing or requiring the knowledge or consent of their spouse.

The *Family Home Protection Act, 1976*, was introduced to control and prevent the sale, partial sale, mortgage, or re-mortgage of a property, which is defined as a family home under the terms of the Act, without the knowledge and consent of the non-owning spouse.

1.6.5.1 Married Couple Living in the Family Home

A *family home* is defined as primarily a dwelling in which a married couple ordinarily resides.

In relation to the family home, *residence* is the key factor rather than *ownership*.

The *Family Home Protection Act* (Section 3) states that the registered owner of his/her family home cannot convey an interest in that property or offer the property as security without the consent of the non-owning spouse.

Example

John and Mary Byrne are married and live together in a residential property, which is their primary dwelling.

John originally purchased the property before John and Mary were married, and Mary's name was not added to the title deed or the mortgage. Therefore, the property and the mortgage are in John's name only.

However, as this is the primary dwelling in which the married couple ordinarily resides, under the Family Home Protection Act, this is deemed to be the *family home*.

John cannot convey an interest (sell, gift or secure against borrowing) without the consent of Mary, his wife.

The *Family Home Protection Act* does NOT create joint ownership for the non-owning spouse whose name is not on the title deeds. This means that if two individuals get married, and only one of them owns the property, which they live in as the family home, the ownership of the property does not automatically become *joint ownership*. An individual must go through the legal process of putting both names on the title deeds. There is no charge for this transaction.

Credit institutions providing finance secured on the family home will normally insist on independent legal advice for the non-owning spouse. For example, if the home is given as security for a business loan, it would be prudent, if there were a non-owning spouse, to place the property formally in joint names.

In 2011, a statutory civil partnership registration scheme for same-sex couples was introduced under the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010*. This Act provides similar protection for civil partners as the Family Home Protection Act, that is, a same sex couple who register their relationship as a civil partnership, in relation to one of the partners not owning the property.

The *Family Home Protection Act* **does not apply** to an unmarried couple, that is, two individuals in a relationship (but not civil partners) and where one of the partners owns the property and the other partner has moved in with them. In this instance, the property owner has the right to sell, re-mortgage or convey an interest in the property.

Key Learning Point

The *Family Home Protection Act, 1976*, stops a property owner selling a property without the knowledge and consent of their non-owning spouse. Similar legislation was introduced, in 2011, to protect individuals in a civil partnership (where one of them does not own the property in which they live as the *family home*).

However, no such automatic protection was offered to individuals living together, who were not married to each other or civil partners.

1.6.6 Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010

For the purposes of the Act, a civil partner is defined as either of two persons of the same sex who have entered into the legal registration of the civil partnership with each other. Registration of the civil partnership grants rights and duties on each of the civil partners like those of a married couple including the duty to live together in a shared home, to maintain each other and to benefit on death under the *Succession Act, 1965*.

1.6.6.1 Shared Home

A shared home is a dwelling where *civil partners* ordinarily reside. Where the shared home is held in the name of one of the civil partners, stamp duty and registry fees <u>are NOT payable</u> on the transfer of the shared home into joint names.

Protection, like that offered under the *Family Home Protection Act*, is also offered to civil partners; that is, the legislation prevents one civil partner selling the property without the consent of the other civil partner.

A spouse/civil partner may inform *Tailte Éireann* that he or she is the spouse/civil partner of a property owner. A notice to that effect will then be registered. There is no charge for such a registration. There is no requirement to enter such a registration and its absence does not affect the rights of a spouse/civil partner.

The protection provided by the legislation, that the family home cannot be sold without the consent of both civil partners, is particularly important when the home is held in the name of only one spouse/civil partner.

1.6.6.2 Cohabitants

As previously mentioned, the *Family Home Protection Act does not apply* in the case of the *family home* of an unmarried couple. An individual therefore who is unmarried but was living in what could be described as the *family home*, even though their name was not on the title deeds, could make a legal case if they are able to show that they made a contribution to the purchase price of the house with the intention of gaining a share in the ownership of the house. However, this was often a long-drawn-out process fraught with problems and financial cost.

The *Civil Partnership and Certain Rights of Cohabitants Act, 2010,* now formally creates a financial redress system for those qualifying as cohabitants. Cohabitants can apply to the courts for *compensation* at the end of a relationship based on certain rights. For one cohabitant to receive compensation, that is, maintenance payments or a share in property rights, they must have lived together for five years (or two years if there is a dependent child from the relationship).

A cohabitant is defined in the Act as:

> *"One of two adults (whether of the same or the opposite sex) who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners of each other." …*
>
> *and*
>
> *"…someone who has cohabited with another adult for a period of <u>five years</u>. Where there is a dependent child of the cohabiting relationship, the qualifying period is reduced to <u>two years</u>."*

There is no requirement for registration of the cohabitating couple's relationship. However, there is no automatic entitlement to these rights; it is only the court that can enforce any rights upon application by one of the cohabitating parties.

A *qualifying cohabitant* (that is, meeting the conditions outlined above) can usually only seek redress under the Act within two years of the end of the relationship, whether through death or otherwise. Ultimately, the Courts will decide on what redress, if any, will be granted to a qualifying cohabitant.

1.6.7 The Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018

The *Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010* imposed a number of obligations on certain financial institutions and intermediaries (such as banks, insurance, investment and mortgage intermediaries) (referred to as *designated persons*) in relation to the prevention of the use of the financial system for the purposes of *money laundering* and *terrorist financing.*

The *Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018*, which amends some provisions of the *Criminal Justice (Money Laundering and Terrorist Financing) Acts, 2010* and 2013 was signed into law in November 2018.

Money laundering is the process by which persons conceal, disguise, convert, handle, use or transfer property which they know or believe to be (or are reckless as to whether the property is) the proceeds of criminal conduct.

The term *property* for the purposes of the Criminal Justice, 2010 Act is wide-ranging and refers not only to land, buildings, etc, but also to cash, cars, jewellery, or any item which can be converted into cash, including financial benefits.

The term *criminal conduct* is also widely defined and includes any type of conduct, which is an offence under the law of the State, and not just the proceeds of such activities as drug dealing, robbery, and kidnapping. Therefore, for example, the term *criminal conduct* also includes:

- Tax evasion;
- Financial fraud and deception;
- Theft.

A designated person is required to identify and verify a customer's identity in several circumstances, *prior* to establishing a business relationship[1] with the customer. In the case of financial institutions and intermediaries who are designated persons, the most likely occasion when customer identification will be required will be for *new* customers, that is, before establishing a business relationship with the customer.

A designated person can adopt a *risk-based* approach to establishing and verifying the identity of a customer, that is, it can identify the most appropriate method to identify and verify the customer's identity, taking account of its assessment of the risk of money laundering or terrorist financing presented by the customer in question.

Typically, a designated person will seek documentary or electronic verification of the customer's:

- Name and date of birth; or
- Name and current address.

Designated persons may secure this information about individuals using, what is called, the *one plus one* method, that is:

- One item of photographic ID evidence, for example, current passport or driving licence; plus
- One item of non-photographic ID evidence, for example, Department of Social Protection or Revenue documents showing the customer's name, address and PPSN.

Additional measures are required where the designated person is dealing with a new customer on a non-face-to-face basis, for example, exclusively over the internet or by telephone, and therefore does not physically meet the customer before establishing a business relationship with them.

As mentioned, the *Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act, 2018* was passed in November 2018. Minor amendments were made to the *Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010* to give effect to certain provisions of EU Directives on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and to provide for related matters.

1.6.8 Code of Conduct on Mortgage Arrears, 2013

The Code of Conduct on Mortgage Arrears (CCMA) issued by the Central Bank applies to borrowers in arrears and a pre-arrears situation[2]. However, it only applies to the borrower where the loan is secured by his/her **primary residence**. This means the CCMA does not apply to loans of a borrower secured by residential investment property. Therefore, if a borrower has a primary residence and residential investment property and both loans secured against these properties are in arrears, then the CCMA will apply to the loan secured on the primary residence only.

[1] *A business relationship is defined in the Criminal Justice Act as: "a business, professional or commercial relationship between the designated person and the customer that the designated person expects to be ongoing".*

[2] *Pre-arrears is (a) where a borrower contacts the lender to inform it that he/she is in danger of going into financial difficulties or (b) the lender establishes that the borrower is in danger of getting into financial difficulties which may impact on the borrower's ability to meet his/her mortgage repayments.*

The **primary residence** for the purposes of the CCMA is defined as:

- The residential property which the borrower occupies as his/her primary residence in this State; or
- A residential property which is the ONLY residential property in this State owned by the borrower.

Examples of this latter situation are:

- Individuals who purchased a residential property as their private dwelling home and lived in it for a time. However, they have now moved home to live with relatives in order to earn rental income from renting out their home to assist with the mortgage repayments.
- Individuals who may have had to emigrate or move to a different location within Ireland for work purposes and maybe are unable to sell their property.

Key Learning Point

The Code of Conduct on Mortgage Arrears does not protect borrowers who purchased a property solely for investment purposes or holiday homes and who have another property in which they live as their primary residence.

The CCMA requires lenders to apply the mortgage arrears resolution process (MARP) to all applicable borrowers who are in arrears. Assessment of the individual's financial situation must be done through the lender's dedicated arrears support unit (ASU) which must be established in accordance with the requirements laid down under the CCMA.

1.6.9 Personal Insolvency Act, 2015 (As Amended)

The *Personal Insolvency Act, 2012* introduced new laws in relation to personal insolvency in Ireland in recognition of the need to lessen the difficulties experienced by debtors who are unable to meet their commitments but also to lessen the adverse consequences for economic activity in Ireland. The Act emerged following several recommendations made by various bodies, notably the September 2011 *Keane Report* which was aimed at dealing with Ireland's growing mortgage arrears and debt crisis.

The *Personal Insolvency Act, 2012*, provides for the reform of personal insolvency law in Ireland that is, bankruptcy. It introduces three non-judicial[3] debt resolution processes which are subject to specific terms and conditions in each case.

Whilst the *Personal Insolvency Act, 2012* was enacted in December 2012, amendments have been made in the intervening years, most notably in July 2015.

We will deal with this in more detail in Chapter 8.

[3] *Financial settlements are made outside of the court and the insolvent individual is not required to appear in court for any legal hearings.*

1.7 The Law of Contract

When an individual is arranging a loan, there are various contracts that the individual may become party to. For example:

- A personal loan agreement contract with the lender in relation to a personal loan;
- A detailed loan offer and mortgage agreement in relation to a housing loan along with, for example:
    - A purchase contract with a vendor to purchase a property;
    - A contract with a solicitor to act on their behalf in the conveyance of a mortgage; or
    - A building contract with a builder to build a new property;
- A credit sale agreement from a finance company or garage.

1.7.1 Essential Elements of a Valid Contract

A contract is considered valid when two or more parties *with capacity* make an agreement involving *valid consideration* to do something or refrain from something illegal.

Key Learning Point

During the loans process, there can be several contracts in place between the lender and borrower at different stages of the process depending on whether the loan is secured or unsecured.

For a contract to be valid, it must contain a few essential elements. Those signing the contract must understand the commitment, and there must be no fraud, mistakes or other obstacles which would invalidate the contract.

A contract can be terminated in a few ways, most commonly by performance that is, when both parties have completed their obligations.

1.7.2 The Law of Contract and Mortgage Lending

A loan offer issued by a lending institution does not constitute a legally binding offer until all the conditions laid down in that loan offer are complied with.

One of the conditions a lender outlines is their right to withdraw a loan offer at any time. In practice, this normally only happens if not all the conditions laid down in the loan offer were complied with (for example, production of supporting documentation), or where it has come to light that information provided by the customer is untrue, (for example, an undeclared bad debt, incorrect salary confirmation, etc).

Most purchase contracts issued today are not subject to *loan approval*. Once a purchaser signs a contract to purchase a property, they are legally bound to follow through with this contract, regardless of whether they have the finance in place or not. Therefore, a borrower is recommended to obtain loan pre-approval before placing a deposit on a property.

It is possible that a borrower having received loan approval, signed contracts to purchase a property and provided a 10% deposit would find themselves having a loan offer revoked (possibly due to non-compliance with the conditions). They would still be legally bound to proceed with the contract to purchase the property or forfeit their deposit.

Therefore, it is unlikely that a solicitor would advise the borrower to sign the contract unless a formal loan offer has been issued and all conditions complied with. Therefore, it is important that a borrower having placed a deposit on a property moves quickly to ensure that they provide a lender will all the necessary documentation to enable the full loan offer to be issued. This, in turn, will allow the borrower sign purchase contracts and close the property deal in a timely manner.

The loan offer and subsequent mortgage deed are the legal basis for the relationship between the lending institution and the borrower. Within these documents lie the rules regarding the responsibilities of both the lender and the borrower.

Example

The loan offer and the mortgage deed outline the fees and penalties that may be imposed on a borrower should they miss a mortgage repayment and fall into arrears.

If a borrower fails to meet their obligations under the contract, for example, falls into arrears, then the contract is breached by the borrower. This means the contract can then be terminated by the lender. In effect, this means the lender can request that the borrower repays the loan in full or they can repossess the property, which they hold as security against the loan.

Repossession is a last resort, especially where the family home is involved.

There are also codes of conduct issued by the Central Bank, which impose requirements on regulated entities which provide a level of protection to borrowers especially when falling into arrears on private dwelling homes.

Key Learning Point

When a borrower arranges a loan with a lender, they enter into a binding contract. Any breach of this contract, such as default on monthly repayments, means a lender can seek, if they so wish, for the loan to be repaid in full or they can repossess the property.

The Central Bank's Code of Conduct on Mortgage Arrears will protect a consumer (where the lender is a regulated entity) when the consumer (as defined under the relevant codes) falls into arrears and engages in discussion with the lender.

The code places a requirement on a lender to enter discussions with the borrower to attempt to resolve the arrears situation.

If the consumer does not fall within the definitions in the CCMA, they may be protected by other regulations. We will discuss this in greater detail later.

Review

Now consider the main teaching points, which were introduced in this chapter. They are listed below. Tick each one as you go through them.

- The concept of a personal *financial need* ☐
- The five main types of personal financial needs ☐
- How client loan needs can differ ☐
- Different types of *loans* covered by this course ☐
- Different pieces of *legislation* that impact on consumer loans ☐
- Essential elements of a valid contract ☐

Sample Questions

The answers to these questions can be found in your Study Hub.

1. A borrower generally pays a higher interest rate on a credit card because:

    A. the loan is secured against their home.
    B. the loan is unsecured.
    C. the bank is required to do so by the Consumer Credit Act, 1995.
    D. the bank is required to do so by the Consumer Protection Code.

2. Finn buys a car by taking out a Personal Contract Plan (PCP). When will Finn be the legal owner of the car?

    A. As soon as the contract is signed.
    B. After he pays an initial deposit.
    C. When the final payment has been made.
    D. When 50% of all payments have been made.

3. The Competition and Consumer Protection Commission has specific responsibility for the authorisation of:

    A. Credit Unions.
    B. Debt Management Firms.
    C. Credit Servicing Firms.
    D. Credit Intermediaries.

4. Under the European Union (Consumer Mortgage Credit Agreements) Regulations, 2016 a lender must:

    (i) conduct a creditworthiness assessment on a borrower prior to offering a loan.
    (ii) provide consumers with a standardised information sheet detailing the mortgage offer.
    (iii) inform a consumer that they must take at least 60 days to consider any loan offer before signing.

    A. (i) only.
    B. (i) and (ii) only.
    C. (ii) and (iii) only.
    D. (i), (ii) and (iii).

02

Housing Loans

Chapter 2 introduces the different types of housing loans that are available to borrowers. The definition of a housing loan according to the Consumer Credit Act is also discussed, as the module is mainly focused on lending to consumers.

The various types of housing loan in the Irish market are also described, paying attention to the differences between them.

This chapter also examines the different types of property ownership available to individuals and how property ownership can be registered to reflect an individual's share in certain cases. It is also explained that regardless of how property ownership is divided, lending institutions will insist through the loan agreement that each borrower is liable for the loan to be repaid in full, regardless of an individual's share in the property.

Interest rates and the differing ways interest is charged on any borrowings are also discussed.

Learning Outcomes – after studying this chapter you should be able to:
define a housing loan in accordance with the Consumer Credit Act, 1995;
describe the various regulated entities involved in lending in Ireland;
describe the process of property registration in Ireland and the different forms of property ownership;
discuss the different types of security required for housing loans; and,
describe the types of housing loans available in the market and how interest is applied to them.

Chapter weightings	**Number of questions which may appear**		
In the exam, questions are taken from each chapter based on the following approximate chart:	Chapter	Minimum	Maximum
	2	20	26

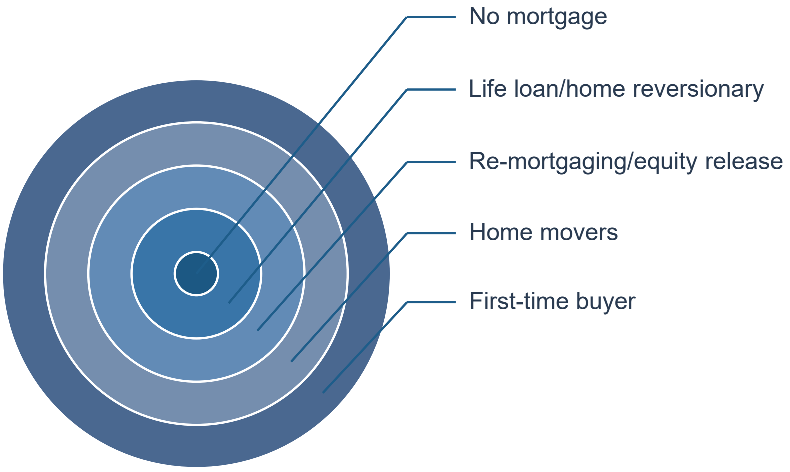
2.1 Housing Loan Lifecycle

The housing loan needs of your customer change with age, personal circumstances, and financial status. No two customers are the same and, in turn, no two loan applications are the same.

As a result, each customer's circumstances must be assessed on an individual basis. Changes in the mortgage market have also affected what was traditionally seen as the 'typical mortgage lifecycle' and the 'typical mortgage customer'.

The residential mortgage market is divided into a few very distinct customer segments, which have changed significantly over the last number of years:

- First-time buyers;
- Home movers - either trading up or trading down;
- Re-mortgaging/equity release without moving property;
- Life loan/home reversionary agreement.



2.1.1 First-Time Buyer

In general, *first-time buyers* in Ireland must not have either individually or jointly with any other person (directly or indirectly), previously purchased, or built a property. Where more than one individual is involved in purchasing or building a new home, all the individuals must be first-time buyers.

However, the Central Bank defines a first-time buyer as "*a borrower to whom no housing loan has ever before been advanced".* This definition of a first-time buyer is used when a regulated entity is determining the maximum housing loan that can be granted under the Central Bank regulations.

First-time buyer status is an important consideration when:

- Choosing a lender because, depending on market competition, lenders may offer lower introductory interest rates or other incentives to first-time buyers than they would to other owner-occupiers.
- Determining the overall LTV that will apply to the loan application. The Central Bank sets a maximum 90% LTV limit for mortgage lending on principal dwelling homes.

- Making applications for current government schemes that may only be available to first-time buyers.

2.1.2 Home Movers – Trading Up; Trading Down

Once on the property ladder, there are many reasons for people to sell their property and move on to another property.

Having been through the mortgage process before, those home movers who are trading up/down have a better understanding of the products available to them, the process, and the way in which they wish to structure their loan. They may have specific requirements in mind; for example, they may wish to hold onto their current residence as an investment or discuss trading up and increasing their mortgage with their lender, whilst still in negative equity. Owner-occupiers who already own a property will have different needs from a first-time buyer.

New mortgage lending to non-first-time buyers is also subject to the Central Bank's 90% LTV limit. This LTV limit does not apply to borrowers in negative equity applying for a mortgage for a new property.

2.1.3 Re-mortgage

Once an individual has established themselves with a lending institution, and ensured they have kept a clean credit record, they may decide to switch lenders or seek to renegotiate their mortgage with their current lender.

A person may release equity for various reasons such as home improvements, payment of children's college fees, etc. A re-mortgage can only take place if there is sufficient equity in the property based on the lender's criteria.

Many existing borrowers are taking advantage of lenders' 'cash back' incentives to switch mortgage lender for a better rate and in some cases perhaps borrow additional funds for home improvement. Some lenders are offering between 2% and 3% of the mortgage amount borrowed, which can be significant. Whereas re-mortgaging activity in the period prior to 2008 was primarily undertaken to release cash, the majority of re-mortgaging in recent years has been undertaken to obtain a better offering from the borrower's current provider or a competitor.

The years prior to 2022 were marked by declining interest rates. In particular, tracker mortgage customers enjoyed extremely low rates as the ECB repo rate to which their mortgages were linked, declined from 4.25% in August 2008 to 0% in April 2016 where it stayed until June 2022. By September 2023, the rate had increased to 4.5% and the market expects the rate to increase further during 2023. As a result, many borrowers with a tracker mortgage are moving off the tracker product to cheaper fixed-rate offerings available in the market. The product that had dominated the market from its introduction in 2002 until its discontinuance in 2008 is likely to be much less common by the end of 2023.

2.1.4 Lifetime Loans

A *lifetime loan* is aimed at individuals who may have a property with no loan outstanding against it. These individuals would then use this property as security in return for a product called a lifetime loan. This product is aimed at individuals over the age of 60.

The Consumer Protection Code defines a lifetime loan as:

"...a loan secured on a borrower's home where:

- *Interest payments are rolled-up on top of the capital throughout the term of the loan;*
- *The loan is repaid from the proceeds of the sale of the property; and*
- *The borrower retains legal title to their home whilst living in it."*

A lifetime mortgage is therefore a housing loan, but with no monthly repayments and the borrower can continue to live in their own home. The loan is repaid from the sale of the property.

2.1.5 Home Reversionary Schemes

A *home reversion agreement* is as an agreement between a vendor (seller) and a home reversion firm that provides:

- *"For the conveyance by the vendor to the home reversion firm of an estate or interest in land (which includes the principal residence of the vendor or the vendor's dependants) for a discounted sum or an income (or both), and*
- *The vendor retains the right to live in the residence until the occurrence of a specified event detailed in the agreement (usually when the person dies or moves out of the property permanently)."*

Part V of the Central Bank Act 1997 (as amended).

On death (or when the property owner moves into long-term care), the property is sold, and the financial institution gets its share of the proceeds, with the balance going to the homeowner or next of kin, as the case may be.

This product is usually only provided to property owners in their late 60s or older.

2.2 What is a Housing Loan?

2.2.1 Consumer Credit Act Definition

The *Consumer Credit Act, 1995* defines a *housing loan* as covering four main types of loans.

Below is an extract from the Act itself (shaded) and a brief description in layman's terms as to the different loan types the Act covers.

Loan Type 1
An agreement for the provision of credit to a person on the security of a mortgage of a freehold or leasehold estate or interest in land - *i.* *For the purpose of enabling the person to have a house constructed on the land as the principal residence of that person or that person's dependants, or* *ii.* *For the purpose of enabling the person to improve a house that is already used as the principal residence of that person or that person's dependants, or* iii. *For the purpose of enabling the person to buy a house that is already constructed on the land for use as the principal residence of that person or that person's dependants.*
This covers loans provided to a person on the security of lands to buy, improve or construct a principal residence for the borrower or for that person's dependants. For example, the following would be *housing loans*: • Mr Smyth borrows € 300,000 from a bank in order to buy an apartment in which he will live as his *principal residence*. • Ms Casey borrows € 300,000 from a bank in order to buy an apartment in which her elderly mother (who is financially dependent on her) will live as her *principal residence*. Everyone can only have one *principal residence* at any one time.

Loan Type 2
An agreement for refinancing credit provided to a person for a purpose specified in paragraph (a) i, ii or iii above
This relates to the refinancing of existing housing loans as mentioned above in Loan Type 1. For example, Mr Smyth (in the example above) moves his mortgage after some years to another lender. He is refinancing his existing housing loan and so the new loan is also a *housing loan*.

Loan Type 3
An agreement for the provision of credit to a person on the security of a mortgage of a freehold or leasehold estate or interest in land on which a house is constructed where the house is to be used or to continue to be used, as the principal residence of the person or the person's dependants
This would include an individual mortgaging or re-mortgaging his or her principal residence in order to release funds for some other purpose, for example, equity release to buy a holiday property abroad, etc.

Loan Type 4
An agreement for the provision of credit to a person on the security of a mortgage of a freehold or leasehold estate or interest in land on which a house is, or is to be, constructed where the person to whom the credit is provided is a consumer.
A *consumer* borrowing funds to buy a *house*, whether the house involved is to be his or anyone else's *principal residence*. Therefore, a consumer (as defined) borrowing funds to purchase a residential property to be let out as an investment, would be covered by the Consumer Credit Act.

It is important to note that the definition of a *house* for this purpose would include an apartment, as the definition of a *house* in the Consumer Credit Act, 1995 refers to:

> *"...any building or part of a building used or suitable for use as a dwelling."*

Key Learning Point

The definition of a consumer for the purposes of a housing loan under the **Consumer Credit Act, 1995 (CCA)**, extends beyond the family home.

So, consumers who purchase a property for purposes other than the family home are protected by the provisions of the Consumer Credit Act, 1995.

The CCA defines a consumer as a natural person acting outside his trade, business or profession. So, once the purchase of the property is not for the individual's trade, business or profession, they are protected by the CCA.

2.2.2 References to Housing Loans

The term *housing loan* is a very specific term used for the purposes of the *Consumer Credit Act* in relation to:

- Defining mortgage intermediaries; and
- Certain regulatory obligations of mortgage lenders, mortgage intermediaries, and others in relation to the promotion and provision of such housing loans to consumers.

It is important to note however, that mortgage lenders may use the term *home loan* or some such other term to refer to one particular segment of their housing loans, for example, typically owner-occupiers, for the purposes of the terms and conditions (for example, maximum loan as a percentage of the property value, the interest rate charged) etc.

So, it would be incorrect to assume that all *housing loans* as defined in the CCA are treated as *home loans* for the purposes of lending criteria, interest rate charged, contract/loan offer conditions.

Mortgage lenders are entitled to set the terms and conditions for their housing loans (subject to complying with various regulatory requirements of the CCA) according to their own categorisation of such borrowers.

For example, a mortgage lender might distinguish in their terms and conditions between, say:

- Borrowers who are refinancing an existing housing loan, that is, switching from another lender;
- First-time buyers;
- Borrowers who wish to release equity from their homes, by increasing the mortgage on their home; and
- Investors in residential property, who will rent out the property to tenants.

Key Learning Point

Each of the previous examples outlined could be a *housing loan* for the purposes of the Consumer Credit Act, but the commercial terms and conditions (for example, interest rate charged) offered by a particular lender may well differ.

In addition, Codes of Conduct referred to in Chapter 1 do not apply to all *housing loans*. Again, we will deal with this in greater detail later.

2.3 Regulated Entities

There are several different categories of providers of housing loans to consumers who operate in the State. These providers are required to be regulated by the Central Bank. Those providers who assist consumers in obtaining loans or those who provide advice and support to consumers when in arrears are also regulated.

2.3.1 Credit Institutions

A credit institution is a body which is authorised by the Central Bank to *receive deposits or other repayable funds* from the public and to *provide loans and credit*.

A complete list of credit institutions authorised to conduct business in the State can be found on http://registers.centralbank.ie/.

Under the *Central Bank of Ireland (Supervision and Enforcement) Act, 2013*, the Central Bank has the authority to publish warning notices naming persons or firms who are providing financial services without the appropriate authorisation or who are holding themselves out to be a regulated financial service provider where they do not have the appropriate authorisation to do so.

Whilst there are numerous authorised credit institutions regulated by the Central Bank in Ireland, here are some more well-known examples:

- Allied Irish Banks;
- Bank of Ireland;
- EBS;
- Permanent TSB.

Both KBC Bank Ireland and Ulster Bank exited the Irish market in 2023

A credit institution is not a credit intermediary.

2.3.2 Retail Intermediaries

Intermediaries who arrange and/or provide advice to consumer on retail financial products are known as *retail intermediaries*.

The main categories are:

Type of intermediary	Services provided
Mortgage credit intermediary	Arranges or provides advice on housing loans (private dwelling homes and residential investment properties) that fall in the scope of the European Union (Consumer Mortgage Credit Agreements) Regulations.
Mortgage Intermediary	Arranges or offers to arrange a housing loan that falls outside of the scope of the European Union (Consumer Mortgage Credit Agreements) Regulations, or introduces a consumer to an intermediary who arranges, or offers to arrange, for a mortgage lender to provide the consumer with a housing loan.
Insurance intermediary	Arranges life and general (house, motor, etc) insurance products.
Investment intermediary	Advises on and arranges specific investment products (not deposits for banks).
Credit intermediary	Arranges the provision of credit or the letting of goods to a consumer.

The types of intermediaries that are discussed in this manual in relation to lending are mortgage credit intermediaries, mortgage intermediaries and credit intermediaries.

2.3.2.1 Mortgage Credit Intermediary

Mortgage credit intermediaries are authorised under the European Union (Consumer Mortgage Credit Agreements) Regulations, 2016 (CMCAR), to:

- Present or offer credit agreements to consumers;
- Assist consumers by undertaking preparatory work or other pre-contractual administration in respect of credit agreements;
- Conclude credit agreements with consumers on behalf of a creditor.

Mortgage credit intermediaries may also be authorised to provide **advisory services** (that is, the provision of personal recommendations to a consumer in respect of one or more transactions relating to credit agreements).

A person, other than a credit institution or a person admitted to carry out credit intermediation activities in another EEA Member State, shall not carry out mortgage credit intermediary activities or provide advisory services unless:

- He/she is the holder of an authorisation granted for that purpose by the Central Bank; and
- Holds a letter of appointment in writing from each undertaking for which he/she is an intermediary.

A mortgage credit intermediary is a person authorised under CMCAR, who is not acting as a creditor, and is not merely introducing, either directly or indirectly, a consumer to a creditor or credit intermediary.

2.3.2.2 Mortgage Intermediary

A Mortgage intermediary licensed under the Consumer Credit Act 1995 (CCA) is a person (other than a mortgage lender or credit institution) who, in return for commission or some other form of consideration:

a. Arranges, or offers to arrange, for a mortgage lender to provide a consumer with a housing loan which **falls outside the scope of the European Union (Consumer Mortgage Credit Agreements) Regulations** (such as equity release products), or

b. Introduces a consumer to an intermediary who arranges, or offers to arrange, for a mortgage lender to provide the consumer with a housing loan.

It is an offence for a person to engage in the business of being a mortgage intermediary unless he/she:

- Is the holder of an authorisation granted for that purpose by the Central Bank; and
- Holds a letter of appointment in writing from each undertaking for which he/she is an intermediary.

2.3.2.3 Credit Intermediaries

Credit intermediaries arrange certain other forms of consumer credit for consumers. For example, a garage which arranges car finance deals for consumers buying cars from them. A shop (for example, a furniture shop or an electrical retailer) arranging leasing or hiring out goods or selling on credit or arranging credit finance provided by credit institutions.

The **Competition and Consumer Protection Commission** (CCPC) has responsibility for the regulation of credit intermediaries and monitors complaints in relation to the advertising of credit with the *Central Bank* under the Consumer Credit Act, 1995.

A credit intermediary must hold a letter of recognition from each undertaking for which he acts as an intermediary, in addition to holding his authorisation from CCPC.

> *A credit intermediary is a person who acts as a form of **go between** ... consumers and the credit institution.*

The intermediary brings together clients who need to take out financial products with financial institutions who provide such products.

2.3.3 Credit Servicing Firms

The Consumer Protection (Regulation of Credit Servicing Firms) Act, 2015 enacted in July 2015 provides for a regulatory regime for an entity known as a *credit servicing firm* as well as the activity of credit servicing, as defined in the Act. Credit servicing is now a regulated activity in Ireland. This was as a response to concerns in relation to the purchase of regulated entities' loan books by so called *vulture funds*. These firms have purchased portfolios of mortgage loans from many regulated entities.

Most of the purchasers of the loan books were unable to or would not want to manage the daily running of these loan books, so they would employ the services of firms which are experienced in administering loan books. These firms were previously unregulated; however, the introduction of the above-mentioned Act changed this position.

Credit servicing firms are typically firms that manage or administer credit agreements such as mortgages or other loans on behalf of unregulated entities.

Under the Act, *credit servicing*, in relation to a credit agreement means managing or administering the credit agreement, including:

- Notifying the relevant borrower of changes in interest rates;
- Taking any necessary steps to collect or recover arrears due;
- Managing or administering repayments, charges, complaints, and the process for addressing financial difficulties.

The Consumer Protection (Regulation of Credit Servicing Firms) Act 2018 further expanded the activity of credit servicing also to include holding the legal title to credit granted under a credit agreement and associated ownership activities.

These Acts mean that relevant borrowers whose loans are sold to unregulated third parties maintain the regulatory protections they had prior to the sale, including the protections provided by the Central Bank's statutory Codes of Conduct.

Credit servicing firms must apply for authorisation to the Central Bank and the Central Bank's statutory Codes of Conduct apply to them.

As a result of the Consumer Protection (Regulation of Credit Servicing Firms) Act, 2015, the Code of Conduct on Mortgage Arrears (CCMA), the Consumer Protection Code, 2012, the Minimum Competency Code and the Code of Conduct for Business Lending to Small and Medium Enterprises 2012 have been amended. The purpose of the amendments is to ensure that it is clear that firms carrying out the activity of credit servicing are regulated entities (a financial service provider authorised, registered or licensed by the Central Bank or other EU member state that is providing mortgage lending activities or credit servicing activities).

For example, for the avoidance of any doubt, as part of the scope of the amendments made under this Act, the term *lender* is now replaced by the term *regulated entity* throughout the entire Code of Conduct on Mortgage Arrears.

2.3.4 Retail Credit Firms

A retail credit firm is a firm, authorised by the Central Bank, which provides loans or mortgages to individuals or a firm that has been prescribed as a "credit institution" under the Consumer Credit Act, 1995, as amended.

Under the Act, a firm which meets the definition of a retail credit firm is required to obtain authorisation from the Central Bank in order to provide these services.

A retail credit firm means a person or firm whose business consists wholly or partly of, providing credit directly to relevant persons. In accordance with the Consumer Protection (Regulation of Credit Servicing Firms) Act, 2015) it does not include:

- A regulated financial service provider authorised by the Central Bank or an authority that performs functions in an EEA country that are comparable to the functions performed by the Central Bank, to provide credit in the State otherwise than under this part of the above Act;
- An authorised credit intermediary;
- A person to whom all or any part of that other person's interest in the credit is directly or indirectly assigned or otherwise disposed of;
- A person who provides credit on a once only or occasional basis;

- A person who is exempted from being required to hold an authorisation as a retail credit firm.

There are several retail credit firms/home reversion firms authorised by the Central Bank such as:

- Haven Mortgages;
- Finance Ireland;
- Dilosk;
- Pepper Finance;
- Start Mortgages;
- Spry Finance;
- Shared Home Investment Plan.

In recent years, retail credit firms have commanded a growing share of the mortgage market in Ireland. In a report in May 2022, the Central Bank noted that retail credit firms accounted for 13% of the new mortgage lending market. These lenders are not subject to Central Bank prudential capital rules but are obliged to adhere to the same consumer protection rules as those with which the licensed banks must comply. They do not suffer from the same credit and IT legacy challenges facing the licensed banks.

However, while Irish banks are almost entirely funded by retail and SME deposits, retail credit firms rely on the capital markets for their funding. Once market rates started their recent steep ascent, the retail credit firms have found it very difficult to compete as their cost of funds rose. In consequence, their share of new lending has declined dramatically, a situation that is likely to continue as long as bank deposit rates remain below market rates.

2.3.5 Credit Unions

Credit Unions also offer mortgages. Currently more than 100 credit unions are offering mortgages to their members. Lending decisions are currently taken at local level.

2.3.6 Local Authority Home Loan

From 4 January 2022, a government-backed mortgage scheme called a Local Authority Home Loan is available to first-time buyers and Fresh Start applicants. This replaces the Rebuilding Ireland Home Loan. "Fresh Start" applicants are people who are divorced or separated and have no interest in the family home, or who have undergone personal insolvency or bankruptcy arrangement or proceedings or other legal process.

Eligible applicants can apply for a Local Authority Home Loan to purchase a new or second-hand property, or to build their home. The loan is a normal capital and interest mortgage which is repaid by direct debit on a monthly basis.

Up to 90% of the market value of the property can be borrowed.

Maximum market values of the property that can be purchased or self-built are:

- **€ 320,000** in the counties Cork, Dublin, Galway, Kildare, Louth, Meath and Wicklow, and
- **€ 250,000** in the rest of the country.

This limits the amount that can be borrowed to no more than **€ 288,000** in the counties Cork, Dublin, Galway, Kildare, Louth, Meath and Wicklow and no more than **€ 225,000** in the rest of the country.

A Local Authority Home Loan offers two rate products:

- 2.495% fixed for up to 25 years (APR 2.52%)
- 2.745% fixed for up to 30 years (APR 2.78%)

All rates are exclusive of mortgage protection insurance (MPI) which is a borrowing requirement. Eligible borrowers are required to partake in the local authority collective MPI scheme. MPI is payable monthly, in addition to the loan repayments.

Eligibility criteria:

To be eligible for a Local Authority Home Loan an applicant must:

- Be a first-time buyer or a 'Fresh Start' applicant
- Be aged between 18 and 70 years
- Be in continuous employment for a minimum of two years, as a primary applicant or be in continuous employment for a minimum of one year, as a secondary applicant
- Have an annual gross income of not more than € 50,000 as a single applicant or not more than € 75,000 combined as joint applicants
- Submit two years' certified accounts if self-employed
- Provide evidence of insufficient offers of finance from two banks or building societies
- Not be a current or previous owner of residential property in or outside the Republic of Ireland
- Occupy the property as your normal place of residence
- Purchase or self-build a property situated in the Republic of Ireland of no more than of 175 square metres (gross internal floor area)
- Purchase or self-build a property which does not exceed the maximum market value applicable for the county in which it is located
- Consent to a Central Credit Register check

Application forms must be submitted directly to the local authority where it is planned to purchase the property.

The Help to Buy Scheme (See Chapter 3) can also be used towards a deposit for eligible properties.

Key Learning Point

There are different types of lenders in the Irish marketplace. Some are mainstream lenders (credit institutions) who provide the traditional range of financial products. Others are specialised lenders, who do not take deposits, and lend to specific sectors of the marketplace for specific purposes. They are known as retail credit firms. Finally, there are Government-backed loans such as Local Authority Home Loan.

2.4 Security for Housing Loans

Housing loan lenders require legal security for loans advanced. This security can come in many different forms:

- A **legal mortgage** over the property in question. This is often referred to as the **prime security**.
- A **personal guarantee** by a third party to make the loan repayments, if the borrower defaults on making repayments. This guarantee is sometimes referred to as **collateral security**, that is, additional to the prime security of a legal mortgage on the property.
- **Insurance**, which is also sometimes referred to as *collateral security.* In some cases, the insurance is effected and paid by the borrower (for example, mortgage protection), while in other cases the insurance is effected and paid directly by the lender, for example, mortgage indemnity guarantee insurance.

The lender will take a legal mortgage over the property in question, which gives the lender the legal power to repossess the property, sell it and pay off the loan (to the extent possible) in the event of the borrower defaulting on the loan. Any surplus left over on such a sale is payable to the property owner; the borrower is liable for any shortfall

Example

John takes out a housing loan of € 350,000 to buy an apartment valued at that time at € 400,000. The lending institution takes a mortgage on the apartment.

Two years later, John defaults on the loan, when the loan outstanding is € 360,000 (that is, including arrears). The apartment is valued at € 425,000 at that time, say.

The lender can go to court and get a possession order, and then sell the apartment for, say, € 400,000 net of expenses and fees. The lender recovers € 360,000 due to it and pays the balance of € 40,000 to John.

Lenders take this option as a last resort.

If a borrower gets into financial difficulty, most lenders will normally go to great lengths to help the borrower. For example, the lender may reschedule payments over a longer loan term and hence reduce monthly repayment levels, or possibly allow the borrower to pay interest-only for a limited period to cope with a short-term financial crisis, etc.

Under the Central Bank's *Code of Conduct on Mortgage Arrears*[4], lenders are obliged to work with a borrower who cannot meet their financial obligations in relation to their principal primary residence due to a change in their circumstances.

However, if a borrower is in arrears and will not engage with their lender, simply refusing to meet their financial obligations regardless of their financial status, then a lender is not bound by the requirements of the Code of Conduct on Mortgage Arrears. In this case, the lender can enforce repossession under the terms of the mortgage as set out in a mortgage deed.

A **mortgage deed** is a document where the property owner transfers a legal interest in the property to the lending institution. **The mortgage deed sets out:**

- The terms of the mortgage;
- The borrower's covenants or commitments;
- The powers of the lender.

2.4.1 Terms of the Mortgage

- Details of the lending institution and the borrower.
- Description of the property.
- Amount of the loan and term of repayment.
- Rate of interest. The deed will specify if the rate is fixed or variable.
- Fees payable. Apart from payment of principal and interest, other charges may become payable in certain situations such as:
    - Interest penalties for late payment;
    - Cost incurred in enforcing the security (repossession and sale) such as auctioneer's fees and legal charges.
- Conditions and rules of the lender – a borrower is bound by the rules of the lender as well as the provisions of the legal charge.

2.4.1.1 Borrower's Covenants

- To repay the loan by regular payments, according to the nature of the loan, that is, capital and interest or interest-only etc.
- To keep the property in good repair.
- Not to make alterations to the property or change its use without the consent of the lender.
- If the property is leasehold, to comply with the provisions of the lease.
- To carry out any obligations imposed by local authorities.

[4] *See Chapter 8.*

- Not to let the property without consent.
- To keep the property insured as required by the lender and pay all premiums when due.

2.4.1.2 Powers of the Lender

A lender's main concerns are:

- To ensure that the borrower repays the loan with interest.
- That in the event of default by the borrower, the lender is able to recoup the monies due by way of the security taken.

The legal charge confers on the lender the right to:

- Call in the loan, that is, demand immediate repayment of the loan from the borrower.
- Take possession and exercise power of sale.
- Sue for the outstanding loan plus any arrears and legal fees.
- Appoint a receiver to collect rents.

These powers will only be exercised if the borrower:

- Is in arrears with his or her repayments (see Chapter 8).
- Is in default of any other covenant in the legal charge or the rules of the lender.
- Becomes bankrupt or a compulsory purchase order of the property is made.

2.4.2 Personal Guarantee

Prior to the economic bust, a first-time buyer seeking a loan in excess of what the lender would normally be prepared to lend to that person based on their income, would qualify for the loan if a suitable third party (for example, a parent with sufficient financial means) gave a legally binding personal guarantee to the lender to make the loan repayments and discharge the loan if the borrower defaults on the loan.

This was sometimes referred to as going guarantor for the borrower. If the borrower defaults, the lender can then call on the guarantor to make the loan repayments or discharge the loan in full.

Where more than one person acts as guarantor, each is jointly and severally liable for the full amount of the guarantee, that is, each is liable in full for the level of guarantee provided.

Since the downturn in the property market, lenders are increasingly calling in the repayment of the debt from the guarantor when the main borrower fails to meet their commitments. In certain instances, the guarantors themselves are in financial difficulty and the reality of going guarantor suddenly hits home, when they realise that they are joint and severally liable for the borrower’s debt.

The Central Bank, cognisant of this practice, updated the Consumer Protection Code, 2012, in relation to Personal Guarantees:

> *“Where a **regulated entity** has advanced credit to a **personal consumer** subject to a guarantee, the **regulated entity** must notify the guarantor, on paper or on another **durable medium**, if the terms of the credit agreement change.”*

2.4.3 Joint and Several Liability

Two or more individuals can purchase property as tenants in common and allocate their individual percentage ownership of the property. However, whilst the property ownership is then clearly defined, it is important to remember that the loan outstanding to the lender remains on a *joint and several* basis.

This means that where two or more persons together constitute a *borrower*, they both have equal and full liability for the loan outstanding regardless of their percentage ownership in the property which is secured against the debt.

In the event of default on the loan, each borrower may be sued for the entire amount of damages due by all, although perhaps only one individual caused/ contributed to the default.

2.5 Ownership of Land

In considering housing loans, it is important to know the nature of the potential borrower's ownership of the property over which a legal mortgage will be given to the lending institution as security for the housing loan.

Ownership is the right to the exclusive enjoyment of something and does not necessarily depend on possession. Ownership is absolute where it is without conditions and is complete. In the Republic of Ireland, ultimate ownership of land rests with the State. This means that should they so require, the State can compulsorily purchase land in the interests of the community at large, for example, for roads, etc.

In addition, under *Section 73 of the Succession Act, 1965*, land may pass to the State as the ultimate intestate successor. This means that where the deceased owner failed to make a valid will disposing of the land (and any buildings on it), and so dies intestate, and had no surviving relatives or next-of-kin capable of succeeding, the land or property in question passes to the State.

2.5.1 Freehold Estate

People who own their own homes have an *interest in land* and some interests are greater than others. A freehold interest is the best possible type of interest in land and is as near as you can get to absolute ownership. You own both the property and the land on which it stands.

Interests less than freehold are *leases* and *tenancies*.

2.5.2 Leasehold

Leasehold land is where the *freeholder*, who is the individual who holds the title to the land (also known as the *lessor*), has granted a *lease* on the land to another person for a term of years.

The *leaseholder,* that is, the person to whom a lease has been granted (also known as a *lessee*), has complete possession and use of the land subject to the terms of the lease until the lease expires, when the land and any buildings on it must be handed back to the freeholder.

Leases can be for any term but typically are for 99 years or 999 years. A lease is usually made in consideration of a regular payment from the *lessee* to the *lessor*.

Leases for 99 years over land are often referred to as *long leases* and the regular payment to the lessor, referred to as *ground rent*, is usually a nominal sum.

A *sublease* is created by the lessee, for a shorter term than the original lease, when the land and property is re-leased by the original lessee to a third party, while the original lease continues in force. This is sometimes referred to as *subletting*.

2.5.3 Rights and Interests Over Land

There are various rights and interests held over property and land.

- ***State rights*** – the State is the absolute owner of land and can compulsorily purchase land in the interest of the community at large for example, for road development.

  If a freehold landowner were to die without heirs or a will, the land would revert to the State.

- **Statutory rights** – the Garda Síochána and Customs and Excise have a right to enter land with a warrant.

- **Wayleave** – a right of way across land to carry in gas pipes, erect pylons, lay cables etc.

- **Easement** – the right enjoyed by a property owner over the lands of another, a right of way, a right to water, etc. For example: an individual may have access to a beach front where there is an easement (that is, right of way) for the other property owners to cross over their land to access this beach front. The longer an easement is used, the more established the right becomes. For example, if an individual has used a pathway across another individual's land for several years, this easement becomes established.

- **Covenants** – can be included in the title deeds of a property or in a lease. Covenants may be restrictive or positive.

  - *Restrictive covenant* – a lease may contain a covenant prohibiting a certain activity or business from being carried out within a premises.

  - *Positive covenant* – a positive covenant may entail direction concerning the maintenance and upkeep of a property for example, membership of a management company for the upkeep of a block of apartments.

- **Profits à Prendre** – hunting or fishing rights on the land of another.

Following the introduction of the Land & Conveyancing Reform Act, 2009, after 1 December 2009, easements, such as rights of way, acquired based on long use, will only be acquired by registration of a court order showing 12 years' continual use.

Therefore, after 12 years of non-use, an easement or profit à prendre will be extinguished unless it is registered. Owners were required to obtain and register the court order to acquire the rights by 2013.

So, for example, take an individual who had been using a right of way for a long period of time: under the new legislation, this easement will need to be registered or the right will be lost after 12 years of non-use. To maintain a right of way/easement, the individual must show 12 years of continual use and register evidence of this use with the court.

2.6 Registering the Ownership of Property

Each time the ownership of a property changes (that is, sold, gifted, or inherited), a new deed of title is drawn up to record the change. Tailte Éireann, a State-owned organisation, is responsible for the system for recording transactions relating to property in Ireland. Prior to the 1st of March 2023, this role was performed by the Property Registration Authority.

Tailte Éireann merged the Property Registration Authority, the Valuations Office (VO), and Ordnance Survey Ireland (OSI).

There are two separate systems for recording property-related transactions in Ireland:

1. The registration of deeds system (Registry of Deeds);
2. The registration of title system (Land Registry).

Both systems are under the control of the PRA, and the systems are mutually exclusive, in so far as, in a particular transaction relating to land, the title can either be unregistered or registered:

- *Unregistered* (that is, the title is not yet registered in the Land Registry and so the Registry of Deeds system applies); or
- *Registered* (that is, the title has been registered in the Land Registry and so the Registry of Deeds system is irrelevant).

Approximately 93% of the total land mass of the State and almost 90% of the legal titles in Ireland are registered in the Land Registry

The *registration of deeds* system has been operated by the Registry of Deeds since 1708, following its establishment by the *Registry of Deeds (Ireland) Act 1707*. Its purpose was to give priority to registered deeds and the prevention of fraud in dealing with the transfer of ownership of land.

The *registration of title system* has operated since 1892 and provides a **State-guaranteed** title to property. In other words, once a property is registered correctly in the Land Registry, then the Government is guaranteeing that this information is correct.

2.6.1 What is a Property Title?

Title is the ownership of a property and a deed is a document in writing which affects property. The fundamental difference between the Registry of Deeds and the Land Registry is that the *title* (the right to ownership of property or evidence of such right) is registered in the Land Registry and the document produced is known as the *folio*.

A folio is a document which describes:

- The property registered and refers to a plan on the registry maps;
- The name and address of the registered owner(s);
- Any burdens, for example, rights of way or charges (mortgages) affecting the property.

This folio is State-guaranteed, and this means a purchaser can accept the folio as evidence of the title without having to go through the arduous task of reading through all the actual deeds. The State is bound to indemnify any person who suffers loss through a mistake made by the Land Registry. The folio allows individuals to look at the title or ownership of a property without having to read the original deeds.

In contrast, in the Registry of Deeds only the documents relating to the title are registered. The deed itself is returned to the person who delivered it for registration. The document filed in the Registry of Deeds is known as the memorial. This is a synopsis of the title deed and contains details such as the description of the property etc.

Titles in the Registry of Deeds are commonly referred to as unregistered titles and solicitors acting for purchasers must check through all documents on record to make sure that the vendor has the right to sell. Once a title is registered in the Land Registry, the Registry of Deeds system no longer applies to it.

Key Learning Point

Land Registry	Registry of Deeds
Title guaranteed by the State and the State is legally bound to indemnify any person who suffers a loss through a mistake made by the Land Registry.	Not guaranteed by the State and title is unregistered. Solicitors must check through all documents to ensure an unbroken chain of ownership.
Title registered and evidenced by a document known as a folio.	Title unregistered but evidenced by document known as memorial.

Very often, one of the delays in a property purchase and loan transaction arises from the fact that the deeds are not registered in the Land Registry and therefore additional work is required to certify the title.

2.7 Property Ownership Rights

2.7.1 Personal Ownership

This type of ownership is the simplest form of ownership. The individual purchases a property in their sole name and they are the exclusive owner of the property. This means that should they die, this property and any obligations under a mortgage deed automatically revert to the deceased's estate.

2.7.2 Joint Tenants

Property is owned under joint tenancy where two or more individuals hold a right of ownership. In this instance, none of the parties holds any specific share in the property. In effect, they have a full interest in the entire property in their own right.

In the event of death of one of the owners of the property, the ownership of the property automatically transfers to the surviving owner(s).

2.7.3 Tenants in Common

In the case of ownership of property as tenants in common, the co-owners may have different interests in the property.

For example, one could have a 30% interest in the property and the other a 70% interest. The individuals themselves normally arrive at this division of interest.

This type of ownership is quite common for unmarried cohabiting couples. One reason for this is that in some cases the individual's interest in the property may be directly proportional to their financial investment in the property.

When a property is owned as tenants in common, on the death of one of the parties, the deceased's portion of the property falls to the deceased's estate.

The surviving owner may either inherit the property through a will made by the deceased or may choose to purchase the deceased's portion of the property from the beneficiaries of the deceased's estate.

If the surviving owner inherits the property, through a will, this could give rise to a substantial tax liability. This tax liability arises because the transfer of the property is to another party as an inheritance and may be liable to inheritance tax.

The amount of tax due is based on the relationship between the deceased and the person inheriting the property. Different tax-free thresholds apply depending on the relationship between the disponer (the person giving the benefit) and the beneficiary (the person receiving the benefit).

It is important to note that where two or more individuals purchase a property as tenants in common, regardless of how they split their interest, say 70%/30%, in the property, any liability under the mortgage deed would be *joint and several*.

Key Learning Point

All housing loan contracts are created on a joint and several liability basis. This means the borrowers are equally responsible (that is, 100%) for the full amount of the loan regardless of the interest they have in the property. As such, all parties to the loan may be sued collectively or individually for the entire amount of damages due by all.

Whilst it is the role of the solicitor to discuss how the property ownership will be created (that is, joint tenants/tenants in common), it is an important point to get across to borrowers at the outset. Where the borrowers **are not** married or in a civil partnership (because automatically ownership is joint) and they are purchasing their property as tenants in common, then they should be made aware that the liability for the mortgage is joint.

2.7.4 Inheritance Rights

In Ireland, if you receive a gift, you must pay *gift tax* and if you receive an inheritance you must pay *inheritance tax*. These taxes are known collectively as *capital acquisition taxes* (CAT). The tax applies when either the person giving or the person receiving the gift is resident in Ireland.

The benefit (the gift or inheritance) is taxed if its value is over a certain limit or threshold. Different tax-free thresholds apply depending on the relationship between the disponer (the person giving the benefit) and the beneficiary (the person receiving the benefit). There are also a few exemptions and reliefs that depend on the type of gift or inheritance.

The *Succession Act, 1965*, governs succession rights in Ireland. Succession relates to the inheritance of a person's property on their death. If an individual receives a gift or inheritance from their spouse, then, under the Succession Act, they are exempt from capital acquisition tax.

The surviving spouse/civil partner has an automatic right to a share in the estate of their deceased spouse/civil partner[5]. The share to which the spouse/civil partner is entitled is referred to as *a legal right share*. This is regardless of any provisions in a will written/ created by the deceased prior to their death.

However, the protection provided to married couples/civil partners by the Succession Act, 1965, does not apply to cohabiting couples. If two individuals are living together in a cohabiting relationship and one dies, there is no automatic right to any share of the deceased's estate.

Cohabitants are defined in the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010,* as two same-sex or opposite-sex adults who are:

- Not married to each other and;
- Not in a registered civil partnership; and
- Living together in an intimate and committed relationship.

Various exemptions from gift and inheritance tax have been provided for. A dwelling house taken as a gift or inheritance is exempt in certain circumstances. We will deal with this in Chapter 3.

2.8 Purchasing New versus Second-Hand Properties

When purchasing a property in Ireland, an individual can opt to purchase a newly built property or a second-hand property. Individuals can also build a new property themselves on previously owned, gifted or purchased land.

The advantages for some individuals of purchasing a new property as opposed to a second-hand property are:

- Scarcity of suitable second-hand properties coming onto the market;
- Most new build properties are also covered by a structural guarantee scheme (such as Homebond or Premier Guarantee) and this gives protection against defects that may arise within the first 10 years;
- New property is also built to specific building standards which ensure improved design, insulation and building standards which should reduce maintenance costs.
- The availability of the Help To Buy scheme, for first time buyers, purchasing or building a new property rather than second-hand, is a significant factor in their decision. This can make the difference of owning a home or not for many.

The purchasing of a second–hand property does afford the buyer the opportunity to purchase in an area with established transport links, schools, and communities. Sometimes a second-hand property may also be bought at a lower cost than an equivalent new property if the purchaser is willing to carry out repairs and upgrading of the property. However, this must be factored into the overall cost of the borrowing and subject to approval by a lender.

[5] *A statutory civil partnership registration scheme for same-sex couples was introduced in January 2011 under the* ***Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010****. The Act sets out the rights and obligations that civil partners have towards each other. These are broadly the same as the rights and obligations of married couples.*

2.9 Options Available to Purchase Property

When buying a property as your main dwelling house, the main options available are:

- Purchase the property by private treaty; or
- Purchase the property at auction.

2.9.1 Private Treaty

The most common method of purchasing property, used by an individual, is to purchase by private treaty. This is the primary method used by individuals buying their first home.

A property may be advertised with an asking price or advised minimum value. An offer can be made above, at or below the asking price and this offer can be accepted or rejected by the vendor (seller).

With a private treaty sale:

- An offer is made and accepted;
- A booking deposit is paid (which may be subject to loan approval being received) and normally is refundable if the purchaser decides for whatever reason not to proceed;
- The contracts to purchase will be sent to the purchaser’s solicitor;
- The purchaser has an opportunity to review the contracts, arrange their formal loan offer and decide if they wish to proceed;
- If they wish to proceed, they must sign contracts and pay the balance of the contract deposit which is normally 10%.

If contracts are signed and the purchasers wished to extract themselves from the contract, they may be able to do so; however, they will probably lose the full deposit and become liable to any additional charges imposed under the contract.

2.9.1.1 Buying Off Plans

Property can also be purchased *off plans* which means that whilst plans and specifications are available for viewing, the purchaser may not be able to see the actual property that they are about to buy for some time, as it has not yet been developed.

In most cases estate agents/developers would have a scale model of a development for potential purchasers to view. There may be a show house or apartment built. However, it is important to stress to a borrower that what they see in the show apartment may not necessarily be the same as the finished product when purchased (that is, tiling, taps, wallpaper, kitchen, bathroom, etc).

In a rising property market, individuals are normally happy to buy off plans, as they see the value of the property potentially rise during the build time. However, as we have seen in the recent past, as the property markets crashed, the opposite was the case. Many individuals who placed deposits on properties under construction just before the property crash saw the value of the properties drop drastically.

In this instance, many individuals found themselves contractually bound to purchase the property at the higher price, even though, once purchased, they would find themselves in negative equity if the price dropped below the amount of the outstanding mortgage.

2.9.2 Auction

Historically, purchasing by auction was more common at the higher end of the market where a property value is unclear and is therefore tested in the market. The auctioneer places an AMV (advised minimum value), which is a guide figure on the likely sale price, when advertising the property for sale. A reserve price is normally placed on the property by the vendor on the day of the auction. The reserve price is the amount of money below which a vendor would not be willing to sell.

However, this can also backfire, as a property remaining unsold still incurs costs and then may have to be returned to the market for sale by private treaty. Alternatively, if a property is withdrawn, the auctioneer may decide to deal with the highest bidder after the auction. Nonetheless, if discussions lead to a sale of the property, then the purchaser will still be asked to sign the legally binding contract immediately.

During the downturn in the market, few properties went to auction. We have seen specialised auctioneers appointed by a lender to sell off (for whatever price) repossessed properties. However, this trend is changing and in recent times some prime residential property has come to the market to be sold at auction to the highest bidder.

Properties sold at auction are sold unconditionally; that is, they are not sold *subject to contract*, or *subject to mortgage approval*. If an individual is successful in their bid, then they are legally obliged to complete the sale of the property, so loan approval should be in place prior to bidding on a property.

When purchasing a property at auction:

- A purchaser must have all the pre-contract checks done prior to attending the auction. This means they must have completed a valuation on the property, most likely a structural survey and had their solicitor review all contracts, planning, etc.
- A valuation on the property and loan approval must be obtained in advance. The reason for this is once the hammer goes down on the bid, the property is purchased, and unconditional contracts are exchanged. The purchaser is legally obliged to proceed.
- A deposit (usually 10%) is then paid immediately.

Normally, when purchasing a property by auction, the purchaser is required to close the sale of the property within one month.

2.9.3 Private Treaty versus Auction

The differences between private treaty and auction

Private treaty	Auction
An offer to purchase is made by the purchaser and accepted by the vendor.	Property is offered for sale at a public auction and individuals are invited to bid for the property.
Booking deposit paid to estate agent (which is normally refundable).	10% of the overall purchase price is paid immediately once the bid is accepted at the auction. This is non-refundable.
Contract sent to the purchaser's solicitor to review.	Unconditional contracts must be signed by the purchasers on the day of the auction.
The purchaser has an opportunity to review the contracts, arrange their loan offer and decide if they wish to proceed.	The purchaser must have all the pre-contract enquires completed before going to auction and are legally obliged to proceed.
Normally the process can take three to six months for the transaction to close.	Normally takes one month from the auction date to the closing of the sale.

2.10 Types of Housing Loans

Currently in the marketplace the main types of loans, which differ in the way the capital is repaid to the lender, are:

- Capital and interest;
- Interest-only, with capital repaid at the end of the loan term from:
  - A lump sum;
  - The sale of an asset (for example, the property).

2.10.1 Capital and Interest

The most popular method of repaying a housing loan is for the borrower to make regular (usually monthly) level[6] repayments, comprising partly of interest and partly repayment of capital, to the lender over the agreed loan term, typically, 25 years or more.

This method is known as a *capital and interest loan* because repayments consist of a mixture of *interest* and *capital* repayments, but this mortgage type is also known by a few other names, such as:

- Repayment mortgage;
- Standard mortgage; and
- Annuity mortgage, as the repayments are an annuity payable to the lender for the duration of the loan.

[6] *Assuming interest rates do not change.*

With a capital and interest loan, part of each repayment is used to meet the cost of the interest on the amount of loan then outstanding, and the balance of each repayment is used to repay part of the loan. At the end of the term of the loan, provided all repayments have been made there is no outstanding balance to be paid to the lender.

In the early years of a capital and interest loan, the larger part of each regular repayment is used to pay the interest under the loan, and so the capital itself reduces very slowly.

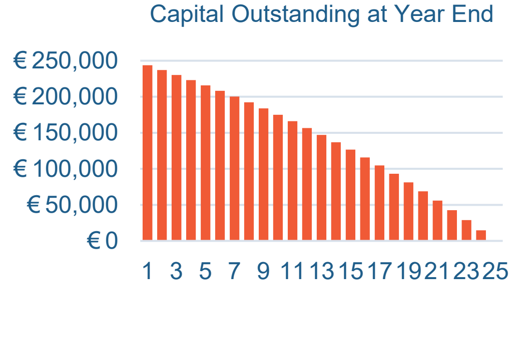
However, as the capital starts to reduce, a reducing proportion of each month's repayment is needed to meet the interest. So, more and more of each repayment is used to repay the outstanding capital because, as the outstanding capital reduces, so too does the amount of interest payable on that capital.

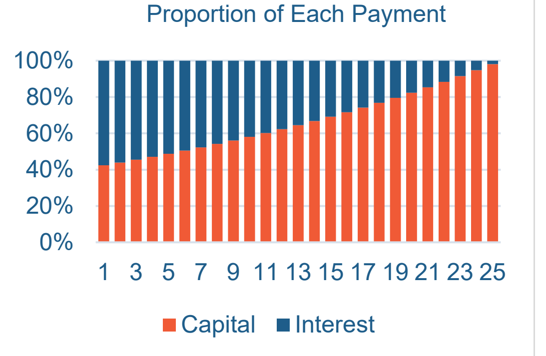
The table below shows the pattern of repayments, interest and capital, year by year for a 25-year € 250,000 loan at 3.5% per annum nominal mortgage rate[7], assuming regular level monthly repayments throughout of € 1,251.56 per month, gross *before* any mortgage interest relief:

[7] *Interest assumed to be charged monthly; APRC 3.557% per annum.*

Year	Interest	Capital repaid	Total repayment	Capital O/S at year end
1	8,648	6,370	15,019	243,630
2	8,422	6,597	15,019	237,033
3	8,187	6,831	15,019	230,201
4	7,944	7,074	15,019	223,127
5	7,693	7,326	15,019	215,801
6	7,432	7,587	15,019	208,214
7	7,162	7,856	15,019	200,358
8	6,883	8,136	15,019	192,222
9	6,593	8,425	15,019	183,797
10	6,294	8,725	15,019	175,072
11	5,983	9,035	15,019	166,037
12	5,662	9,357	15,019	156,680
13	5,329	9,689	15,019	146,991
14	4,985	10,034	15,019	136,957
15	4,628	10,391	15,019	126,566
16	4,258	10,760	15,019	115,806
17	3,876	11,143	15,019	104,662
18	3,479	11,539	15,019	93,123
19	3,069	11,950	15,019	81,173
20	2,644	12,375	15,019	68,798
21	2,204	12,815	15,019	55,983
22	1,748	13,271	15,019	42,712
23	1,276	13,743	15,019	28,969
24	787	14,232	15,019	14,738
25	281	14,738	15,019	0
Total	**125,468**	**250,000**	**375,468**	

The split of the annual repayment, assuming the 3.5% rate remains unchanged throughout, shows how the interest element gradually falls over the term, as the capital starts to be repaid.



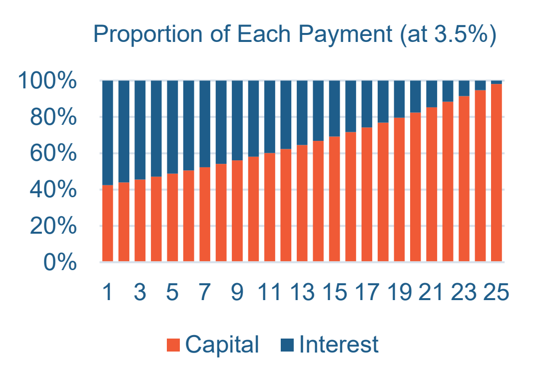


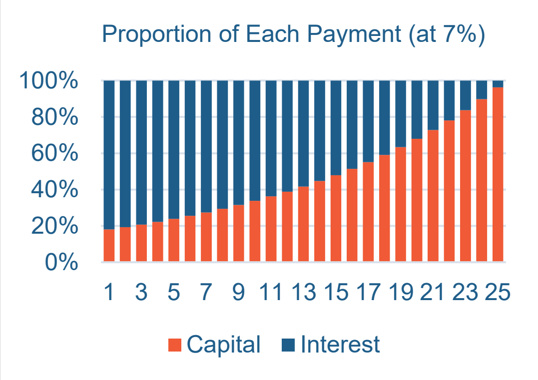
The pattern of capital outstanding is not uniform but falls sharply towards the end of the loan term.

In the example above[8], 1/2 of the loan is repaid during the first 15 years, with the other 1/2 being repaid over the remaining 10-year term of the loan.

The higher the interest rate, the higher the interest proportion of repayments in the earlier years becomes and hence the slower the rate of repayment of capital.

Compare, for example, the makeup of each repayment of a 25-year capital and interest loan, at a 3.5% per annum and 7% per annum interest rate:





2.10.2 Interest-Only

Interest-only loans are, as the name implies, loans where the borrower only pays interest to the lender during the loan term and repays the capital sum borrowed at the end of the loan term in one lump sum. In certain circumstances (such as loans for an investment property or when a borrower is in repayment difficulties) a lender will normally provide an interest-only repayment option for a period less than the full term of the mortgage.

There are two main types of interest-only mortgages;

- A Pension Mortgage
- An Endowment Mortgage

A *Pension Mortgage* can be taken out by an individual who has a personal pension plan (Retirement Annuity Contract) or a Personal Retirement Savings Account (PRSA), or by a proprietary director with an occupational pension scheme.

The capital on the pension mortgage is paid off when the pension policy is cashed in. Until that time interest-only payments are made to the mortgage and a monthly payment is made to the pension policy.

The pension policy is expected to grow to a value which will enable the outstanding capital to be cleared on the encashment of the pension policy. However, there is a risk that the value of the policy will not be enough to clear the outstanding capital. The borrower will remain liable for any shortfall.

In general lenders will lend less to a borrower for a pension mortgage than with a standard annuity mortgage.

[8] *Based on a 3.5% per annum nominal interest rate charged monthly, over a loan term of 25 years.*

An *Endowment Mortgage* is another form of interest-only mortgage, although they are not generally sold in the Irish marketplace. With an endowment mortgage, the borrower will only pay the interest on the loan throughout the term. However, they must also make regular payments into an investment policy, called an endowment policy during the term of the policy. It is anticipated that the value of the endowment policy will be enough to repay the outstanding capital on the mortgage in one lump sum at maturity.
However, as the policy is an investment policy with no guarantees, there is a risk that the growth will not be enough to cover the outstanding balance and the borrower will remain liable for any shortfall.

Endowment mortgages were a very popular way of financing a house purchase in the past, but due to poor investment growth, many borrowers found themselves with significant shortfalls at the time the capital sum was due to be repaid.

Interest-only mortgages also affect a borrower’s life assurance requirements. As the entire capital usually remains unpaid during the term, it is necessary to effect a level term policy, rather than decreasing mortgage protection, so that the entire amount outstanding is covered for the term of the mortgage.

2.11 Interest Rates

There are two main options usually offered to the borrower regarding the payment of interest on a housing loan:

- *Variable rate*, where the interest rate can be varied by the lender and hence will move up and down in line with interest rates generally.

- *Fixed rate*, where the interest rate is fixed for a certain period, sometimes called the *fix period.* At the end of the fix period, it will revert to the variable rate then ruling or the borrower can opt for a new fixed rate at the fixed rates ruling at that time.

2.11.1 Standard Variable Rate (SVR)

A mortgage lender is in the business of buying mortgages with borrowed money:

- It borrows money by issuing deposits to retail customers and bonds in the capital markets. The mortgage lender must pay to buy money to lend.

- It uses the borrowed funds to buy mortgages. The mortgagors promise to pay interest and capital to the mortgage lender.

In general, a mortgage lender will attempt to set and maintain their mortgage interest rates at:

[Cost of funds + margin]

The margin covers the lender’s expenses and provides a profit margin.

A mix of factors will in turn determine the mortgage lender’s cost of funds:

- The cost of deposits, that is, what the lender must pay to attract deposits where the mortgage lender is also a deposit taker. This might be called the retail money market.

- The cost of borrowing funds from the wholesale money market.

Lenders now source almost all their funds from the retail market.

The term *loan-to-deposit ratio* (*LTD ratio*) is the ratio of a lender's total loans to its deposits. For example, if a bank has € 20bn of loans outstanding and has € 23bn of deposits, its LTD ratio is 87%. The lower this ratio becomes, the more the lender is dependent on investing funds in the wholesale money market.

A mortgage lender will attempt to set its variable rate by reference to its cost of funds, plus a margin, but also must take competition in the mortgage market into account.

CPC Protections for Variable Rate Mortgage Holders:

In 2016, the CPC issued an addendum outlining increased protections for variable rate mortgage holders. These added protections became effective from 1 February 2017.

Provision of Information

The Code now states that "*a regulated entity must produce a summary statement of its policy for setting each variable mortgage interest rate, for those rates that it makes available to a personal consumer, excluding a tracker interest rate, and update that summary statement when the policy changes*".

The summary statement must;

- Clearly identify any factors which may result in changes to the variable interest rate;
- Clearly outline the criteria and procedures applicable to the setting of the standard variable rate;
- Clearly outline where the regulated entity uses a different approach to setting the variable interest for different cohorts of borrowers and the reasons for such approach;
- Be set out in such a form as prescribed by the Code; and
- Be published on the regulated entity's website, where they operate one.

If a change is made to the regulated entity's summary statement, it must be supplied to all affected personal consumers on paper or another durable medium.

Post–Sale Information Requirements

In addition to a personal consumer's statement of their account annually, certain information must also be supplied to personal consumers who take out a mortgage with a variable interest rate (excluding a tracker interest rate). This additional information must include:

- A summary of other mortgage products that could have provided savings for the personal consumer at that time;
- Details of how the personal consumer can obtain information on these mortgage products;
- A statement that the personal consumer should keep their mortgage arrangements under review;
- A link to the section on the Competition and Consumer Protection Commission's website relating to switching lenders or changing mortgage type, and;
- A reminder that the regulated entity's summary statement (referred to above) is available on their website.

Further amendments to the Consumer Protection Code were introduced on 1 Jan 2019 providing further protection to variable rate mortgage holders. CPC states that if consumers are on a variable rate mortgage (other than on a tracker mortgage), lenders are required to notify consumers whether or not they can move to a cheaper interest rate as a result of a move in their Loan to Value interest rate band, subject to the provision of an up-to-date valuation and any other requirements the lender might require. If it is determined that the consumer cannot move to a lower interest rate from the existing lender based on Loan to Value, a notification must be provided to the consumer advising that they may be able to avail of lower Loan to Value interest rate bands from another regulated entity based on an up-to-date valuation.

Regulated entities are also obliged to publish a variable rate policy statement which must be drafted in a clear, consumer-friendly manner and in plain English.

The policy statement must contain the following warning:

Warning: We may change the interest rate on this loan. This means the cost of your monthly repayments may increase or decrease.

2.11.2 Discounted Variable Rate

Some lenders offer a *discount* off their standard variable rate for new mortgage holders for the first six to 18 months of their mortgage. For example, a lender may have offered a discount of 0.5% off their standard variable rate for new mortgages in the first year of the loan.

At the end of the discount period, the borrower is charged the normal variable rate and so their repayments will increase at that time.

In addition, lenders may also offer a lower interest rate to a borrower where the loan-to-value (LTV) ratio is 50% or lower.

For example, here is a range of rates based on the LTV from a mainstream lender.

LTV	Rate	APRC
Less than 50%	3.75%	3.8%
50% to 80%	3.95%	4.0%
More than 80%	4.15%	4.2%

Offering these lower rates to what would be seen as lower risk borrowers may ultimately benefit a lender. This is because they will be increasing the reliability of their loan book and reducing their potential exposure to negative equity and bad debt. In addition, taking on a lower risk loan will reduce the capital a lender needs to hold the mortgage.

Under the Central Bank regulations, a bank is required to hold capital in proportion to the risk-weighting of its loans. Capital adequacy ensures that a lender can absorb the losses which might emerge in an extreme scenario as laid down by the Central Bank.

2.11.3 Green Mortgage Rates

Many banks are now offering Green Mortgage Rates. These are provided to encourage people to build or make renovations to produce more energy efficient homes. Energy efficient homes qualify for a reduced mortgage rate compared to standard homes. Typically, applicants for a green mortgage will need to verify the achievement of a minimum (Building Energy Rating) BER. For example, the property must be rated B3 or better to qualify for a lender's Green Mortgage Rate and borrowers will need to produce their BER Certificate as part of the application process for this mortgage type.

2.11.4 Fixed Rate

A fixed rate loan is one where the interest rate charged is fixed by the lender for a specified period, typically two to ten years. Regardless of how interest rates move in the meantime, the borrower's repayments will be fixed for the period chosen.

In general:

- The longer the fix period, the higher the fixed rate will be.

Fixed rate loans offer the borrower the peace of mind that their repayments will not increase over the fix period, even if interest rates increase. Of course, the other side of the coin is that the borrower's repayments do not fall during the fix period if variable interest rates fall.

Fixed rate borrowers who break out of the fixed rate during the fix period may be charged a *fixed rate breakage fee* by the lending institution, which may make it unattractive for the borrower to switch. This breakage fee is to reimburse the lending institution for the higher funding cost it may have incurred for the fix period.

For example, the lender may have agreed to pay a fixed rate of interest on deposits for a fixed period and then lent out these borrowed funds on a fixed rate to borrowers for the same fixed period. If the borrower pays off the loan early, typically because interest rates have fallen, the lender will still be obliged to pay the higher fixed rate on the deposits but can now only lend back out the funds at a lower rate than before, so incurring a loss.

The fee only applies during the fixed rate period.

Example

John has a three-year fixed rate housing loan.

The lender can impose a fee on early repayment, in part or total, of the loan during this three-year fix period.

Under the Consumer Credit Act, 1995, a lender cannot charge a housing loan borrower an early redemption fee if the borrower wants to pay off a variable rate mortgage early or switch it to another lender but can charge a fixed rate breakage fee for fixed rate housing loans, which have a fixed period of at least one year.

Fixed rate loans are not necessarily a good thing. They can work in favour of the borrower if variable rates increase over the fix period, but they can work against the borrower if variable rates decrease over the fixed period.

Fixed rate loans tend to suit borrowers whose repayments will be a significant percentage of their disposable income and want the certainty that their repayments will not increase.

For these borrowers, it is more important that repayments do not increase in the near future, as they could have difficulty in meeting these increased repayments. They may therefore be prepared to pay more for an initial period for the peace of mind that loan rates will not increase for this period.

Key Learning Point

A borrower can choose between a fixed and a variable interest rate loan; however, they need to be aware of the advantages and disadvantages of both.

A variable rate may be cheaper in the short term but, if interest rates rise, could be costly over the long term. There again, if a borrower chooses a fixed rate and interest rates decline during the fix period, the borrower will not benefit from this decline in rates.

As it is important that a borrower understands the implications of a fixed rate loan, the Consumer Protection Code requires that where a *regulated entity:*

a. Offers credit on a fixed interest rate to a *personal consumer*; or

b. Offers a *personal consumer* the option to fix their rate or to switch to a fixed rate, on an existing credit agreement*,*

the *regulated entity* must provide, in the credit documentation, a *worked example* specific to the *personal consumer* of the early redemption *charge* in monetary terms and details in relation to the calculation of this *charge*.

According to the Consumer Protection Code, if a consumer has a fixed rate mortgage, the regulated entity must inform them at least 60 days in advance that they are about to come off their fixed rate and to provide details of the default rate applicable from the expiry date.

If the default rate is not a tracker rate, the following information must also be provided to the borrower:

- *"A summary of other mortgage interest rates provided by the **regulated entity** that could provide savings for the **personal consumer** compared to the default rate of interest at the time of notification;*
- *Details of how the **personal consumer** can obtain further information on the default rate of interest and other mortgage interest rates provided by the **regulated entity**;*
- *A statement that the **personal consumer** should keep their mortgage arrangements under review as there may be other options that could provide savings for the **personal consumer."***

A link should also be provided to the relevant section of the Competition and Consumer Protection Commission's website relating to switching lenders or changing mortgage type.

This is in order to provide increased transparency to the consumer and give them some time to consider any alternative options that may be available.

2.11.5 Split Rate

A *split rate* loan is a loan where part of the loan, usually 50%, is on a fixed rate for a period, and the other part is on a variable rate. The customer can choose the % split. However, not all mortgage lenders offer a split rate loan option.

The advantage of this type of loan for the borrower is that if interest rates increase, only part of their repayments increase, that is, the part that is on the variable rate.

On the other hand, if interest rates fall, only part of the repayments fall, that is, the part that is on the variable rate.

Therefore, the split rate loan steers a mid-course between the fixed and variable rates.

2.11.6 Tracker Variable Rate

During the boom times, competition in the market saw lenders offer mortgages where the lender set a formal link between the variable rate charged and the ECB refi rate. This type of variable rate loan was usually referred to as a *tracker mortgage* because:

- The interest rate charged was set equal to the current ECB rate plus a specified margin, for example, 1% per annum. The variable rate would therefore track the ECB refi rate as it moved up and down. However, some tracker mortgages imposed a base or minimum loan rate, which applied regardless of how low the ECB rate fell.

- The interest rate charged was guaranteed to change with the ECB refi rate within a certain time span, for example, within 15 or 30 days of a change in the ECB rate.

Tracker mortgages are variable rate loans, but the borrower has the comfort of knowing that the rate charged will equal the ECB refi rate plus the specified fixed margin and that if the ECB rate falls, the fall will be passed on within a certain minimum period. Of course, the other side of the coin is that increases in rates will be passed on quickly as well.

For many years, the tracker product was the cheapest in the market and advisors were careful to ensure borrowers did not switch from the product and lose the benefit of the lower rate. However, since the ECB started to increase its repo rate aggressively in July 2022, trackers no longer provide the most attractive rate for most borrowers and many tracker customers are choosing to switch to more attractive fixed rates.

2.12 Housing Loan Interest Rates

Housing loan interest rates charged by lenders are usually shown on their website or advertised in national newspapers:

- Some lenders charge lower rates for new borrowers (sometimes referred to as *new business*) than for existing borrowers, obviously to try to entice in more new borrowers. This is clearly unpopular with existing borrowers!

- Some lenders tier their mortgage rates relative to the LTV (*loan-to-value*), that is, the ratio of the loan sought to the market value of the secured property. Typically, the higher the *LTV*, the higher the rate of interest charged. This reflects the higher degree of risk for the lender, due to the reduced equity in the property, that is, the estimated surplus there would be if the property was disposed of and the loan repaid at that time.

- Most lenders distinguish in their loan rates between *owner-occupier* loans and *investment* or *buy-to-let* loans, typically charging a higher rate for buy-to-let housing loans.

- Lenders can also distinguish in their loan rates between *top-up loans* (to existing borrowers) and new loans to new borrowers.

The Consumer Protection Code, 2012, introduced specific requirements regarding the advertisement of, and information relating to, changes in mortgage interest rates by a regulated entity.

A *regulated entity* must notify affected *personal consumers* on paper or on another *durable medium* of any change in the interest rate on a loan. This notification must include:

- The date from which the new rate applies;
- Details of the old and new rate;
- The revised repayment amount; and
- An invitation for the *personal consumer* to contact the lender if he/she anticipates difficulties in meeting the higher repayments.

In the case of a mortgage where a revised repayment arrangement has been put in place in accordance with the *Code of Conduct for Mortgage Arrears*, the notification must clearly indicate the revised repayment amount that applies to the revised repayment arrangement.

In addition to the above information, personal consumers who hold a variable rate mortgage (excluding a tracker interest rate) must also receive the information previously outlined in 2.11.1

A *regulated entity* must provide this notification to a personal consumer at least **30 days** in advance of any change in the interest rate, except in the following circumstances:

- In the case of a tracker interest rate, the regulated entity must provide the notification required above as soon as possible, and **no later than 10 business days** after the regulated entity becomes aware of a change in the underlying rate being tracked; or
- For loans other than mortgage loans, where the following conditions are satisfied, the regulated entity does not need to provide the notification:
  - The change in the interest rate is caused by a change in a reference rate which changes on a daily or weekly basis;
  - The new reference rate is made publicly available by appropriate means; and
  - Information concerning the new reference rate is kept available on the premises of the regulated entity.

Where a regulated entity operates a website, it must publish on its website the interest rates for mortgages, which are currently available to consumers from that regulated entity.

2.13 Charging Interest

There are many different types of housing loans provided by lenders, which vary principally by:

- How the capital sum borrowed is to be repaid; and
- How the interest payable on the capital sum outstanding from time to time, is determined.

2.13.1 Simple Interest

A loan is a financial transaction between the lender and the borrower, under which the borrower charges interest on the capital sum advanced, until that sum is repaid by the borrower to the lender.

The interest charged on a loan could be either *simple interest* or *compound interest.*

Simple interest is normally used for loans over a short period such as 30 or 60 days.

The formula for calculating *simple interest* is = p x i x n where:

- p = principal (original amount borrowed or loaned).
- i = interest rate for one period.
- n = number of periods.

Example

Mary borrowed € 1,000 from her brother Patrick for 60 days and, to keep everything above board, they agreed a 4% simple annual interest rate. Therefore, the interest Patrick charged on this loan after 60 days would be € 6.58.

This is calculated as follows:

€ 1,000 multiplied by the interest rate (that is, 4%) then divided by 365 (number of days in the year) and multiplied by 60 (that is, the number of days the money was borrowed).

The final figure is then rounded up to two decimal places.

That is, € 1,000 x 0.04 x (60/365) = € 6.575 rounded up to € 6.58.

Therefore, if Mary borrows € 1,000 from Patrick for 60 days at a simple interest rate of 4% then she will repay € 6.58 in interest.

2.13.2 Compound Interest

Interest on housing loans is *compounded* and therefore it is important to understand the concept of *compound interest,* as this concept underlies the operation of housing loans.

When a lender refers to a 4% per annum interest rate, the calculation is based on *compound interest*. This is where interest charged is added to the loan amount and from that moment on, the new loan amount is the original capital and the interest charged.

Lenders charge interest on a loan account and require that the borrower makes a repayment on a monthly basis. If the interest is not paid at the end of the month, it is *capitalised*, that is added to the loan outstanding so that the loan amount outstanding increases. Interest will be charged the following month on this larger amount, and so on.

If no repayment is made for the second month, then at the end of the second month, interest is added once more. It is the fact that lenders charge compound interest, which causes arrears to grow sharply when borrowers get into difficulties and stop making loan repayments.

2.13.3 Interest Accrual Period

Whilst the loan is normally expected to be repaid on a monthly basis, with housing loans it is common to find that interest is **accrued**[9] by the lender monthly, fortnightly or even daily. This is accounted for in the annual percentage rate of charge (APRC). The APRC is the rate of interest charged by a loan assuming interest is accrued in one sum at the end of each year, that is, *annually*. APRC enables borrowers to compare loans.

Example – Interest Accrued on a Monthly Rest (Monthly Stop)

Let's take a 30-year capital and interest loan of € 200,000 with an interest rate of 4.5% and a monthly repayment of € 1,013.37. The interest in month one is calculated by taking the annual interest rate divided by 12 and applying it to the initial mortgage balance of € 200,000.

So, if we take a 4.5% interest rate and divide by 12 it equates to 0.375% per month. Multiplying it by the mortgage balance of € 200,000, this means that the interest portion of the loan of € 200,000 in month one is € 750.00. The remaining amount that is, capital repayment, € 263.37.

Once the first monthly payment of € 1,013.37 is applied to the loan account then the capital repayment of € 263.37 reduces the mortgage outstanding from € 200,000 to € 199,736.63. Therefore, the amount of interest charged in month two is only against a loan of € 199,763.63.

In month two, when the repayment of € 1,013.37 is applied to the account, the interest portion due is only € 749.01 and € 264.36 goes towards reducing the outstanding loan. This exercise repeats itself on a monthly basis and the capital outstanding reduces over time.

See tables and graphs in 2.10.1 above.

Key Learning Point

One of the main reasons a lender's APRC might differ from another even when both are offering the same *interest rate* is because of the way the lender accrues their interest.

As accrued interest is added to the capital outstanding which will attract a further charge if not paid, it is in the borrower's best interests to make repayments as the payment falls due.

2.13.4 Loan Affordability

Whilst the legal mortgage is the prime security for a housing loan, the prime consideration in assessing a housing loan application is the income capacity of the borrower to fund future loan repayments. The forms of security previously listed are *fall backs*, that is, to be called on if the borrower becomes unable or unwilling to make any further repayments. Housing loan lenders would ideally hope not to have to enforce or claim on any of the other forms of security listed above.

[9] *Charged to the loan account but not yet received.*

Therefore, lenders exercise considerable effort in *underwriting* housing loan applications in order to ensure, as far as can reasonably be predicted, that the applicant will be able to afford to make the repayments for the level of loan granted to him or her for the expected duration of the loan.

As part of the housing loan application process, lenders will:

- Seek considerable evidence of the applicant's earnings, employment status, other loans, their savings and spending habits, etc.
- Undertake a check on the applicant's credit history with the Central Credit Register. Any evidence of previous missed loan repayments or undischarged debts would cause the lender to review the application very carefully and, in some cases, either:
  - Reduce the loan offered; or
  - Reject the application entirely if the applicant's credit history is very poor.
- In deciding on the level of loan they are prepared to advance to the applicant, the lender must (except in the case of loans that have been fixed for at least five years) *stress test* an applicant for a loan to determine if the borrower could still afford to make the repayments if interest rates increased from current levels. Therefore, it is not just whether the applicant can currently afford the current loan repayments, but also whether they are likely to be able to meet the repayments in the future as well.

2.13.4.1 Loan-to-Income (LTI) Restrictions

In 2015, the Central Bank announced new regulations which apply limits to mortgage lending by regulated financial services providers in the Irish market. This means that when assessing a borrower's repayment capacity, lenders must work within specific guidelines laid down by the Central Bank.

In October 2022, the Central Bank updated its mortgage measures following an extensive consultation process. From 1 January 2023, for individuals purchasing their own private dwelling home, the lender is limited to advancing no more than 4.0 times the borrower's gross income (LTI limit) if they are a first-time buyer, and 3.5 times if they are a non-first-time buyer. This means that if a first-time buyer earns € 40,000 per annum, then the maximum loan for which they can be approved (all other things being equal) is € 160,000. However, if they are a non-first-time buyer, the maximum loan is € 140,000. Lenders are permitted to provide mortgages above these limits for a small percentage of their new loans each year. However, there are severe penalties if they provide more than this percentage.

Under the new regulations the LTI restrictions **do not apply** to:

1. *Switcher mortgages* or refinancing of an existing housing loan.

> *"…a new housing loan under which amounts are advanced by the lender to refinance the full amount outstanding under an existing housing loan, where the new housing loan is secured or to be secured on the same residential property as the existing housing loan, and the amount to be advanced under the new housing loan does not exceed the amount outstanding under the existing housing loan (whether or not the lender in respect of the existing housing loan and the new housing loan are the same)."*

2. Housing loans entered into for the purposes of addressing pre-arrears or arrears.

> *"…a housing loan the purpose of which is to address the arrears or pre-arrears of the borrower on an existing housing loan by agreeing alternative repayment arrangements".*

The above are exceptions to the Central Bank rules which give a lender some flexibility and we will deal with these regulations in further detail in Chapter 4.

2.13.5 Insurance

There are two main forms of insurance, which may be associated or required in relation to a housing loan:

1. **Insurance on the property**, in relation to perils such as fire, flood, subsidence, etc, which if they occurred could substantially reduce the value of the property and hence the value of the lender's mortgage or security on that property. The borrower is required by the lender to insure the property for an appropriate amount (the estimated rebuilding cost of the property) and to pay all premiums due on the policy.

2. **Insurance on the borrower**, to either:

   - Pay off in full the loan outstanding on the borrower's death and/or serious illness during the loan term;

   - Pay an income, for a specified period, in the event of the borrower's sickness, accident or unemployment (subject to certain conditions) causing him or her to be unable to work and earn an income. The income paid by the insurance can be used either directly or indirectly to meet loan repayments for a period.

Insurances associated with housing loans are looked at in more detail in Chapter 5.

2.14 Risks When Choosing a Mortgage Type

Borrowers are subject to certain investment risks in relation to different types of housing loans as discussed in this chapter:

Type of loan	Investment risk
Variable rate loans	• That interest rates will increase from current levels, and hence increase the borrower's repayments.
Fixed rate loans	• That the fixed rate will exceed the variable rate over the fixed rate period, and so the borrower pays more in interest than if he or she had chosen a variable rate loan over the same period. • That the borrower may want to redeem the loan early within the fix period, and hence becomes potentially liable to an early redemption penalty by the lender.
All housing loans	• That the borrower, through changed financial circumstances, could become unable to make the loan repayments in full and goes into arrears on the loan or is obliged to seek forbearance. The borrower's credit record will show the borrower is in arrears or in an alternative arrangement. This will make it difficult for them to obtain further credit. • If the arrears cannot be cleared and loan repayments recommenced within the terms of the original contract, the lender could repossess the borrower's home and sell it. This would lead to the borrower losing their home. • That the borrower wishes to sell the property and the value of the property has fallen below the outstanding loan balance. The borrower is unable to clear the loan because of the *negative equity.* • As a result of being unable to make loan repayments, and an arrears situation arises, the debt is added to the original loan amount (that is, arrears). Further interest is then applied to the individual's account thus increasing the overall debt.

Review

Now consider the main teaching points, which were introduced in this chapter. They are listed below. Tick each one as you go through them.

- [ ] What is a *housing loan*?
- [ ] The main *housing loan* providers
- [ ] The difference between ownership and possession of property
- [ ] How property ownership is registered
- [ ] Different types of *property* ownership rights
- [ ] The main types of security for housing loans
- [ ] The main features of the generic types of housing loans
- [ ] The main risks for the borrower associated with different forms of housing loans

Sample Questions

The answers to these questions can be found in your Study Hub.

1. To be eligible for a local Authority Home Loan, John and Mary, who are both first time buyers, cannot have a combined salary greater than:

   A. € 35,000
   B. € 50,000
   C. € 75,000
   D. € 100,000

2. Which one of the following organisations manages the system which records the transfer of ownership in property related transactions?

   A. Tailte Éireann.
   B. Department of Housing, Planning and Local Government.
   C. Local Authorities.
   D. Department of the Environment.

3. Joe and Maria were married at the time of Joe's death. In accordance with the Succession Act 1965, Maria:

   A. is automatically entitled to the entire proceeds of Joe's estate regardless of the provisions of Joe's Will.
   B. has no legal right share over Joe's estate.
   C. is legally only entitled to the share of Joe's estate left to her by Joe in his Will.
   D. has an automatic right to a share in Joe's estate regardless of the provisions of his Will.

4. Which of the following factors will influence a lender’s decision to change its variable mortgage interest rate?

   (i) current wholesale money market rates and the cost of the lender's retail deposits,
   (ii) lender's profit margin,
   (iii) euro inflation rate.

   A. (ii) only.
   B. (ii) and (iii) only.
   C. (i) and (ii) only.
   D. (i), (ii) and (iii).

03

Taxation and Reliefs

Chapter 3 looks at the various taxes and tax reliefs that may be associated with purchasing, selling, and inheriting properties.

It outlines the various reliefs and incentives that have been introduced for first-time buyers, owner-occupiers, and investment property owners since 2012 to ensure that when discussing a loan for house purchase with a borrower, all potential costs and reliefs will be considered.

Learning Outcomes – after studying this chapter you should be able to:
explain the exemptions and thresholds that apply to capital acquisitions tax (CAT) and calculate an individual's CAT liability;
outline the Help to Buy incentive for first-time buyers;
calculate the local property tax liability where required and outline any exemptions to this tax;
outline the rules applying to tax relief being granted to residential investment properties and calculate the amount of an investor's income that will be subject to income tax;
calculate an individual's capital gains tax liability and discuss any exemptions from the tax; and,
calculate the stamp duty payable for both residential and non-residential properties.

Chapter weightings	**Number of questions which may appear**		
In the exam, questions are taken from each chapter based on the following approximate chart:	Chapter	Minimum	Maximum
	3	10	15

3.1 Introduction

Taxation and the various tax reliefs allowed by the Revenue Commissioners need to be considered when discussing a housing loan with a client. A few taxes (and tax reliefs) need to be taken into consideration. For example:

First-time buyers

- The *Help to Buy* (HTB) incentive is designed to assist first-time buyers fund the deposit required to purchase or self-build a new house or apartment to live in as their home. HTB provides for a refund of income tax and deposit interest retention tax (DIRT) paid over the previous four tax years.

Residential property investors

- Purchasers of residential investment property are entitled to tax relief on the mortgage interest they pay on a loan secured against the investment property.
- All purchasers of any property must pay stamp duty.
- Some individuals will be liable for capital gains tax on the disposal of property should a financial gain (capital gain) arise.
- Local property tax must be taken into consideration by all homeowners/potential first-time buyers.
- Individuals who receive an inheritance/gift must be aware of the tax liability that might arise if they are considering using these funds towards the purchase of a property.

This chapter will cover each of the taxes/reliefs. Whilst you are not required to be a tax expert, you should be aware of how the tax is calculated and the implications (either positive/negative) for a borrower.

3.2 Capital Acquisitions Tax – Inheritance

Inheritance tax is a tax liability that may arise on the death of an individual with assets, where those assets are inherited by someone other than the individual's spouse/civil partner.

If a borrower intends to use part of an inheritance/gift as a down payment on property, then they must FIRST make allowances for any tax liability that might arise on the inheritance/gift they have received.

The benefit (that is, the inheritance) is taxed if its value is over a certain threshold. Different tax-free thresholds apply depending on the relationship between the disponer (the person giving the benefit) and the beneficiary (the person receiving the benefit).

It is the recipient of the benefit that is potentially liable to inheritance tax and NOT the estate of the deceased person.

Inheritances taken by a spouse or civil partner of the deceased are completely exempt from inheritance tax, regardless of amount.

There are three group thresholds, (Group A, B and C) which depend on the relationship between:

- The disponer (that is, the person who provided the property comprised in the inheritance); and
- The beneficiary (that is, the person who takes the benefit).

The current Capital Acquisitions Tax thresholds are applicable for inheritances or gifts received on or after 9th October 2019.

	Beneficiary	Threshold Amount
Group A	The beneficiary is a child (including adopted child, stepchild and certain foster children) or minor child of a deceased child of the disponer.	€ 335,000
Group B	A brother, sister, niece, nephew or lineal ancestor (that is, grandparent) or lineal descendant (that is, grandchild) of the disponer.	€ 32,500
Group C	All other cases.	€ 16,250

So, you will see that Group A applies where the beneficiary is a child (including a stepchild or adopted child) of the disponer.

The total threshold amount that a son or daughter can inherit tax-free from their parent(s) on death is € 335,000 assuming they have not previously received a gift or inheritance from any source since December 1991 (inheritance/gifts prior to 1991 are ignored). An individual child cannot benefit from a separate threshold from a father and a mother. The Group A threshold relates to gifts and/or inheritances from either parent.

After the threshold amount is received, the inheritance tax rate is 33%.

Example #1 – Group A Threshold – Inheritance Father to Child

In July 2024, John died and left an inheritance of € 1m to his son, Tom, in his will.

Assuming he has not previously received a gift or inheritance from any source, Tom's inheritance tax liability will be:

First € 335,000 at nil:	€ Nil
Balance of € 665,000 at 33%:	€ 219,450

This means that after taxes are paid on the € 1m inheritance, Tom will have € 780,550 (that is, € 1,000,000 - € 219,450) left from his inheritance.

Example #2 – Group A Threshold – Previous Inheritance

In July 2024, Paul inherits property and investments valued at € 1m from his father but had received € 200,000 inheritance from his mother in 2010.

Because Paul received € 200,000 inheritance in 2010 from his mother, which did not attract an inheritance tax liability at the time, he now only has € 335,000 - € 200,000, that is, € 135,000 threshold left, so that the taxable part of his latest € 1m inheritance from his father is € 865,000 which is then taxed at 33%.

So, a child does NOT benefit from 2 x Group A Thresholds, one from his father and one from his mother. A child only has ONE Group A Threshold in respect of all gifts and inheritances taken from his or her parents.

Inheritance	€ 1,000,000
Prior gifts/inheritance	€ 200,000
Total received since 1991	€ 1,200,000
Less threshold	<u>€ 335,000</u>
Balance	€ 865,000
Balance € 865,000 at 33%	€ 285,450

Example #3 – Group B Threshold – Inheritance – Grandparent to Child

In 2024, Ann Marie receives an inheritance of € 50,000 from her grandmother.

Assuming she has not previously received a gift or inheritance from any source, Ann Marie's inheritance tax liability will be:

First € 32,500 at nil:	€ Nil
Balance of € 17,500 at 33%:	€ 5,775

Therefore, Ann Marie's inheritance tax liability is € 5,775

Example #4 – Group C Threshold – Inheritance – All Other Cases

In 2024, William receives an inheritance of a property valued at € 250,000 from his partner, Sam. Sam and William were not married to each other, nor were they civil partners. They had been cohabiting for the previous 18 months.

Assuming William has not previously received a gift or inheritance from any source, he will have a tax liability under Group C Threshold:

First € 16,250 at nil:	€ Nil
Balance € 233,750 at 33%:	€ 77,137.50

Therefore, whilst William might find himself inheriting the property from his partner, due to the nature of their relationship William may now find himself (unless he has other substantial personal resources) having to sell the property to clear the inheritance tax liability.

In the table above, you will see that the threshold for Group C is quite low in comparison to Group A.

3.2.1 Dwelling House Exemption

The low threshold for Group C has given rise to problems where individuals are living together but are not married to each other or in a registered civil partnership. If they own the property as joint tenants, and one of the owners dies, then the property automatically transfers to the surviving owner. However, for tax purposes as they are not married or civil partners, this transfer is seen as an inheritance by Revenue and would be subject to CAT. Revenue can, under *S*ection 86 of the Capital Acquisitions Tax Consolidation Act 2003, allow certain exemptions to deal with situations such as this. The Finance Act 2016 introduced changes to the qualifications which apply to inheritances on or after 25 December 2016. These criteria are outlined below.

In certain circumstances, if an individual receives an inheritance of a house that has been their main residence, it is exempt from tax if they do not own or have an interest in any other house and subject to the following conditions[10]:

To qualify for an exemption from paying inheritance tax (CAT) on a property, the recipient must:

- Have occupied the property continuously as their main (only) residence for a period of three years immediately prior to the date of the inheritance.

- Not, at the date of the inheritance, be beneficially entitled to any other dwelling house or to any interest in any other dwelling house.

- Continue, except where such recipient was aged 65 years or more at the date of the inheritance or has died, to occupy that dwelling house as his/her only/main residence for a period of six years commencing on the date of the inheritance.

- In addition, for the recipient to be exempt from CAT the house they inherited was the only or main home of the person who died.

Withdrawal or Clawback of the Exemption

The dwelling house exemption no longer applies if, during the six-year period after qualifying for the exemption the recipient:

- No longer lives in the house as their main home. The exceptions to this are if the recipient requires long-term medical care in a hospital, nursing home or convalescent home or as a result of a condition being imposed by an employer on a recipient to reside elsewhere. Ill health reasons must be confirmed by a registered medical practitioner.

- Sells the house and does not use all the money from the sale to buy a replacement main home. If some money has been used towards purchase of a new main home, then the exemption can be clawed back in proportion to the amount left over.

[10] *The Finance Act 2016.*

Example – Group C Threshold

In 2024, Caroline receives an inheritance of a property valued at € 250,000 from her boyfriend, Roy. It was the only house owned by Roy. Caroline and Roy were not married to each other when Roy died leaving his property to Caroline in his will. They had been living together for the past four years in the property owned by Roy. This was, in effect, their family home.

Caroline does not own or have an interest in any other property, and this is her family home. As Caroline satisfies the exemptions rules under Section 86 of the Capital Acquisitions Tax Consolidation Act 2003 (as amended under the Finance Act 2016) she is not liable to pay inheritance tax on the property.

3.2.2 Capital Acquisitions Tax – Gift Tax

Like inheritance tax liability, when an individual receives a gift, they may also be subject to a capital acquisition tax liability. However, the first € 3,000 of all gifts received by a beneficiary from each disponer in any one calendar year *is exempt* for gift tax. This means that an individual can receive a gift of up to € 3,000 from several people in any one calendar year and the first € 3,000 from each disponer is exempt from the calculation of gift tax. This is often known as the **small gift exemption**.

The thresholds then apply:

Group A: € 335,000	Applies where the beneficiary is a child (including adopted child, stepchild, and certain foster children) or minor child of a deceased child of the disponer. Parents also fall within this threshold.
Group B: € 32,500	Applies where the beneficiary is a brother, sister, niece, nephew or lineal ancestor or lineal descendant of the disponer.
Group C: € 16,250	Applies in all other cases.

Example – Group B – Gift Tax Calculation

In 2024, Philippa receives a gift of € 25,000 from her good friend and neighbour whom she looked after for several years.

Assuming she has not previously received a gift or inheritance from any source this year, Philippa's gift tax liability will be calculated as follows:

As the first € 3,000 of a gift is ignored, she would be taxed as if she had received € 22,000.

Gift calculation now based on € 22,000:

First € 16,250 at nil:	€	Nil (see Group C exemption)
Balance € 5,750 at 33%:	€ 1,897.50	

Therefore, Philippa's gift tax liability is € 1,897.50.

3.2.3 Exemptions from CAT

In addition to the exemptions mentioned above (Section 86 of the Capital Acquisitions Tax Consolidation Act 2003) (amended in the Finance Act 2016) the following are also exempt from capital acquisitions tax:

- Gifts or inheritances from a spouse or civil partner;
- Payments for damages or compensation;
- Benefits used only for the medical expenses of a person who is permanently incapacitated due to physical or mental illness;
- Benefits taken for charitable purposes or received from a charity;
- Winnings from a lottery, sweepstake, game, or betting;
- Retirement benefits and pension and redundancy payments are not usually liable to gift tax;
- The first € 3,000 of the total value of all gifts received from one person in any calendar year is exempt. This does not apply to inheritances.

3.3 Help to Buy Scheme

In the Budget 2016 announcement, the Government announced a new Help to Buy (HTB) incentive designed to help first-time buyers of newly built homes to assemble the required deposit. The scheme also applies to once-off self-build homes.

The HTB scheme provides for a refund of income tax and deposit interest retention tax (DIRT) paid over the previous four tax years up to a maximum of € 30,000[11].

- The amount that can be claimed is the lesser of:
  - € 30,000
  - 10% of the purchase price of a newly built home, or 10% of the completion value of a self-build
  - The amount of Income Tax and DIRT paid by the first-time buyers in the four years before the purchase of the newly built home or self-build.
- First-time buyers who buy or have bought a new residential property between 19th July 2016 (signed a contract) and 31st December 2025 may be entitled to claim a refund of income tax and DIRT paid over the previous four tax years. This also applies to self-builds for the same period.
- If two or more people are purchasing together, they must both be first-time buyers, that is, not have previously bought or built a property either individually or jointly with anyone else. If the buyers have previously been gifted or inherited a property, this does not affect eligibility. The apportionment of the relief can be determined by the claimants. It does not have to be a 50/50 split.

[11] Prior to July 2020, the maximum relief claimable was limited to the lesser of € 20,000 and 5% of the purchase price of the new home or the completion value of a self-build.

- To qualify, the borrowers must obtain a mortgage of at least 70% of the purchase price (or, for a self-build, 70% of the valuation approved by the mortgage provider) on a property valued at € 500,000 or less.

- In all cases, applicants must be tax-compliant for the previous four years.

- Applicants buying a home using the Local Authority Affordable Purchase Scheme are also eligible to apply for the HTB scheme from 11 October 2023.

- The property must be purchased through a qualifying contractor as defined by Revenue. Building contractors must apply to Revenue for approval.

- Contractors wishing to operate the HTB incentive need to:

  - Be tax-compliant and VAT-registered.

  - Provide the properties for sale during the period the incentive is available.

  - Be compliant with all Planning and Development Acts 2000 to 2016 in respect of the qualifying residences.

Example #1

Angel and Mary, both first-time buyers, paid a deposit on a new property valued at € 375,000 in January 2024. They obtained a loan of € 250,000 to assist them in the purchase.

They do not qualify for the *Help to Buy* scheme as the loan amount was less than 70% of the purchase price of the property.

Example #2

Denise, a first-time buyer, and Joe, who owns his own home, are selling his house to buy a new private residential property together.

As Joe already owns a property, even though it will be sold, and they are buying a new property together, neither of them will qualify for the *Help to Buy* scheme.

Amount of Relief Allowed *(see note 11)*

Purchase price or valuation	Amount of relief
Up to € 500,000	Up to 10% of the purchase price of a new home or 10% of the completion value of a self-build, up to a maximum of € 30,000, depending on amount of Income tax and DIRT paid in last four years
Over € 500,000	No relief

3.4 First Home Scheme

The First Home Scheme (FHS) is a shared equity scheme. The Government and the participating banks pay up to 30% of the cost of a new home in return for a similar percentage stake in the home. The borrower can buy back the stake at any time but doesn’t have to.

The First Home Scheme states as follows:

*To be eligible for the Scheme **you** must:*

- Be over 18 years of age
- Be a first-time buyer or other eligible homebuyer
- Have Mortgage Approval with a Participating Lender
- Borrow the maximum amount available to you from one of the Participating Lenders (up to 4 times your income)
- Not be availing of a Macro Prudential Exception (MPE) with a Participating Lender
- Have a minimum deposit of 10% of the property purchase price or build cost (for self-builds, equity in your site can contribute to your deposit.)

*To be eligible for the Scheme, the **property** must:*

- Be a qualifying house or apartment **OR** a Self-build on a privately owned site **OR** a house or apartment you are currently renting and residing in and now, looking to purchase having received a Notice of Termination from your landlord, as the landlord is putting the property on the market
- Be a property in a private development OR on a site in your name in the Republic of Ireland
- Be your Principal Private Residence
- Be within the local authority property price ceiling for the property type

How much funding can the FHS provide?

- The FHS can fund up to 30% of the property purchase price or build cost (for Self-builds)
- This amount is reduced to 20% if you are availing of the Help to Buy Scheme (HTB)
- The minimum equity share is 2.5% of the property purchase price or build cost (for self-builds), or € 10,000, whichever is higher.

Example #1

Louise and Daniel have a joint salary of € 70,000. They wish to buy a new house in Cork for € 460,000. To avail of the scheme, they must borrow the maximum allowable, which is 4 x Salary and have the minimum deposit which is 10% of the price:

- Mortgage = 4 x Salary = € 280,000
- Deposit = 10% of the price = € 46,000.

The funding shortfall is € 450,000 - € 280,000 - € 46,000 = € 124,000

The FHS will provide € 78,000 and own € 124,000/€ 460,000 = 27.0% of the home. This is less that the 30% maximum allowable under the scheme..

Example #2

Lorna and Mary have a joint salary of € 85,000. They wish to buy a new apartment in Dublin for € 470,000. To avail of the scheme, they must borrow the maximum allowable, which is 4 x Salary and have the minimum deposit which is 10% of the price. They are obtaining € 25,000 under the Help to Buy (HTB) scheme which can be used as part of the deposit:

- Mortgage = 4 x Salary = € 340,000
- Deposit = € 27,000
- Help to Buy = € 25,000

The funding shortfall is € 470,000 - € 340,000 - € 27,000 - € 25,000 = € 78,000

The FHS will provide € 78,000 and own € 78,000/€ 470,000 = 16.6% of the home. This is less that the 20% maximum which those availing of the HTB scheme may obtain.

3.5 Local Authority Affordable Purchase Scheme

The Local Authority Affordable Purchase Scheme (LAAPS) is a shared equity scheme in affordable newly built local authority houses. The local authority can pay up to 40% of the cost of a new home in return for a similar percentage stake in the home. The borrower must buy back the stake after 40 years or when the house is sold but can do so at any earlier time.

To qualify for the scheme, the borrower must be a first-time buyer or a ‘Fresh Start’ applicant. The borrower can get a mortgage from a bank or financial institution. It may also avail of a Local Authority Home Loan and the Help to Buy Scheme. The borrower must have a 10% deposit and borrow the maximum allowable, currently four times income. The maximum amount they can borrow must be less than 85.5% of the value of the house to qualify for the scheme. The local authority can provide the balance of the funds up to a maximum of 40% of the value of the house.

3.6 Finance (Local Property Tax) Act, 2012 (LPT)

Following the enactment of the *Finance (Local Property Tax) Act, 2012,* the Government introduced a local residential property tax (LPT) which is charged to and payable by residential property owners, based on the market value of the property in the State.

A *residential property* is defined in the Act as:

> *"… any building (or part of a building) which is used as, or is suitable for use as, a residence and includes any yard, gardens, driveway, or other land associated with the property up to one acre in size.*
>
> *It also includes any other buildings or structures that belong with the residence such as garages and sheds."*

The charge is administered by Revenue and Revenue have set the bands for the chargeable value, and when advising a property owner of their liability initially Revenue will provide guidance to property owners on their estimation of the value of the property in question. Revenue's estimate is not a valuation of a property and Revenue are clear that it should not be regarded as an accurate calculation of LPT liability. Ultimately the final decision on the value of the property is made by the property owner.

However, Revenue will impose fines on the property owner, if at some future date, Revenue discovers an individual has attempted to avoid paying the full tax due by under-declaring the value of their property.

3.6.1 Properties Exempt From LPT

The following properties are exempt from LPT:

- Under Section 8 of the Finance (Local Property Tax) Act, 2012 (as amended), any person who purchased a property in 2013 and occupies it as a sole or main residence is entitled to an exemption from local property tax (LPT) **until the end of 2021.** It was originally intended that this exemption **would only apply to first-time buyers**. However, if the legislation is read literally the exemption benefits any buyer, not just a first-time buyer.
  The result is that a person who purchased a property in 2013 and occupies it as a sole or main residence is entitled to the exemption regardless of the fact that they are not a first-time buyer.

  Therefore, the exemption **is not restricted** to first-time buyers nor is it restricted to **new** properties if the property is used as the person's sole or main residence until the end of 2021.

  If the property is subsequently sold or ceases to be the person's main residence between 2013 and 2021, the exemption no longer applies.

  Where a property is purchased jointly by married couple/civil partners or cohabitants, the exemption will apply once the property is purchased in 2013 and is occupied as the sole or main residence of the married couple/civil partners or cohabitants.

- Properties constructed and owned by a builder or developer that remain unsold and have not yet been used as a residence. In order to qualify for the exemption, the property must:

  - Have been constructed as part of the builder's or developer's trade

  - Have not yet been used as a residence

  - Not have generated an income that is subject to income tax or corporation tax.

- Properties purchased from a builder or developer between 1 January 2013 and 31 October 2021 were exempt until the end of 2021. In order to qualify for the exemption, the property must:
  - Be new and previously unused
  - Be purchased from a builder or property developer who constructed the property, or had it constructed as part of a trade
- Properties in unfinished housing estates (commonly called *ghost estates*) specified by the Minister for the Environment, Community and Local Government.
- Certain properties certified as having significant pyrite damage as detailed in Section 10 of the Act, have an exemption for a temporary period of six years to enable testing and assessment of the damage.
- Residential properties owned by a charity or a public body and used to provide accommodation and support to people who have a particular need in addition to a general housing need to enable them to live in the community. For example, sheltered housing for the elderly and the disabled.
- Registered nursing homes.
- A property previously occupied by a person as his or her sole or main residence that has been vacated by the person for 12 months or more due to long-term mental or physical infirmity. A property may also be exempt if the vacated period is less than 12 months and the person's doctor is satisfied that he or she is unlikely to return to the property. In both cases, the exemption only applies when the property is not occupied by any other person.
- Mobile homes, vehicles or vessels.
- Properties fully subject to commercial rates.
- Diplomatic properties.

Exempted individuals are still required to complete and submit a NIL return to Revenue each year.

3.6.1.1 Calculating LPT

Local Property Tax (LPT) is charged according to the valuation band that applies to a property. Each band has a corresponding basic rate of LPT for the valuation period 2023 to 2025. The amount of the LPT liability due depends on the market value of an individual's residential property on 1st November 2021 as assessed by the individual owner.

Band 1 includes properties with a valuation of less than € 200,000. Band 2 includes properties in the range € 200,001 to € 262,500. Seventeen further bands include properties in € 87,500 increments up to € 1.75m. The LPT for these 19 bands is shown in the table below.

The LPT for properties with a value in excess of € 1.75m is calculated as the sum of:

- 0.1029% of the first € 1.05m of declared market of the property;
- 0.25% of the portion of the declared market between € 1.05m and € 1.75m, and
- 0.3% of the portion of the declared market value above € 1.75m.

Valuation band number	Valuation band €	LPT charge basic rate €
1	0 – 200,000	90
2	200,001 – 262,500	225
3	262,501 – 350,000	315
4	350,001 – 437,500	405
5	437,501 – 525,000	495
6	525,001 – 612,500	585
7	612,501 – 700,000	675
8	700,001 – 787,500	765
9	787,501 – 875,000	855
10	875,001 – 962,500	945
11	962,501 – 1,050,000	1,035
12	1,050,001 – 1,137,500	1,189
13	1,137,501 – 1,225,000	1,408
14	1,225,001 – 1,312,500	1,627
15	1,312,501 – 1,400,000	1,846
16	1,400,001 – 1,487,500	2,064
17	1,487,501 – 1,575,000	2,283
18	1,575,001 – 1,662,500	2,502
19	1,662,501 – 1,750,000	2,721

Example #1 – Property Valued at € 310,000

Select the band amount that corresponds with the valuation. In this case, the band number is 3 (that is, properties valued between € 262,501 and € 350,000).

The LPT for a property valued by a property owner at € 310,000 is € 315.

However as stated, properties valued at greater than € 1.75m are assessed on their actual value and not a valuation range.

Example #2 – Property Valued at € 1,900,000

As the property is valued over € 1.75m, the full value is liable for LPT at 0.1029% up to € 1.05m, 0.25% on the portion between € 1.05m and € 1.75m and 0.3% on the balance.

€ 1,050,000 at 0.1029% = € 1,080.

(€ 1,750,000 - € 1,050,000) at 0.25% = € 1,750.

(€ 1,900,000 - € 1,750,000) at 0.3% = € 450

Therefore, the liability for a property valued at € 1,900,000 is € 1,080 + € 1,750 + € 450 = € 3,280.

Since January 2015, local authorities can vary the base LPT rate on residential properties in their administrative area. These rates can be increased or decreased by up to 15%. This is referred to as the **local adjustment factor.**

The introduction of the local adjustment factor means that residential properties of the same value in different local authority areas may pay different amounts of LPT from 2015 on, depending on whether the local authority has applied a local adjustment factor or not.

Key Learning Point

When advising a borrower and assessing their monthly and annual outgoings in terms of affordability of a mortgage, it is important to factor in that they may be required, depending on their status, to pay a local property tax (LPT).

3.6.2 Deferrals

Revenue has put in place specific procedures whereby an individual who cannot, without excessive hardship, make their LPT payments when it becomes due, can apply for a deferral of payment. This allows for a full or partial deferral of the payment. The deferral claimed will remain in place for the valuation period 2022 to 2025, unless the property is sold or transferred during this period.

Deferral is not an exemption. Payment of the tax is deferred, and interest will be charged on agreed deferred amounts at a rate of **4% per annum** up to 31 December 2021 and **3%** thereafter. The deferred tax remains a charge on the property. This is charged against the property and if the amount and interest charged remain outstanding, then the tax due must be paid to Revenue on the sale or transfer of the property.

There are four separate categories of LPT deferral available:

1. Income threshold,
2. Personal representative of a deceased liable person,
3. Personal insolvency and
4. Hardship grounds.

A ***full deferral*** (that is, 100% of the liability) or partial deferral of the LPT is subject to specific income conditions:

Liable person (owner-occupiers only)	To qualify for a full deferral, gross income must not exceed	To qualify for a partial (50%) deferral, gross income must not exceed
Single or widow/er, no mortgage.	€ 18,000	€ 30,000
Couple, no mortgage.	€ 30,000	€ 42,000
Single or widow/er, with mortgage.	€ 18,000 + 80% of gross mortgage interest	€ 30,000 + 80% of gross mortgage interest
Couple, with mortgage.	€ 30,000 + 80% of gross mortgage interest	€ 42,000 + 80% of gross mortgage interest

Source: Revenue: Irish Tax and Customs

Example #1

Ann and Luke are married and are owner-occupiers of a property valued at € 230,000. They have no mortgage outstanding.

In 2024, their total combined gross income was € 35,000. They have calculated their LPT liability at € 405 for a full year.

Based solely on this information, they do not qualify for a full deferral of their LPT payment based on the income threshold (see row two above, that is, € 30,000). However, they would be eligible for a partial deferral.

Example #2

Peter and Jane are married and are owner-occupiers of a property valued at € 230,000. In 2024, their total combined gross income was € 35,000.

Peter and Jane have an outstanding loan of € 200,000, secured against their property, at an interest rate of at 4%. Their gross mortgage interest payments are € 8,000 per annum (that is, € 200,000 x 4% = € 8,000).

Based on the threshold above, the income threshold can be increased because they have an outstanding mortgage. In 2024, they can increase the threshold by 80% of the mortgage interest payable. That is, € 8,000 x 80% = € 6,400.

This means that the adjusted income threshold for Peter and Jane has now increased to € 36,400.

That is, gross income threshold of:	€ 30,000
plus, allowance for mortgage interest:	€ 6,400
Increased joint income threshold (full deferral):	**€ 36,400**

As Peter and Jane earn a combined gross income of € 35,000, they will qualify for a full deferral. If Peter and Jane decide to opt for a deferral a charge for the outstanding amount plus interest will be placed as a charge against the property.

The ability to defer the payment as a result of an individual's income being below a certain threshold does not automatically mean they do not have to pay the LPT, it just means that they are eligible to apply for a deferral.

A person who has entered into an insolvency arrangement, that is, a debt settlement arrangement (DSA) or a personal insolvency arrangement (PIA) under the Personal Insolvency Act 2012 (see later in this section) can qualify for a deferral of the local property tax during the period of which the insolvency arrangement is in effect.

3.7 Mortgage Interest Tax Relief

Mortgage Interest Tax Relief will be introduced for a year for homeowners who had an outstanding mortgage balance of between € 80,000 and € 500,000 on their primary home on 31 December 2022.

Relief will be available on the increased interest paid on a mortgage in 2023 when compared with the amount paid in 2022. The tax relief on the increase will be at 20%, the standard income tax rate. The relief will be capped at € 1,250.

3.8 Rent a Room Relief

This tax relief allows individuals to earn **up to € 14,000** per annum in income tax free from renting out a room or rooms in their sole or main residence in the State, to be used for residential purposes.

The € 14,000 limit also includes payment for ancillary services, such as the provision of meals, cleaning, laundry or other similar goods and services that are incidentally provided in connection with renting out the room for residential purposes.

If the gross income received from renting out a room or rooms exceeds € 14,000 in a year, then the entire amount of rent received for renting out the room is subject to income tax, as rental income. An individual cannot deduct expenses from their rental income in order to qualify for the € 14,000 rent a room relief threshold.

There are some restrictions on this relief. The relief is not available in respect of rents received by:

- A parent renting a room to their own child. This restriction does not apply to renting to other family members.
- An individual renting a room to their employer or to a person connected with their employer.
- An employer renting a room to an employee.
- Renting a room to short-term guests, including those who book accommodation through online booking sites (*e.g.* Airbnb). Section 22 of the Finance Bill 2018 introduces a minimum rental period of 28 days expressly to exclude such lettings from the incentive. The relief can, however, apply to lettings used as residential accommodation for students in an academic year or term, accommodation provided for respite care, exchange language students or five day a week digs.

Key Learning Point

If a borrower is purchasing a property where they have space to rent out a room, and thus earn additional annual income (tax free up to € 14,000), a lender may take this into consideration when assessing their mortgage application.

3.9 Tax Relief on Residential Investment Property Loans

Rental income in Ireland is treated as a taxable income and subject to income tax. Rental income is taxed on an actual tax year basis.

3.9.1 Tax Relief on Rental Income

100% of the interest accruing on a loan used to purchase, improve, or repair an investment residential property may be offset against rental income from the same property for income tax purposes, without any limit. If only part of the loan is used for the residential portion of the property, only relief proportionate to the part of the loan deemed to be attributable to the residential property may be claimed.

Example

John borrowed € 250,000 to purchase an apartment, which is then let out and receives € 1,000 per month rental income.

In 2024, John has rental income of € 12,000 but the interest portion of his loan repayment is € 1,300 per month. This equates to € 15,600 per year.

Revenue allows John to offset 100% of the interest on the loan, against this rental income.

Interest paid is € 15,600 100% of which can be offset against his income of € 12,000.

As the amount of interest paid less the allowable interest is still more than the income received, John will not incur tax on his rental income in 2024.

3.9.2 Tax Relief on Other Deductible Expenses

Deductible expenses are day-to-day running expenses. These expenses include insurance, repairs, renewals, redecoration, utility bills to the extent not paid by tenants, advertising the lettings, legal fees on the second and subsequent lettings, letting agent fees and management fees, all inclusive of VAT.

The following are examples of the type of expenses that may be claimed for:

- Rents payable by the landlord in respect of the property, that is, ground rent;
- Rates or levies payable on the property, that is, water rates, refuse collection;
- Cost of any service or goods provided by the landlord, that is, gas, electricity, central heating, telephone rental, cable television, etc, for which they do not receive a separate payment;
- Maintenance, that is, cleaning and general servicing of the premises;
- Insurance of the premises against fire, public liability insurance, etc;

- Management, that is, actual cost of collection of rents, advertising, etc;
- Legal fees to cover the drawing up of leases or the issue of solicitor's letters to tenants who default on payment of rent;
- Accountancy fees incurred for the purposes of preparing a rental income account;
- Wear and tear on furniture and fittings, that is, carpets, cookers, central heating, etc;
- Repairs, that is, decorating and general upkeep of the property. A *repair* means the restoration of an asset by replacing subsidiary parts of the whole asset.

3.9.3 Tax Relief for Landlords

A temporary rental income tax relief is being introduced to support private landlords. The relief will be available against some rental income. It will be available from 2024 to 2027 and will only apply if the landlord keeps their rental property in the rental market for the next four years. The relief will be clawed back if the landlord leaves the rental market during this time.

Landlords can claim tax relief at the standard rate of 20% for each of the years, as follows:

Year	Amount	Tax Relief
2024	€ 3,000	€ 600
2025	€ 4,000	€ 800
2026 and 2027	€ 5,000	€ 1,000

3.9.4 Capital Gains Tax

Capital gains tax (CGT) is a tax charged on the profit (gain) arising from the sale of an asset. It is payable by the person disposing of (selling) the asset (that is, anything of value that can be converted to cash, such as, but not limited to, property).

The profit, that is, the difference between the purchase price and the sale price (less allowable costs), is known as the *chargeable gain*. Capital gains tax at 33% applies to any *chargeable gain* on certain properties.

3.9.4.1 Principal Private Residence

No capital gains tax arises on the sale of a property used by the owner as his or her *principal private residence* (and grounds of up to one acre which are part of the residence), where the residence has been occupied by the individual throughout his or her period of ownership, as his or her *only or main residence*.

Certain periods of absence are regarded as periods of occupation, for this purpose, such as:

- The last 12 months of ownership.

  Therefore, if an individual moves out of their home to a new home and sells the old home ***within 12 months*** of moving out, the sale of the old home still qualifies for capital gains tax exemption on any gain made.

- Any period of absence throughout which the individual worked in a foreign employment where all the duties were exercised outside the State.

- Any period of absence, not exceeding four years, during which the individual was prevented from occupying the residence by employment circumstances, for example, the individual was required by their employer to reside elsewhere.

An individual cannot have more than one principal private residence which qualifies for capital gains tax exemption at any one time.

3.9.5 Accidental Landlords

Accidental landlords are individuals who find themselves renting out, for whatever reason, a property which was previously their family home. As a result, the status of the property will change from a private dwelling home to a residential investment property and may be liable to capital gains tax on disposal.

For example, in recent years during the property downturn, some property owners may have moved out of their private principal residence, for whatever reason, and due to the market crash found themselves owning two properties. Unable to sell one of the properties, for many, the only option was to rent out their original PDH, in the hope that the property price would rise in future years.

Similarly, you might have two individuals who may intend to marry, and each individual already owns a private residence prior to marriage. As a married couple, they may assign one of the properties as their principal private residence (family home) and then rent out the other property. For capital gains tax purposes, if they subsequently sell the property that was let out, at a gain, then part of the gain (apportioned) will be taxable.

Individuals need to be aware that as a result, apart from a few exemptions, the property is now liable to the taxes and charges imposed on residential investment properties. In addition, if the property is rented and not sold within the 12-month period following the vacancy by the owner (see above exemptions), then capital gains tax will arise on any gain made on the property if/when sold.

The capital gains tax will only be applied to an apportionment of the gain in line with the period during which the property is rented.

The exception is where (as stated above) the individual was required **<u>by their employer</u>** to reside elsewhere.

Example

John purchased his PDH in Kildare in 2008 and lived in the property as his principal private residence until 2013. In 2013, he moved to Donegal to be nearer his family and bought a new PDH. He was unable to sell the property in Kildare, so he rented it out to paying tenants.

In 2024, John was able to sell the property in Kildare and as the property market had picked up, he made a gain on the sale of € 50,000. John must pay capital gains tax on the € 50,000 gain (known as the chargeable gain).

However, as John occupied the property as his PDH and did not rent the property out for the whole period of ownership, his CGT liability is for a portion of the gain.

In this instance, John owned the property for a total of 16 years. For eight of these, it was rented out and receiving an income. His CGT liability will therefore be 10/16 (62.5%) of € 50,000 less any allowable expenditure. The first five years and the last year are treated as the period of private residence use and that part of the gain is not taxable.

3.9.5.1 Residential Investment Property

Capital gains tax at 33% applies to any *chargeable gain* realised on the sale of an asset, for example, an investment property. It does not apply to the sale of a property which is used as the owner's principal private residence.

A *chargeable gain* is calculated as follows:

Consideration for sale of property LESS allowable expenditure on property

The acquisition cost of the property is an allowable item of expenditure, in calculating the chargeable gain that may arise on subsequent sale of the property. So too is any enhancement expenditure, that would *not* be an allowable deduction for income tax purposes.

Example #1

Joe buys an investment property for € 178,000. Two years later, he spends € 45,000 on extending the premises. One year later, he spent € 5,000 on repainting the premises.

Three years later, he sells the property for € 398,000.

The allowable expenditure includes the original acquisition cost of € 178,000 and the subsequent € 45,000 of *capital* expenditure. The € 5,000 repainting expenditure is not allowed, as it is a *revenue* or *income* item of expenditure, deductible from rental income for income tax purposes and hence not deductible for capital gains tax purposes.

Incidental items of expenditure related to the acquisition and sale of the property are deductible for capital gains tax purposes on a subsequent sale, for example:

- Fees paid to buy or sell the property, for example, auctioneer's fees, solicitor's fees, valuation fees, etc.
- Stamp duty paid to acquire the property.
- Costs of advertising the property for sale.

Any allowable expenditure incurred on the property before 2003 is indexed in line with inflation, before calculating the chargeable gain, for capital gains tax purposes.

This has the effect of increasing pre-2003 expenditure or buying costs of the property in line with the rise in Consumer Price Index since the property was acquired up to January 2003.

The indexation factors, which apply for disposal of assets in 2024, are as follows:

Tax year in which expenditure on property was incurred	Indexation factor on disposal of gain in 2016 tax year
1994/1995	1.309
1995/1996	1.277
1996/1997	1.251
1997/1998	1.232
1998/1999	1.212
1999/2000	1.193
2000/2001	1.144
2001	1.087
2002	1.049
2003 and subsequent years	1.000

The first € 1,270 of a taxable gain in a tax year is exempt from CGT. If an individual is married or in a civil partnership, this exemption is available to each spouse or civil partner but is not transferable.

This means that an individual can dispose of (sell) an asset up to the value of € 1,270 without incurring a tax liability.

Example #2

Joe buys an investment property for € 250,000 in 2002. Associated acquisition costs at the time (for example, stamp duty, legal fees, etc) were € 30,000. In 2003, he spent € 45,000 on extending the premises.

In July 2024, he sold the property for € 650,000. Associated sale costs (for example, auctioneer fees, advertising, legal fees, etc) were € 12,000.

The chargeable gain, for capital gains tax purposes, is calculated as follows:

Net sale proceeds = € 650,000 less € 12,000 sale costs = **€ 638,000**.

Acquisition/improvement costs = [€ 250,000 + € 30,000] = € 280,000.

€ 280,000 x 1.049 = € 293,720

€ 293,720 (indexed acquisition cost) + € 45,000 (improvement cost) = **€ 338,720**.

Chargeable gain = € 638,000 - € 338,720 = **299,280**[12].

Capital gains tax = € 299,280 x 33% = € 98,762.

[12] *Ignoring the € 1,270 annual exemption from capital gains tax.*

3.9.5.2 Exemption for Properties Purchased Between 2011 and 2014

For properties purchased after 6th December 2011 and up to 31st December 2014, where the property is held for at least four years but less than seven years, the gains accrued in that period will not attract CGT. If the property is held for more than seven years, the chargeable amount will be proportionate to the length of time the property was held for. The four- to seven-year exemption is only applicable to properties that were sold since 1st January 2018. Properties that were bought during the dates above and sold prior to 1 January 2018 had been required to be held for a minimum of seven years to enjoy a relief from CGT on any chargeable gains.

The purchaser must hold any property purchased between the required periods, otherwise the exemption ceases to apply.

3.9.6 Stamp Duty

Stamp duty is a tax payable based on the documents used in the transfer of property that is, the documents/deed that transfers ownership of the property.

Stamp duty is mandatory and there are penalties for failure to pay on time. The duty must be paid within 30 days of the execution of the deed of transfer.

If stamp duty is not paid within 30 days, the purchaser of the property is liable for both interest charges and penalties.

3.9.6.1 Stamp Duty Rates

The following rates of stamp duty apply for purchasers of property for owner-occupation or for investment purposes:

Consideration (purchase price)	Rate of duty
First € 1,000,000	1%
Excess over € 1,000,000	2%

Example #1

An individual purchase a residential property in January 2024 for their own occupation. The purchase price is € 635,000. They will be liable for stamp duty as follows:

€ 635,000 x 1% = € 6,350.

Therefore, the total stamp duty liability on a property valued at € 635,000 is € 6,350.

Example #2

An individual purchase a residential property in January 2024 for their own occupation. The purchase price is € 1,250,000. They will be liable for stamp duty as follows:

€ 1,000,000 x 1% = € 10,000.

€ 250,000 x 2% = € 5,000.

Therefore, the total stamp duty liability on a property valued at € 1,250,000 is € 15,000.

3.9.6.2 Rates of Stamp Duty on Non-Residential Property

Stamp duty is also applicable on the transfer of land or housing sites without residential buildings. The rate applicable on the purchase of non-residential property is 7.5% and applies to the entire consideration paid or value (whichever is higher) for all individuals.

Example #1

Alex purchases land in January 2024. for € 100,000.

Therefore, Alex will be liable for stamp duty on the land as follows:

€ 100,000 x 7.5% = € 7,500.

Therefore, the total stamp duty liability is € 7,500.

Where there is a connected agreement to build a property on the land, that is, sold with planning permission, then the stamp duty is payable on the aggregated amount, that is the cost of buying the site and the cost of building the property. However, if a site is bought with a connected agreement to build residential property on it, the site is classed as being residential property and therefore the Stamp Duty that is applied is that of a residential property; *i.e.* 1% up to € 1,000,000 and 2% for any excess.

Example #2

Martin purchases land with sea views in July 2024. The land held no residential buildings although Martin buys it with planning permission to build a private dwelling house.

The land is valued at € 80,000 and the estimated build cost is € 250,000. Martin will be liable for stamp duty as follows:

€ 80,000 + € 250,000 = € 330,000.

€ 330,000 x 1% = € 3,300.

Therefore, the total stamp duty liability will be € 3,300.

Where it is not possible to determine the aggregate amount of the site and the building works at the time of the stamping of the instrument, a multiple of 10 times the market value of the land should be used to calculate the Stamp Duty. Any over payment can then be refunded once a claim is submitted within three years of the stamping of the instrument.

Review

Now consider the main teaching points, which were introduced in this chapter. They are listed below. Tick each one as you go through them.

- [ ] The taxation issues arising from individuals investing in residential and commercial property
- [ ] The main costs which can apply when buying a residential property with a housing loan
- [ ] The main risks for the borrower associated with different forms of housing loan

Sample Questions

The answers to these questions can be found in your Study Hub.

1. How much, in monetary value, is an individual allowed to receive by way of a gift, in any one calendar year, before becoming potentially liable for gift tax?

   A. Nil
   B. € 3,000
   C. € 16,250
   D. € 32,500

2. Alan and Penny are first time buyers and are building their own home, which has a completion value of € 350,000. As a result of the Help to Buy scheme, they are entitled in 2024 to a refund of what amount of income tax and DIRT paid over the past four years?

   A. € 15,000
   B. € 20,000
   C. € 30,000
   D. € 35,000

3. Rent a room relief is available to:

   (i) owner occupiers.
   (ii) those renting to a relative other than their own child.
   (iii) renting a room to short-term guests.

   A. (i) only.
   B. (iii) only.
   C. (i) and (ii) only.
   D. (i), (ii) and (iii).

4. John, who has a number of residential investment properties, receives total rental income of € 60,000. In 2024, John also pays loan interest of € 60,000 on all his investment property loans. On how much of this rental income will John be taxed?

   A. Nil.
   B. € 15,000
   C. € 40,000
   D. € 60,000

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04

Comparing Housing Loans

Chapter 4 examines the Central Bank's regulations that regulated entities must adhere to when deciding the maximum amount that an individual can borrow to purchase a property. It underlines how affordability and the ability to repay any borrowings must be considered within the limits prescribed by the Central Bank.

This chapter also outlines the various upfront and ongoing costs that a borrower needs to consider when assessing the true cost of purchasing their property.

Learning Outcomes – after studying this chapter you should be able to:
understand how lenders assess a loan application in line with the Central Bank regulations;
outline the upfront costs of arranging a housing loan;
describe the ongoing costs associated with a housing loan;
outline the primary use of the APRC and calculate a borrower's monthly capital and interest repayment and interest-only repayment; and,
discuss the risks and rewards of the various types of housing loans.

Chapter weightings	Number of questions which may appear		
In the exam, questions are taken from each chapter based on the following approximate chart:	Chapter	Minimum	Maximum
	4	8	12

4.1 Introduction

Like any other financial product, a housing loan recommended to a consumer should be appropriate to their financial needs and resources, and their attitude to investment risk.

In assessing a loan application and attempting to recommend an appropriate housing loan, the following factors should be considered when comparing competing loans:

- Maximum loan;
- Affordability;
- Flexibility;
- Investment risks;
- Upfront costs including fees and any required insurances.

4.2 Assessing a Loan Application

In 2015, macroprudential regulations for residential mortgage lending issued by the Central Bank, referred to as mortgage measures, placed limits on the proportion of mortgage lending at a high loan-to-value (LTV) ratio. The regulations also limit the proportion of mortgage lending at a high loan-to-income (LTI) ratio (that is, a maximum multiple of the borrower's gross income before tax or other deductions) by regulated financial services providers.

The Central Bank points out that the limits they impose are supplementary to individual banks' credit policies and are not designed as a substitute for lenders' responsibilities to assess affordability and lend prudently on a case-by-case basis. A lender may choose to offer a lower LTV to a borrower based on the credit assessment of the borrower's loan application or the property involved. On the flip side, under the regulations, a lender is given some flexibility and discretion to breach these upper limits when assessing individual cases.

In late 2016 and again in 2017, the Central Bank reviewed and amended the guidelines.

The regulations apply to the purchase of residential property by:

- First-time buyers;
- Non-first-time buyers; and
- Investors.

The LTV and LTI regulations **do not apply** to:

- *Switcher mortgages,* or refinancing of an existing housing loan (once the loan amount advanced on the new loan does not exceed the amount outstanding under the existing loan)
- Housing loans entered for the purposes of addressing pre-arrears or arrears.
- LTV regulations do not apply to negative equity mortgages
- LTI regulations do not apply to Buy-To-Let (Investor) mortgages

Therefore, in assessing the maximum loan a lender is prepared to offer an individual borrower, the lender looks at these two main factors:

- **Loan-to-value** (LTV) ratio, that is, the loan sought relative to the value of the property, and the category of purchaser the borrower may be:
  - First-time buyer;
  - Non-first time buyer;
  - Investor.
- **Affordability** - the borrower's expected capability to make the loan repayments without undue financial hardship.

For the purpose of the regulations the Central Bank defines a first-time buyer as:

> *"…a borrower to whom no housing loan has ever before been advanced. Where the borrower under a housing loan is more than one person and one or more of those persons has previously been advanced a housing loan, none of those persons is a first-time buyer."*

Example

James was a single first-time buyer in 2008 when purchasing an apartment with a 90% mortgage.

He recently married Jane, who has never owned property before. James has now sold his apartment and Jane and James are now buying a house together.

Even though Jane is a first-time buyer, under the Central Bank regulations, as James had a previous housing loan and they are now purchasing together, they will not be treated as first-time buyers.

4.2.1 Creditworthiness Assessment

Whilst the Central Bank guidelines mentioned above introduced a prudential policy for residential mortgage lending, the Consumer Mortgage Credit Agreements Regulations, 2016, also introduced regulations regarding creditworthiness assessment to ensure they comply with the EC Mortgage Credit Directive with the aim to establish EU-wide standards and principles.

These regulations require that a creditor must:

- Assess the creditworthiness of the consumer before the conclusion of the credit agreement.
- Ensure that the procedures and information on which the information is based are established, documented, and maintained.
- Ensure the assessment of creditworthiness cannot rely predominantly on the loan-to-value of the property at that time or assumption that the property value will increase.
- Not cancel the credit agreement if issued on the basis that the creditworthiness assessment was incorrectly conducted.

- Advise the consumer in advance if they intend to consult a database as part of the creditworthiness assessment.

- Reassess the consumer's creditworthiness before any increase in credit is granted after the conclusion of the credit agreement.

4.2.2 Loan-to-Value (LTV) Ratio

How much an individual can borrow from a lender normally depends on the loan-to-value ratio (also known as LTV).

A lender's LTV ratio is the ratio of:

Housing loan amount advanced / Value of the property purchased with the loan

The value of the property is taken as the ***lower*** of:

- The purchase price of the property; and

- The lender's valuation of the property.

It is important to note that LTV is based on the lower amount of the purchase price or the lender's actual assessment of the property value.

Example – Purchase Price *v* Valuation

John, a first-time buyer, is purchasing a property for € 200,000. However, the valuer acting on behalf of the lender, states that the property is valued at € 180,000.

The lender's maximum LTV ratio for first-time buyers such as John is 90%.

The maximum loan the lender will advance to John to purchase this property will be 90% of the lower of € 200,000 (purchase price) and € 180,000 (valuation), that is, 90% x € 180,000 = € 162,000.

4.2.3 Loan-to-Value (LTV) Limits

The purpose of an LTV limit is to ensure that if a borrower defaults and the lender has to repossess the property and sell it to pay off the loan, the lender hopes that the property value will be sufficient to fully repay the loan and any accumulating arrears. If not, the lender could suffer a loss. LTV limits also dampen "the pro-cyclicality of credit and house prices so a damaging credit-house price spiral does not emerge."

In conjunction with their own lending policy, a lender must now take into consideration the regulations laid down by the Central Bank in relation to LTV values as discussed above.

Under the Central Bank regulations (effective January 2023) there are different limits for different categories of buyers:

- First-time and non-first-time buyers borrowing for a PDH buyer, (max 90%);
- Investor borrowing for the purchase of a non-PDH, that is, a buy-to-let, (max 70%).

Principal Dwelling Homes

First-time and Non-First-Time buyers	Investors
90% LTV applies.	70% LTV applies.

Example

Ruth is a first-time buyer purchasing a property valued at € 275,000. The maximum loan available to her is 90% of the value of the property. Therefore, subject to meeting all other criteria laid down by the lender, Ruth can borrow up to € 247,500. Therefore, Ruth will need a deposit of € 27,500.

Ruth may also be eligible to apply for the Help to Buy scheme to cover her deposit up to a maximum of € 13,750 (5% of purchase price of property) (see chapter 3).

Obviously, these limits are the *maximum* a lender can apply, and should a lender feel it is prudent to do so they can impose stricter lending limits. For example, a lender may reduce the loan-to-value for one bed apartments, or for properties in certain locations.

Under the Central Bank guidelines, lenders are given some leeway and can breach the LTV limits for up to 15% of the total aggregate monetary amount of loans advanced in one year to first-time buyers and non-first-time buyers. 10% of lending to buy-to-let borrowers is allowed above the 70% limit.

Each lender will apply its own criteria for when it will, and why it will, lend outside of the standard Central Bank rules. However, examples of such rules include:

- Only one of the exceptions can be breached, that is, either higher LTV or higher LTI.
- Current affordability and potential for a higher future income.
- Borrower has no other debts and a clean credit history.

4.3 Affordability

4.3.1 Loan-to-Income (LTI) Limits

Lenders assess and underwrite housing loan applications with the key requirement that the applicant demonstrates their ability to make the monthly loan repayments.

Under the Central Bank regulations, mortgages on a private dwelling home are subject to a borrowing limit of 4.0 times gross income (single or combined incomes) for a first-time buyer and 3.5 times for a non-first-time buyer.

However, this is a maximum guideline and different lenders will have different criteria for establishing the maximum loan it is prepared to advance to an applicant based on other circumstances, such as monthly outgoings, etc. In addition, the Central Bank allows for some discretion by a lender where they feel an application merits a higher LTI limit. Following the 2022 mortgage review, the Central Bank ruled that since 1 January 2023, 15% of new lending to first-time buyers and non-first-time buyers is allowed over the LTI limit.

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For example, the lender may be prepared to provide a higher loan where the loan-to-value ratio is, say, less than 75% (for example, where a parent has gifted the applicant sufficient funds to make up the 25%) and/or where a parent is prepared to act as guarantor for the loan. A lender may also be prepared to lend a higher loan amount based on an individual's previous credit history, current occupation and potential for salary increases leading to a higher net disposal income into the future.

However, even in this situation, whilst a lender may lend beyond the standard LTI value, they will apply a *net disposable income* (NDI) test (affordability test). This means that even if they go beyond the LTI limit, the lender will require that the borrower has a certain amount of money left each month at their disposal for living costs.

Whether or not the borrower can afford the loan repayment is always a key factor in assessing the suitability of any loan to any borrower. Different lenders may be prepared to offer differing amounts to the same loan applicant within or over and above the Central Bank limits.

LTI limits do not apply to switcher mortgages, restructured mortgages for those in arrears, nor do they apply to buy-to-let mortgages.

Example

Patricia is a single first-time buyer earning a salary of € 55,000. Patricia has no other loans outstanding. Patricia wishes to purchase a property valued at € 250,000.

All things being equal and notwithstanding lenders' discretion, the following would apply:

- Purchase price € 250,000 – maximum LTV is 90%.
- Maximum loan which could be advanced subject to LTV limits is € 225,000.
- Patricia earns € 55,000 so the maximum LTI limit which could be advanced is € 220,000.

Therefore, when applying for a housing loan the maximum Patricia may be advanced, subject to the lender's discretion, is € 220,000.

4.3.2 Net Disposal Income

The net income test (*affordability test*) determines the maximum loan, which could be advanced to an applicant, based on the amount of disposable income (net salary) a borrower will have on a monthly basis once their mortgage repayment is made.

Net disposable income is the amount left over having subtracted the stress-tested mortgage repayment. This is then compared to a minimum threshold required to cover living expenses.

Lenders will have their own criteria; however, an example would be:

Status	Net disposable income (NDI)
Single	€ 1,000 - € 1,300
Married	€ 1,900 - € 2,100

Example:

€ 2,450 Net monthly take-home pay

Less

€ 900 stress-tested new mortgage payment

<u>€ 300</u> short-term continuing debt (car loan)

€ 1,250 Net Disposable Income

This shows the borrower has € 1,250 left for their monthly cost of living expenses (groceries, utility bills etc) after paying their short-term debts and the proposed mortgage at a stress-tested rate.

4.3.3 Repayment Capacity

In addition to the LTI limits outlined above, the lender must be satisfied that the borrower can afford to make the loan repayments into the future. The Consumer Protection Code requires lenders to carry out a stress test on future affordability in the case of all mortgage products provided to personal consumers.

A *stress test*, carried out by a lender, assesses the borrower's ability to make loan repayments by assuming the current interest rate increases by 2%.

The requirement for this test does not apply to mortgages where the interest rate is fixed for a period of five years or more. The purpose of this stress test is to determine if the borrower will still be able to make the housing loan repayments if interest rates increase from current levels.

Once a lender completes the affordability test, they must notify the relevant intermediary, if any, of the results of the assessment of affordability.

Example

The gross monthly repayments per € 1,000 borrowed on a capital and interest housing loan at a variable loan rate of 4.5% per annum are as follows:

Over 20 years	Over 25 years	Over 30 years
€ 6.32	€ 5.55	€ 5.06

The same gross monthly repayments per € 1,000 borrowed at a variable loan rate of 6.5% per annum, that is, at the current rate of 4.5% + 2% (stress tested) are as below:

Over 20 years	Over 25 years	Over 30 years
€ 7.45	€ 6.75	€ 6.32

Some lenders will take the stress test amount and require new mortgage applicants to demonstrate that they can afford the stress-tested new repayment based on their financial standing for the previous 6 to 12 months. An applicant may be able to demonstrate this by showing their monthly savings, rent payments or discontinuing loan repayments exceed the mortgage payment. This has become an important new feature in lending assessment following the financial crisis and impacts particularly on first-time buyers. If an applicant meets all other criteria but cannot demonstrate that they have been used to servicing a monthly commitment equal to the stress-tested mortgage repayment, it is likely that their application will be declined. They will be advised to demonstrate repayment capacity for the next 6 to 12 months before applying again.

4.3.4 Loan Terms

Traditionally the maximum loan term was 25 years. To increase the level of maximum loan it could offer a potential borrower (and stay within its lending criteria), lenders offer housing loans over a long loan term such as 30 or 35 years. As repayments are spread out for a longer period, the monthly repayment will be lower than a loan for the same amount that must be repaid over a shorter period.

The monthly cost per thousand borrowed reduces the longer the loan term.

For example, the gross monthly repayment per € 1,000 borrowed under a capital and interest mortgage on a loan rate of 3.75% per annum are:

Over 20 years	Over 25 years	Over 30 years	Over 35 years
€ 5.88	€ 5.09	€ 4.58	€ 4.23

By moving out the loan term, the gross monthly loan repayments are reduced, so that the net income ratio test may allow a higher loan to be provided than could be offered with a shorter loan repayment term.

Some lenders are prepared, for young first-time buyers, to offer loan terms of up to 35 years. Of course, lenders are not generally prepared to lend at a term that is likely to exceed the borrower’s normal working lifespan, say up to age 65 or 68. In some cases – for example, self-employed people who can work longer – lenders may be willing to lend until the borrower reaches 70 years of age.

Borrowers should, of course, be aware that while opting for a longer term may increase the size of loan they can get by lowering the level of monthly repayments required, they will:

1. Be paying more in the long run for the loan, than if they had chosen a shorter loan term; and

2. By paying less now, they will be paying down the capital (on a capital and interest loan) more slowly than if they had chosen a shorter loan term.

Example

Take, for example, a capital and interest housing loan of € 250,000 over 20, 25, 30, and 35-year loan terms at a loan rate of 3.75% *p.a.*, compounded monthly.

This table shows the gross repayments, and the level of capital repaid at different durations:

Term (years)	20	25	30	35
Gross monthly repayment €	1,482 per month	1,285 per month	1,158 per month	1,070 per month
Total projected capital repaid after (years)	€	€	€	€
5	46,181	33,209	24,807	19,007
10	101,869	73,255	54,721	41,928
15	169,022	121,546	90,793	69,568
20	250,000	179,779	134,292	102,897
25		250,000	186,746	143,089
30			250,000	191,556
35				250,000
Total interest paid over loan term	*€ 105,733*	*€ 135,598*	*€ 166,804*	*€ 199,300*

Under a 25-year loan, some € 73,255 of the € 250,000 borrowed would[13] be repaid after 10 years, but only € 41,928 would be repaid at the same point in time if the loan were a 35-year loan term.

Note also the substantial additional interest paid (that is, the *cost of credit*) over the full loan term on a 35-year term (just under € 200,000 in total) compared with the interest payable over a 25-year term (€ 135,598).

Therefore, borrowers on a long loan term, such as 30 or 35 years, should try to accelerate their repayments or reschedule the loan term to a shorter one, as soon as their financial circumstances allow, perhaps after a few years as their income situation improves.

4.4 Upfront Costs

There are many possible associated initial costs involved in buying a residential property with a housing loan.

It is prudent for a loan adviser to review all costs with the potential new borrower to ensure they have allowed enough funds prior to the property purchase.

The main costs which may need to be budgeted for prior to drawdown of the loan include:

- Loan application fee;

[13] *Assuming a constant 3.75% loan rate throughout.*

- Valuation fee;
- Structural survey;
- Acceptance fee;
- Stamp duty (please see Chapter 3 for more detail on stamp duty);
- Solicitor's fees; and
- Legal outlay.

The *Consumer Protection Code 2012* ensures that consumers have the right to pay any charges, which may be applied to the loan account (or any form of a loan either personal or housing), separately, instead of incorporating them into the loan amount. The lender must, prior to the consumer signing an application form for a loan, inform the customer of the charge and the overall cost and their right to pay that fee separately.

The lender must also display in its public office and on its website, if applicable, in a manner that is accessible by the consumer, all fees and charges imposed.

4.4.1 Housing Loan Application Fee

In the past, some lenders sought loan application fees from housing loan applicants, in order to process a housing loan application. In some cases, the fee was refunded if the loan went ahead with that lender.

Housing loan lenders do not currently charge a loan application fee although this could change depending on the financial climate.

Some mortgage intermediaries / mortgage credit intermediaries may charge a fee for advice or sourcing a loan for a client. A mortgage credit intermediary is required under the Code[14], prior to offering, recommending, arranging or providing a product or service to disclose to a consumer "*the existence, nature and amount of any fee, commission or other remuneration received or to be received from a product producer in relation to that product or service*".

Where the amount cannot be ascertained, the method of calculating that amount must be disclosed. The disclosure must be in a manner that is comprehensive, accurate and understandable.

This provision *does not* apply where the product or service relates to an insurance policy.

4.4.2 Valuation Report

All lenders will seek an independent valuation report from a professional valuer, to certify the estimated market value of the property being offered as security for the loan sought.

Some lenders may have a panel of experts whom they will use to complete the valuation report on their behalf, although the cost of the valuation is still borne by the borrower.

- The lender must give a copy of the valuation report to the housing loan applicant, on either approval or refusal to grant the loan.

[14] *Consumer Protection Code, 2012.*

- The lender must refund the applicant the cost of the valuation report if the lender refuses the loan application.

- The valuation fee is, typically, between € 120 and € 200.

- Since January 2017, the market valuation must be completed within four months of the drawdown of the loan. If the loan is drawn down more than four months after the valuation was completed, a new valuation report is required before the loan cheque can be issued.

Under the CMCAR, a creditor must use reliable standards and ensure that internal and external property valuations are conducted by professionally competent valuers and be sufficiently independent from the credit process so they can provide an impartial and objective valuation.

In practice, this requirement is already in place in Ireland where lenders have a defined panel of valuers and a valuer carrying out a report for a lender cannot have a vested interest in the property transaction (that is, cannot also be the auctioneer selling the property).

4.4.3 Structural Survey

Lenders will **not** usually seek a full structural survey on a property, unless the property is very old or the valuation report raises some issue of concern about the state of the property, for example, suspicion of subsidence, etc.

Even if the lender does not seek a full structural survey, some potential borrowers (when buying an older property) may decide to obtain a full survey themselves, in order to satisfy themselves about the state of the property they are considering buying. For example, in the case of an old house, they may want to check that there isn’t rising damp or dry rot, etc. that would not be apparent to the layperson.

The cost of a structural survey will vary according to the nature of the property to be surveyed and the details of the survey required.

A typical cost for a standard surveyor’s report might be about € 350 plus VAT. However, if a full survey by a structural engineer is required (to examine foundations/walls, etc.) the cost would be higher.

4.4.4 Stamp Duty

Stamp duty is payable on the purchase of all residential property regardless of the status of the purchaser. The rate of stamp duty charged is based on the purchase price of the property and is calculated at 1% on the first € 1,000,000 and 2% on the excess over € 1,000,000.

4.4.5 Solicitor Fees

A borrower will require a solicitor to act on his or her behalf to deal with the legal requirements arising in relation to purchasing a property and obtaining a housing loan to be secured on that property.

In many cases the one solicitor will act for both the borrower and the lending institution.

Legal fees vary; some solicitors charge a percentage of the property value (for example, 1% of the value of the property) while others may charge a fixed fee. VAT applies to these fees.

4.4.6 Legal Outlay

Associated legal costs (outlay) for a housing loan vary according to the type of registration of the individual's title or interest in the property to be mortgaged. In Ireland, there are two methods of *land registration* and each method incurs different levels of fees. Thus, an individual's solicitor can only confirm land registry fees upon sight of the title deeds.

4.4.7 Legal Investigation of Title

Any costs incurred **by a mortgage lender** in respect of, arising from or in connection with, the investigation of legal title to any property offered as security for a housing loan *must,* under the Consumer Credit Act 1995, be paid by the mortgage lender and cannot be recovered from the borrower.

4.4.8 Auctioneer Fees

Where the borrower is selling his or her existing home to buy another home, the borrower may incur auctioneer fees in the sale of his or her existing home as well as legal fees related to the sale. Auctioneers may charge between 1% and 1.75% (plus VAT) of the sale price, plus advertising costs.

4.4.9 Example of Upfront Costs

Below is an example of how to calculate the upfront costs for individuals who are purchasing a property for use as their private residential home.

Example

For this example, we assume that the purchaser obtains a mortgage for 90% of the € 220,000 purchase price of a new house:

	First-time buyer
Stamp duty	€ 2,200
Valuation fee plus VAT	€ 200
Structural survey n/a	€ Nil
Legal outlay plus VAT	€ 2,600
Total initial outlay	**€ 5,000**
Purchase price	€ 220,000
Plus, initial outlay	€ 5,000
Total cost of purchasing property	**€ 225,000**
Mortgage (90%)	€ 198,000
Borrower's input required	**€ 27,000**

It is vital that all the extra costs arising as a result of obtaining a housing loan are highlighted to the borrower in advance. This will ensure they have accumulated enough funds to cover all these costs prior to the property purchase.

4.5 Ongoing Cost

Obviously, individuals would want to pay the least possible for the required loan amount.

However, **care needs to be taken in attempting to assess accurately the true annual cost of a housing loan**.

There are three factors sometimes used to describe the cost of a housing loan:

1. The *nominal* rate of interest;

2. The APRC, which is short for annual percentage rate of charge;

3. The cost per thousand, sometimes referred to as CPT.

4.5.1 Nominal Rate of Interest

Two different loan rates may be referred to in relation to a housing loan:

- The nominal rate; and
- The APRC.

The *nominal rate* is the actual rate used to calculate a mortgage repayment. However, it is not obvious from the rate itself to see if the Lender is using it to calculate and charge interest on a monthly reducing basis or some other longer or shorter frequency.

The nominal rate of interest does not take account of other charges which may be made by the lender as a condition of obtaining the loan.

It may also only refer to the initial rate of interest charged on the loan. For example, it may be a special *discounted* year one rate which will increase after the first year of the loan.

So, it's not accurate to compare one lender's nominal rate with another lender's, as it won't take account of the frequency with which interest is calculated, any additional charges or an incentivised initial rate.

4.5.2 APRC

European Union (Consumer Mortgage Credit Agreements) Regulations 2016 (CMCAR) has introduced the term *APRC* (previously referred to as APR) to describe the equivalent annual rate of interest payable on a loan, assuming that the credit agreement is to remain valid for the period agreed and that the creditor and consumer will fulfil their obligations under the terms and by the dates specified in the agreement.

Interest is accrued in full at the end of each year, when allowance is made for:

- The frequency at which repayments are made;
- The duration for which repayments must be made;
- All fees and charges made by the lender in connection with the loan which are not refundable to the borrower, such as an acceptance fee for example.

The lower the APRC, the lower the overall cost of the credit.

Example

A lending institution quotes a variable rate home loan of 4.85% per annum. However, interest is charged monthly to the account, so that if allowance is made for monthly payment of interest, the APRC is actually 4.9% per annum, that is, paying interest monthly at a rate of 4.85% per annum is the same as paying interest annually at the end of each year at a rate of 4.9% per annum.

Lenders must show in advertisements their ***APRC***, as prominently as any interest rate charged.

Housing loan lenders *must* calculate the APRC for credit, in accordance with a formula set out in the European Union (Consumer Mortgage Credit Agreements) Regulations 2016.

In broad terms, the APRC is the annual rate of interest at which the:

Total value of the loan equals the present value of loan repayments and charges.

4.5.2.1 What is Ignored in the APRC Calculation?

The following items are *ignored* when calculating the APRC for a *housing loan*:

- Any stamp duty payable on the purchase of the property.
- Legal fees in relation to the purchase of the property.
- Any charges payable for non-compliance with the loan agreement.
- The cost of any insurances required as collateral for the loan, for example, mortgage protection premiums, household insurance premiums.

In general, the housing loan with the lowest APRC is the cheapest loan, *at that time*.

4.5.3 Primary Use of APRC

The prime use of the APRC is to compare the cost of competing loans on a *relative* basis, rather than an indication of their likely absolute cost.

Usually, a variable rate loan's nominal rate and APRC will be very similar.

Example #1

A housing loan lender is currently quoting an LTV > 80% variable rate (nominal) of 3.7% and an APRC of 3.8%.

However, a loan's nominal rate and APRC may differ to a greater extent in a few different circumstances:

- Where a fixed rate is substantially higher or lower than the lender's current variable rate.

  The APRC of the fixed rate loan will be calculated assuming that at the end of the fixed rate period, the borrowing rate is the same as the current variable rate at the time of the calculation of the APRC. Therefore, the APRC of a fixed rate loan is more influenced by the lender's current variable rate.

Example #2

A housing loan lender is quoting a 2-year fixed rate of 2.5%. The lender's current variable rate is 3.00%, nominal. APRC on the fixed rate loan is 3.00%.

- Where the nominal variable rate quoted is a special low *discount* rate applying only for an initial period of the loan, for example, one year, after which the rate will revert to the higher standard variable rate. The APRC in this case will be higher than the *discount* rate applying for the first year.

4.5.4 Cost Per Thousand (CPT)

As we have referred to in 4.3.4 above, the *cost per thousand* (CPT) is the gross monthly repayment per € 1,000 loan for a standard capital and interest loan, that is, level repayments consisting of capital and interest. It is important to note that the CPT is **not** an interest rate; it is a monetary calculation of the repayment cost of a loan.

For example, a table of variable housing loan rates for new owner-occupier borrowers for a capital and interest loan is shown below:

Owner-occupier interest rates

	Nominal rate	APRC	Capital and interest mortgage monthly repayment per € 1,000 loan over 25 years[15]
LTV variable ≤ 50%	4.09%	4.16%	€ 6.10
LTV variable > 50% ≤ 80%	4.29%	4.37%	€ 6.21
LTV variable > 80%	**4.49%**	**4.57%**	**€ 6.31**
One-year fixed (new business)	4.09%	4.44%	€ 6.10
One-year fixed (existing business)	4.55%	4.50%	€ 6.34
Two-year fixed	4.75%	4.56%	€ 6.45
Two-year fixed	4.95%	4.66%	€ 6.56
Five-year fixed	5.35%	4.96%	€ 6.78

4.5.4.1 How to Calculate Monthly Mortgage Repayments Using the CPT

Taking the variable rate highlighted in the table above for a loan of € 250,000 over 25 years (assuming > 80% LTV):

- The interest rate is 4.49%;
- The APRC is 4.57%;
- The CPT is € 6.31.

The borrower will pay € 6.31 for every € 1,000 borrowed on a 25-year loan.

Note the APRC is slightly higher than the interest rate.

Key Learning Point

To calculate monthly mortgage payments (capital and interest) using the CPT table, you simply take the corresponding CPT (in this case € 6.31) and multiply it by the amount of € 1,000s borrowed that is, 250. Therefore, the monthly repayment is 250 x € 6.31 = € 1,577.50.

The cost per € 1,000 loan repayments is typically based on the *initial* interest rate charged.

[15] *For the fixed rate quotes, the CPT figures are for the fix period only.*

While the APRC is the most reliable estimate of the long-term cost of a loan, it should be remembered that its main use is only as a means of comparing competing loans over similar terms. The APRC is not a definitive prediction of the likely actual cost of a loan over a loan term, for the reasons already stated.

4.5.4.2 How to Calculate the Monthly Mortgage Payment on an Interest-Only Basis

However, let's assume we only want to calculate how much interest an individual will pay on an annual/monthly basis on such a loan.

To obtain an indication of the yearly interest payment you simply take the loan amount and multiply by the rate (interest/nominal rate). Using the same example as above on a loan of € 250,000:

- The interest/nominal rate is 4.49%;
- The APRC is 4.57%;
- The CPT is € 6.31;
- € 250,000 x 4.49% = € 11,225 per annum or € 935.42 per month.

This is a 'simple' calculation and unlike an APRC does not fully reflect the frequency at which the interest is charged. However, this type of calculation for illustration and comparison purposes is more than adequate.

4.5.5 Insurances

Insurances required or effected in connection with a housing loan add to the cost of the loan; they are an additional ongoing outlay on top of the normal loan repayments to the lender. (We will deal with insurances in Chapter 5).

At a minimum, home loan borrowers will usually be required to have or effect:

- Mortgage protection cover, enough to repay the outstanding loan on death before the end of the mortgage term.
- Household insurance, to insure the property for fire and other perils, to cover the cost of rebuilding or restoring the property to its previous state.

It is important to factor in the cost of the above insurances when budgeting for the ongoing regular payments associated with having a mortgage, as they are usually required to be in place for the duration of the housing loan.

4.6 Risks/Rewards When Choosing a Mortgage Type

Several *investment risks* associated with the various forms of housing loans have already been outlined in Chapter 2.

However, for every potential downside, there is a corresponding upside or potential benefit:

Trade off

	Risk	Reward
Variable rate loans	• That interest rates will increase from current levels, and hence increase the borrower's repayments.	• Interest rates could fall from current levels and hence reduce the borrower's repayments.
Fixed rate loans	• That the fixed rate will exceed the variable rate over the fixed rate period, and so the borrower pays more than if he or she had chosen a variable rate loan over the same period. • That the borrower may want to redeem the loan early during the fix period and hence becomes subject to an early redemption penalty by the lender.	• The fixed rate could save the borrower money if the variable rate over the fix period turns out to be higher than the fixed rate over that period. • Protects the borrower against market volatility and provides certainty of the cost of monthly repayments, which enables the borrower to budget.
All housing loans	• That the borrower could become, because of changed circumstances, unable to pay the loan repayments in full and hence go into arrears. The lender could repossess their home and the borrower could therefore lose their home. • That the value of the property falls, and the property becomes worth less than the loan amount outstanding at that time leading to *negative equity*. If the borrower wishes to sell the house, they are liable for the shortfall.	• Property values could increase substantially and so lead to considerable growth in equity. • The mortgage-holder has some certainty as to where they will live for the long term/ foreseeable future, which is not always transparent and as stable with a landlord in a rental situation

Review

Now consider the main teaching points, which were introduced in this chapter. They are listed below. Tick each one as you go through them.

- [ ] How lenders assess the maximum loan available to a borrower
- [ ] How to calculate the cost of a housing loan
- [ ] Understand the primary use of APRC
- [ ] Understand the risks and rewards when choosing a mortgage type

Sample Questions

The answers to these questions can be found in your Study Hub.

1. John is purchasing a property priced on the open market at € 200,000. However, the property has been valued by the lender at € 180,000. If John wants to borrow € 150,000, the lender will calculate his Loan to Value as:

   A. 75%
   B. 80%
   C. 83%
   D. 90%

2. Under the Consumer Protection Code, a lender is NOT required to stress test a home loan application for affordability if the:

   A. borrower is known to them.
   B. interest rate is more than 5%.
   C. loan relates to a principal private residence.
   D. interest rate is fixed for more than five years.

3. When Provident Bank declined Noreen's loan application, it was obliged to:

   (i) recover the cost of the report directly from the valuer.
   (ii) refund her the cost of the valuation report.
   (iii) give her a copy of the valuation report.

   A. (ii) and (iii) only.
   B. (i) and (ii) only.
   C. (i) and (iii) only.
   D. (i), (ii) and (iii).

4. In calculating the APRC of a housing loan, the lender MUST allow for:

   A. mortgage protection premiums the borrower may be required to pay.
   B. all legal fees paid by the borrower in connection with the purchase of the property.
   C. the allowable mortgage interest tax relief.
   D. the duration for which repayments are made.

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05

Housing Loan Insurance

When individuals are choosing a housing loan, they will always consider the cost of the housing loan. However, insurances are also an essential expense that needs to be factored into the total cost of a property purchase, as in most cases, they are a legal requirement to have in place in conjunction with a housing loan.

Chapter 5 outlines mortgage protection and household insurance, the two main types of insurance that are required when purchasing a property with the assistance of a housing loan.

The section on mortgage protection outlines the choices a consumer has when determining what type of mortgage protection is most suitable for them and describes the advantages and disadvantages of each type. Additional information is provided on other types of protection cover that consumers can put in place in addition to mortgage protection.

Household insurance is also described, the various options a consumer has when choosing cover are detailed and the procedure in event of a claim is outlined.

Learning Outcomes – after studying this chapter you should be able to:
outline the different insurances required when arranging a housing loan;
discuss the obligations imposed on mortgage lenders in relation to the provision of mortgage protection insurance cover;
describe the features and benefits of the different generic types of insurance; and,
discuss the limitations and risks of the different types of insurance.

Chapter weightings	**Number of questions which may appear**		
In the exam, questions are taken from each chapter based on the following approximate chart:	Chapter	Minimum	Maximum
	5	8	11

5.1 Introduction

There are a few different insurances which may/will be required when arranging a housing loan.

Some may be compulsory, and set as a condition of the loan approval, for example:

- Mortgage protection, designed to pay off the balance of the loan on death during the loan term; and

- Household insurance which insures the building against fire, floods, and other perils.

Other forms of insurance may be optional for the borrower, for example:

- Contents insurance;

- Income protection insurance.

5.1.1 Regulation Relating to the Provision of Insurance Products

Before we look at the various insurances available, we will look at the legislation which governs regulated entities when dealing with consumers in relation to insurance products.

The main pieces of legislation are:

- Consumer Credit Act, 1995 often referred to as the CCA, 1995.

- Consumer Protection Code, 2012, often referred to as the CPC, 2012.

5.1.2 Consumer Credit Act, 1995

The Consumer Credit Act states that any insurance which a mortgage lender may require a borrower to take out and keep on a property may be effected by the borrower with any insurer and through any intermediary. The lender must let the borrower know this in writing and state the amount and nature of the insurance required.

The European Union (Consumer Mortgage Credit Agreements) Regulations 2016, also reiterates the fact that the creditor must accept a policy selected by the consumer, provided the policy covers the term and the amount of the borrowing.

The lender cannot impose a requirement that the insurance would be of a different level or nature just because it is not arranged through the lender. In addition, under the Consumer Credit Act, the lender cannot impose a fee on a borrower if the borrower does not effect the required policy with them.

5.1.3 Life Insurance

The Consumer Credit Act, 1995, states that in relation to a housing loan, the lender is obliged to:

> *"... arrange, through an insurer or an insurance intermediary, a life assurance policy providing, in the event of the death of a borrower before a housing loan made by the mortgage lender has been repaid, for payment of a sum equal to the amount of the principal estimated by the mortgage lender to be outstanding in the year in which the death occurs on the basis that payments have been made by the borrower in accordance with the mortgage, such a sum to be employed in repayment of the principal."*

In other words, a lender, subject to certain exemptions, must have the ability to offer to arrange a life insurance policy though a group policy (also known as a group scheme or group mortgage protection policy)[16] to protect the lives of the borrower. The lender must make sure there is an insurance policy in place to protect the life of the borrower (also known as mortgage protection).

However, a lender is exempted from this requirement in a few situations one of which is where the borrower has already arranged or intends to arrange life insurance themselves. We will deal with the other exemptions in more detail later.

As a result of this requirement, housing loan lenders typically arrange at least one group or block policy scheme with a life assurance company in order to cover those housing loan borrowers who do not otherwise have their own mortgage protection cover.

Where a policy is arranged under a lender's block scheme, the lender is the legal owner of the policy even though the cost of each borrower's cover under the policy is passed on by the lender to the borrower, by increasing his or her loan repayments accordingly.

5.1.4 Consumer Protection Code, 2012

The *Consumer Protection Code* requires that any regulated entity (that is, lender) providing an insurance quotation to a consumer must include the following information in the quotation, if all details provided by the consumer are correct and do not change:

- The monetary amount of the quotation;
- The length of time for which the quotation is valid; and
- The full legal name of the relevant underwriter.

In addition to this, the regulated entity must also provide any warranties or endorsements, discounts or loadings that apply to the policy. This information must not be in a smaller font size than other information in the document.

The full legal name of the insurance underwriter must be included on all insurance and renewal notices.

A *regulated entity* must explain to a *consumer*, at the proposal stage, the consequences for the *consumer* of failure to make full disclosure of relevant facts, including:

- The consumer's medical details or history; and
- Previous insurance claims made by the consumer for the type of insurance sought.

The explanation must include, where relevant:

- That a policy may be cancelled;
- That claims may not be paid;
- The difficulty the consumer may encounter in trying to purchase insurance elsewhere;
- In the case of property insurance, that the failure to have property insurance in place could lead to a breach of the terms and conditions attaching to any loan secured on that property.

[16] *Unless the borrower chooses to arrange the policy themselves.*

5.2 Mortgage Protection

Mortgage protection is a life assurance policy designed to repay the balance of a loan on death during the loan term.

Housing loan lenders will usually insist on the borrower (owner-occupier) being covered by mortgage protection cover, as a form of collateral security.

This is for two reasons:

1. The Consumer Credit Act, 1995, requires that a lender (subject to certain exemptions) arranges an insurance policy though a group policy[17] (also known as a group scheme) to protect the lives of the borrower; and

2. If a borrower dies, his or her dependants will not be forced out of the home due to an inability to continue making loan repayments.

In relation to housing loans, there are two forms of mortgage protection cover:

- Where the borrower is covered under a block or group mortgage protection policy effected by the lender; or
- Where the borrower assigns to the lender an individual mortgage protection policy he or she may have on their life.

5.2.1 Group Mortgage Protection Cover

As mentioned, a lender is obliged to attempt to cover all its housing loan borrowers under the group policy. The exceptions to this are as follows:

a. Where the house in respect of which the loan is made is, in the mortgage lender's opinion, not intended for use as the principal residence of the borrower or of his dependants.

b. Loans to persons who belong to a class of persons which would not be acceptable to an insurer, or which would only be acceptable to an insurer at a premium significantly higher than that payable by borrowers generally. For example, mortgage lenders are not required to insure potential borrowers who are in very bad health.

c. Loans to persons who are over 50 years of age at the time the loan is approved.

d. Loans to persons who, at the time the loan is made, have otherwise arranged life assurance, providing for payment of a sum, in the event of death, of not less than the amount of the principal estimated to be outstanding in the year death occurs on the basis that payments have been made by the borrower in accordance with the mortgage.

It is important to note that many lenders may still insist, and are entitled to insist, as a commercial term of advancing a housing loan, on mortgage protection cover for borrowers who fall under the Consumer Credit Act exception a and c above.

Exemption d. above allows borrowers to offer an individual policy, of appropriate term and level of cover, to a lender as security for a housing loan, instead of being covered by the lender's group mortgage protection cover.

[17] *Unless the borrower chooses to arrange the policy themselves.*

In the case of joint borrowers, the group policy can either:

- Cover just one of the borrowers, as designated by the lender; or

- Cover both on a joint life, first death basis, that is, the group policy pays out in full on the death of the first of the two borrowers.

Some group mortgage protection policies may offer a choice between level cover (of the initial loan amount) for the full term or a decreasing level of cover where the cover falls each year in line with the level of capital then outstanding on the loan.

If the group cover pays out more than needed to pay off the balance of the loan, the balance over that required to pay off the loan is repayable to the surviving borrower (in the case of joint borrowers) or the borrower's estate (in the case of a single borrower).

Unlike individual mortgage protection policies, most group mortgage protection policies are not interest rate sensitive; that is, each borrower is covered for the principal outstanding from year to year, regardless of changes in loan interest rates in the meantime.

Lenders are not required to cover arrears under group mortgage protection cover. Some lenders' group mortgage protection policies may cover arrears, but some may not. This means that there could be a shortfall in cover in the event of death of one of the borrowers if there were arrears outstanding on the loan. The liability of the outstanding debt falls to the surviving borrower or the deceased's estate.

5.2.2 Individual Policy

As pointed out above, a housing loan borrower can effect an individual mortgage protection or other life assurance policy, or use an existing policy, instead of joining the lender's group mortgage protection cover scheme.

However, the lender will usually only accept an individual policy from a borrower if the policy offered:

- Has life cover that will at least match the anticipated loan outstanding at all times during the anticipated loan term;

- Has a remaining term at least equal to the loan term; and

- The policy provides guaranteed cover at a guaranteed premium, that is, is not subject to investment risks.

Individual mortgage protection policies may be interest rate sensitive, that is, the individual policy provides a set scale of decreasing cover which may not necessarily be sufficient to pay off the outstanding loan in full on death, depending on when the borrower dies and how interest rates have worked out during the term of the loan.

However, most individual policies assume a relatively high rate of interest, for example, 6% or 8% per annum, so unless housing loan interest rates rose substantially, the outstanding loan should always be fully covered by the cover provided by the policy.

Under the Consumer Credit Act, 1995, the borrower is entitled to arrange individual mortgage protection cover with any life assurance company and through any intermediary of their own choice. The lender cannot force the borrower to take out the cover through them or with a life company nominated by the lender.

Key Learning Point

Mortgage protection policies are designed to repay a loan in the event of the death of a borrower. Lenders are obliged under the Consumer Credit Act to provide cover to all housing loan borrowers with **four** specific exceptions. This means it is the lender's responsibility to ensure borrowers are covered before advancing the loan.

This type of policy provided by a lender is often called a group policy. Housing loan borrowers are free to effect an individual policy should they choose to do so.

5.2.3 Borrower's Options

An individual taking out a housing loan with a lending institution has three options, regarding mortgage protection cover:

1. They can effect a suitable individual mortgage protection policy, with any life company and/or through any intermediary of the individual's choosing, or they can offer a suitable existing policy, as security for the loan; or

2. They can opt to be included in the lender's group mortgage protection policy; or

3. They can opt to waive cover at the lender's discretion subject to the Consumer Credit Act.

From the borrower's perspective, the *advantages* of the **individual arranging their own mortgage protection policy**, over the lender's group mortgage protection cover, are:

- The borrower is not restricted to the life company used by the lender for its group mortgage protection policy. The borrower can search the market for the most appropriate and competitive mortgage protection cover package available at that time.

- The borrower owns the individual policy.

- In the case of the individual policy, if the borrower wants to move his or her loan later to a new lender, he can repay the first lender who will then release the assignment from the individual policy, and so the borrower can bring the policy to the new lender for the new loan.

- If the borrower pays off the loan fully, he or she can hold onto the individual mortgage protection policy when it is released by the lender. However, under the group mortgage protection policy, the lender owns the cover, so once the loan is paid off, for whatever reason, the cover ceases immediately.

- Individual policies usually offer a greater choice of optional benefits, such as serious illness cover. Group mortgage protection policies, on the other hand, tend to only offer life cover protection, possibly with limited optional benefits.

The *disadvantages* of the individual arranging their own mortgage protection policy, over the lender's group mortgage protection cover are:

- Cover on an individual policy is set a specific interest rate level. If loan rates exceeded this level, there is a risk that the cover could be insufficient on death to fully repay the loan.

- Individual policies may not carry enough cover to protect arrears.

- The individual policy will have to be individually assigned to the lender.

On the other hand, **group mortgage protection cover** does have some *advantages* for the borrower over arranging an individual mortgage protection policy:

- The premium, for the same level of cover and term, may be cheaper than for an individual policy. However, this is not always the case.

- There are usually reduced medical underwriting requirements under a group policy, for example, the borrower is automatically covered if a 'No' answer is given to a relatively small number of medical questions on the loan application/proposal form.

- A group policy will usually offer immediate free cover for a limited period, subject to certain conditions. For example, the borrower may be immediately covered for accidental death cover while applying for the loan.

- The premiums are collected with the loan repayments. This means that the policy is unlikely to lapse once the borrower keeps up their repayments to the lender.

- The cover on a group policy is not usually interest rate sensitive, and so will cover the outstanding mortgage regardless of interest rate changes and may cover arrears to a limited extent.

The possible *disadvantages* of this approach are:

- The premium may be more expensive than the borrower could obtain by arranging the cover on an individual policy.

- The lender owns the policy and cover so that on repayment of the loan the cover ceases. This could prevent the borrower moving to a more competitive lender later, if there was a risk that the borrower might not be able to get fresh life cover at that stage, for example, due to a deterioration in the borrower's health.

- Limited cover and benefits compared to cover and benefits which could be obtained in the open market under an individual policy.

Using **an existing policy**, be it mortgage protection or otherwise, as protection for a mortgage has a few *advantages* compared with effecting new cover, be it an individual or group policy:

- There is a saving on the mortgage protection outlay, as no new policy is required.

- No underwriting requirements will apply, as no new policy is being effected. This may be important if the borrower has a medical condition and getting new cover may be impossible or available only at a prohibitive cost.

Key Learning Point

There are advantages and disadvantages to a borrower either effecting their own life policy or arranging the policy through a lender's group scheme.

It is important to note that where a borrower is purchasing a property intended to be used as their principal private residence, are in good health and under the age of 50, then the lender is required to ensure they effect a life policy through the lender's group scheme or provide the lender with a suitable policy.

It is important to note that if a borrower is an exempted person under the Consumer Credit Act (that is, the property is not their principal private residence, or they are over the age of 50 when the loan was approved or they are of ill health and cannot get life cover), the lender is NOT obliged to provide the loan.

The lender can decide based on the risk involved in providing a loan without life cover. They can refuse to advance the loan since they will not have adequate security in the event of death of one of the borrowers.

5.3 Specified Illness Cover

The legal minimum required type of mortgage protection cover is life assurance cover, that is, a sum payable on the death of the borrower during the loan term to pay off the balance of the loan then outstanding.

Some mortgage protection policies offer the option of adding specified illness cover to the policy, to pay out the sum insured earlier on the confirmed medical diagnosis should the borrower contract or suffer from one of the specified serious illnesses covered by the policy.

It is important to note that specified illness cover does not pay out a regular monthly sum in the event of just any illness. It is designed to pay out a lump sum in the event of the insured contracting one of the serious illnesses listed in their specific policy document. There is no generic list of illnesses and each provider's policy differs depending on when the borrower first took out the cover.

Adding specific illness cover increases the cost of the mortgage protection cover but adds additional security for both the lender and borrower alike. That is, if the borrower should suffer a serious illness, for example, a stroke, then the policy would pay out and pay off the mortgage thereby freeing the borrower from the burden of any further loan repayments. While the level of mortgage protection cover must at least equal the mortgage loan amount, a customer can choose to set the level of specified illness at a level to suit their personal requirements and budget.

However, prior to a consumer completing a proposal form for a specified illness policy, a regulated entity must explain clearly to the consumer the restrictions, conditions and general exclusions that attach to that policy.

A serious illness policy is most suitable for individuals who:

- May not have any cover for ill health;
- Are taking out a mortgage and are concerned that if they became seriously ill, they would not have a fall back and would not be able to earn an income.

5.4 Income Protection

When taking out a loan, whether it is a housing loan or a personal loan, consideration should be given to how a borrower can continue to make loan repayments in the event of being unable to work due to an accident, illness or unemployment.

Borrowers can avail of *income protection* products; *e.g.* permanent health insurance (PHI), which will pay a monthly income if an individual is unable to work due to any illness, accident or injury. Income protection does not cover redundancy.

This cover is **most** suitable for individuals who:

- Have no other form of health protection cover;
- Are self-employed and would have no source of income if they contracted an illness or disability;
- Are in employment where they would not receive sick pay from their employer.

5.4.1 Cover

The cover is designed to replace lost income if the insured is unable to work due to illness or injury for a set period. This set period is called *the deferred period*. The deferred period can range from 13 weeks, 26 or 52 weeks. The length of the deferred period will affect the monthly premium. The shorter the deferred period the higher the premium.

So, for example, if an individual insured under this type of policy chose a 13-week deferred period and was unable to work due to illness or injury, then **after** 13 weeks, the *income protection* payments will begin.

The longer the deferred period, the lower the premium. The replacement income would continue during a period of long-term illness and disability, or until the earlier of the borrower returning to work, or to the ceasing date on the policy (which might be age 60 or 65).

Premiums qualify for income tax relief at the individual’s marginal (highest) tax rate, up to an annual limit of 10% of total income. Permanent health insurance (PHI) premiums are not deductible for the purposes of PRSI or universal social charge (USC). PHI benefits, in payment, are subject to PAYE at source.

Prior to a consumer completing a proposal form for a PHI policy, a regulated entity must explain to the consumer the:

a. Meaning of disability as defined in the policy;

b. Benefits available under the policy;

c. General exclusions that apply to the policy; and

d. Reductions applied to the benefit where there are disability payments from other sources.

Specified Illness v. Income Protection

The main differences between *specified illness* and *income protection* cover are that:

- Income protection covers any illness, injury, accident or disability that prevents an individual from working and pays out a regular alternative income payment after a deferred period. Specified illness pays a once-off lump sum.

- Tax relief is not available on specified illness premiums, but can be claimed, at the marginal rate, on income protection premiums.

- Income protection allows for multiple claims whereas specified illness cover ceases once a single claim is made.

5.5 Household Insurance

5.5.1 Introduction

Housing loan lenders will always require that the building to be mortgaged is insured for fire and other such perils.

Just like mortgage protection cover, this cover can be arranged either:

- Through a block policy arranged by the lender. The premium is added to the borrower's repayments and collected by the lender, who then pays the premiums on to the insurer;

  OR

- The individual arranges household insurance himself or herself. The lender's interest in the policy is noted on the respective insurance company's records. In the event of a claim, the settlement cheque issued by the insurance company will be issued in the joint names of the borrower and lender. This protects the lending institution from the borrower cashing the insurance claim cheque and not carrying out the necessary repairs to the building; that would leave the lending institution with a property as security for the loan of considerably less value than before the event giving rise to the claim.

Homeowners may require insurance cover in respect of several risks, such as fire, special perils, theft and legal liability. Such cover may be grouped together into a policy covering buildings and/or contents against a range of perils. These policies are now known as *household* policies, though there are many different brand names for different insurers' products.

Household policies are package policies; insurers bring together in a single policy a range of different covers such as damage by fire, storm, riot, and liability for injury to others or property damage.

There is a variety of household policies available with some insurers offering a full *package* whilst others offer a more limited cover with optional extras being made available. There is no such thing as a *standard* household policy. There are minor variations of cover under each insurer's policy, and wordings also vary. In this section, the basic cover most frequently provided by insurers, namely *building* and *contents* insurance, will be reviewed.

Housing loan lenders do not insist on contents cover but will require that a borrower insures the building.

When offering a property insurance policy to a consumer, the *Consumer Protection Code, 2012,* requires that the lender must explain to the consumer that in the event of a claim the lender may appoint its own builder or other expert to undertake restitution work on the property.

5.5.2 Definitions

In relation to household insurance, there are several relevant definitions:

Buildings

When related to household insurance, it is the main structure of the private dwelling and includes landlord's fixtures and fittings, garages, sheds, greenhouses and other outbuildings.

Swimming pools and tennis courts are also included.

Combined Policy

A single insurance policy incorporating a combination of optional covers of the proposer's choosing.

Contents

When related to household insurance, covers all household goods and personal effects, including cash and stamps (up to a limit), belonging to the insured or resident family. Fixtures and fittings belonging to the insured are also covered.

5.5.3 Building Insurance

Buildings, in respect of household insurance, may be defined as the main structure of the private dwelling (house, etc.) and includes garages, sheds, greenhouses and other outbuildings. Swimming pools and tennis courts are also included. Anything that you would normally leave behind when moving from a house is part of the building. This would include, for example, fitted kitchens or bedrooms, electrical fittings and double glazing.

5.5.3.1 Cover

Insurance cover is provided in respect of damage caused by fire, theft or attempted theft, subsidence and water damage. It also covers damage from items falling on the property such as trees, branches, etc. Cover normally contains several exclusions which a borrower is advised to review in detail before effecting their policy.

5.5.3.2 Reinstatement Values

The buildings sum insured should be equal to the cost of rebuilding the property from scratch if it is destroyed, and this is called the reinstatement value.

This is NOT the same as the market value of the property if the property were to be sold which may be higher as a part of the value of any property is its site value which will still persist even if the building was completely destroyed, for example, by fire.

5.5.3.3 Exclusions

Buildings insurance **does *not*** usually cover damage caused by:

- Acts of terrorism;
- Wear, tear and deterioration in the structure or interior – for instance, roof damage due to gradual wear and tear would be excluded, as would water damage due to a leaking shower.

- Some risks such as flood damage or subsidence may not be covered if the property is in an area prone to flooding or subsidence.

5.5.4 Contents Insurance

Most insurers provide products where the sum insured on contents is based on a percentage of the sum insured on the building. The table below shows how this concept operates.

Basically, the percentage figure is the *maximum* amount payable under the contract, not the guaranteed amount. In the table below, a client who buys the policy known as *household B* is covered for contents up to € 60,000. If the client has only € 50,000 contents, then € 50,000 is the *maximum* amount payable.

These contracts, however, give clients the peace of mind and security of a level of cover that is probably slightly higher than they require, without the bother and worry of trying to work out exactly how much the contents of their home should be insured for.

The client has only to establish the rebuilding cost of his/her home. Let us presume it is € 200,000.

Household A product gives 20% cover on contents at € 40,000.

Household B product gives 30% cover on contents at € 60,000.

Household C product gives 50% cover on contents at € 100,000.

Contents, in respect of household insurance, may be defined as household goods and personal effects of every description, belonging to the insured or a family member living in the property.

A typical definition of *contents* is as follows:

"Household goods, valuables, sports equipment and personal effects belonging to you (or which are your responsibility) or belonging to members of your family or any other person (excluding tenants) permanently residing with you. The policy provides cover for loss or damage to the ***contents*** *caused by any of the insured risks."*

Any part of the structure, ceilings, wallpaper and the like are not covered. Radio and television aerials can be specifically mentioned, but satellite dishes and receivers may be excluded.

The risks covered under the contents section are basically the same as those covered under the buildings section, although there are certain minor differences, which should be noted:

- No separate excess applies to storm, flood or escape of water claims.

- Theft or attempted theft of cash, currency, bank notes and stamps is normally excluded if it does not involve forcible and violent entry or exit.

- Theft or attempted theft while the building is lent, let or sublet in whole or in part is normally excluded if it does not involve forcible and violent entry or exit.

- Accidental damage cover is subject to the same excess and exclusions as under the buildings section, but certain contents are excluded. For example, clothing, jewellery, contact lenses, money, sports equipment, furs and bicycles.

5.5.4.1 Limits

There are usually limits on single articles of value and the total amount of valuables:

- *Single article limit:* no picture or other work of art, stamp collection, precious metal, jewellery or fur will be treated as being of greater value than, say, 5% of the total contents sum insured.

- *Valuables limit:* the total value of articles of precious metal, jewellery or fur is restricted to one-third of the total contents sum insured.

5.5.4.2 New for Old

Some insurers offer contents insurance based on *new for old*, that is, in the event of a claim, the benefit paid in respect of contents is the replacement cost of the relevant items stolen or damaged, rather than their *second-hand* value at the time of claim.

However, contents must be valued, for sum insurance purposes, on a similar replacement value basis.

5.5.4.3 Exclusions

Typical exclusions on contents insurance would include:

- Any loss or damage that happens when the property has been left vacant for a set time – usually more than 30 days;

- Money or valuables stolen from the property without the use of force to gain entry;

- Deeds, bonds, bills of exchange, promissory notes, cheques, securities for money, stamps, documents of any kind, manuscripts, medals, coins, motor vehicles and accessories; and

- Damage caused to contents by wear and tear.

5.5.5 Types of Cover Available

The insurance industry has evolved to cover most situations, which arise in modern Irish life. These are the most common situations:

- *Owner-occupier:* where the house owner, owns and occupies his/her own house. Policy cover indemnifies the owner for damage to both the buildings and the contents.

- *Occupier*: where the house is rented to a tenant, the tenant as occupier should insure his/her personal belongings in the house. The tenant cannot insure the building as there is no insurable interest, unless the terms of the tenancy agreement create a legal obligation on the tenant to do so.

  Owner: where the house is rented to a tenant, the owner should insure the building but cannot insure the tenant's household contents. However, where the owner (landlord) lets the building on a furnished basis, the owner has an insurable interest in those contents. The owner would include on the proposal form an item for "landlord's fittings, furniture and furnishings" with an appropriate figure for the replacement value of these items. In such cases, insurers usually exclude the risk of 'theft, not involving forcible or violent entry or exit'.

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If the property is vacant, for a certain period (for example, more than 30 days), the insurer must be notified by the policyholder. If the policyholder does not notify the insurer, the insurance cover may be void.

Upon notification the insurer could, depending on the policy document:

- Increase the premium; or
- Cover only for fire (that is, exclude theft, water damage, etc.); or
- Increase the excess amount on the policy.

The insurance company is unlikely to cancel the policy immediately. However, they may review at the next renewal date, with a possibility of declining renewal.

- *Purpose-built apartments:* In this case, all the individual owners combine to form a management company for the entire block of apartments. The management company insures the entire block for its replacement value and the interest of each individual owner is noted for their own particular apartment. The occupier of each apartment (whether it is the owner or a tenant) is responsible for insuring his or her own contents just as if it were a private house. The insurance of blocks of apartments falls more into the commercial insurance field. It is important to note that these arrangements are necessary to deal with issues that relate to the *common parts* of such buildings, such as hallways, stairs, roofs, etc.

5.5.6 Index-Linking

This is an optional system employed by insurers to ensure that *sums insured* are maintained at up-to-date valuations. The client does not have to recalculate the rebuilding cost of his/her building or the replacement cost of his/her contents every year. Insurers automatically increase the amount of cover (sum insured) on the building every year, in accordance with the House Building Cost Index, issued by the Society of Chartered Surveyors Ireland, or any other index deemed appropriate. The premium is increased accordingly.

It is important to note that the sums insured must be correct at inception. If they are, then index-linking will maintain the correct valuations. If they are set too low, index-linking can never catch up and the client will remain underinsured. For the same reason, index-linking cannot cater for a situation where a client builds on an extension or a conservatory on to the main premises, during the currency of a policy. The insurers must be told of the increase in value, otherwise the client will be underinsured. The results of underinsuring can be very significant in the event of a claim.

5.5.7 Cost

Each insurer has its own method of calculating the premium for household insurance. The premium for buildings insurance cover is usually based on the sum insured, which is the value declared by the insured as the estimated rebuilding cost of the property insured, that is, the *reinstatement value.*

Other considerations that affect the premium for *household insurance* are:

- *Location*: traditionally, the Dublin city and county area was rated higher than the rest of Ireland because of the higher incidence of theft claims. However, in recent years, areas bordering the Shannon have been rated higher because of storm and flood damage in that area. There are other *pockets* spread around the country where flood cover is unavailable, due to the frequency of flooding (for example, Clonmel and Mallow). This textbook cannot list all the specific areas where special rates are applied.

- *Occupancy*: the standard rates apply to a house that is occupied as a private dwelling house and is occupied by the owner and his/her family.

- Insurers may impose a loading on the premium where:

  - There is a business carried on in the premises: depending on the type, size and scale of the business, insurers may decide to:

    - Include it at no extra charge;

    - Include it but charge an additional premium,

    - Refuse to insure the risk under a household policy.

- The house is let to tenants. Again, there are no hard and fast rules. If a house were let to, say, a family as a private residence, insurers would be more likely to look favourably on it. However, if it were let to a group of students, or as several *bedsits* or flats, every insurer would apply a loading and, indeed many would refuse to insure it.

- *Casual guests* are kept: most insurers will permit the keeping of one or two casual paying guests. This is intended to accommodate clients who take in one or two students during the summer months, etc. However, the insurer must be advised of the fact that paying guests are kept and how many (some insurers allow more than others). This is particularly relevant in coastal and scenic areas where seasonal *bed and breakfast* businesses flourish. If the number of paying guests exceeds eight or 10, most insurers would refuse to give household cover and would insist on arranging a commercial guest house policy.

- *Discounts*: various discounts are allowed by different insurers, some of which include:

  - Burglar alarm (may have to be connected to a central station and have a maintenance agreement);

  - Insured is over 50 years of age;

  - No claims bonus;

  - Neighbourhood watch;

  - Two policies (for example, discount off home insurance if the client has a motor policy with the same insurer).

- *Loadings*: insurers rarely put on a loading on a household policy. Usually, they either accept a risk at *normal* rate or else decline it. However, some exceptions may apply for example, non-standard construction. Some insurers apply a loading if a property has, say, a timber and felt roof covering. A loading may be applied to reflect adverse claims experience.

5.5.8 Claims

5.5.8.1 The Policyholder's Duty

The policyholder's duties can be either *expressed* or *implied*. Implied duties are those imposed at common law and may not necessarily be found in the policy wording and a claim will not be valid if these duties are not performed. For example, a homeowner would be expected to take reasonable care of, and to protect, his or her property.

Express duties are those written into the contract and are usually found as the claims conditions in the policy.

The first claims condition is often entitled *claims procedure* or *action by the insured* or *the notification condition*. A breach of such express conditions allows the insurer to repudiate the claim.

An example of a notification condition in a household policy is as follows:

> *"You must notify us when you become aware of a claim under your policy as soon as possible. If there has been stealing, attempted stealing, vandalism, loss or any malicious act you must tell the Gardaí as soon as possible.*
>
> *You must at your own expense provide us with all details and evidence we reasonably request, including written estimates and proof of ownership and value. Do not dispose of any damaged items until we have had the opportunity to inspect them. Any writ, summons, other legal documents, letters of claim or other correspondence served on you or any member of your household in connection with a claim must be sent to us as soon as possible. You must not answer this correspondence without our written consent. We will not unreasonably withhold our consent."*

A further condition may typically read:

> *Conduct of the Claim*
>
> *"You must give us whatever information or assistance we reasonably request and must not admit, deny, negotiate or promise to pay any claim without a written consent. We will not unreasonably withhold our consent. We may enter any building where loss or damage has occurred and deal with the salvage.*
>
> *No property may be abandoned to us."*

The *Consumer Protection Code* requires that in the case of property insurance claims, where relevant, the regulated entity must notify the claimant that the claimant may appoint a **loss assessor** to act in their interest. The regulated entity <u>must</u> maintain a record of this notification. However, any such appointment will be at the claimant's expense.

5.5.8.2 Valid, Invalid or Partially Met Claims

There are legal requirements that must be met for a valid claim. If these are not met by the insured, a claim may be invalid or only partially met.

The onus of proof rests on the insured. Thus, it is usually the insured's responsibility to prove:

- *That an insured peril arose*: the insured must prove that he has suffered a loss directly caused by a peril which is insured by the policy. In most cases, this proof of loss is provided in the form of a completed claim form.

- *The amount of the loss:* the insured must also prove that he/she has suffered a financial loss and identify the amount of the financial loss suffered. The insured cannot simply claim for a lost or damaged item without proving the value of the item. This proof might take the form of a purchase receipt, a repair account or a valuation. The point is that it is not for the insurer to prove the value of the loss.

Although the onus of proof of a loss rests with the insured, the position changes completely if an insurer wishes to decline to pay a claim because of the operation of an exception in the policy terms. In this case, the onus is on the *insurer* to prove that the exception applies.

The insurer will carry out internal checks, ensuring that:

- The cover was in force at the time of the loss (or when the claim was made, under certain policies);

- The insured is that named in the policy or person entitled to indemnity;

- The peril (or event) is covered by the policy;

- The insured has taken reasonable steps to minimise the loss;

- All conditions and warranties have been complied with;

- The principle of utmost good faith was originally complied with;

- No exceptions are appropriate;

- The value of the loss is reasonable.

This list contains the legal requirements for a valid claim. Therefore, in effect, a claim is invalid if the above conditions are not complied with or if fraud can be proved.

There are a few situations where a claim is valid but is only *partially* met. An insurer may provide less than a full indemnity either as a result of the insured's choice (as in the case of an agreed value policy), because of an imposed policy term (such as a compulsory excess) or due to poor insurance arrangements (no flood cover).

There are several circumstances in which a full indemnity is not provided. The following policy terms and conditions mean that a claim may be only partially met:

The sum insured in respect of property insurance limiting the maximum amount recoverable. If the measurement of indemnity following a loss is greater than this sum or limit, the insured's recovery is limited to this sum or limit. If the policyholder has insured the property for a sum that is too high, the principle of indemnity[18] governs and the insurer can only pay the cost of reinstatement.

Operation of the average clause, in the case of underinsurance for household insurances.

[18]Insured can only recover up to the loss incurred, that is, insured is placed in the same position after a loss as he or she enjoyed before the loss incurred. The insured can't make a profit out of the loss. Household insurance is a contract of indemnity.

Where an insured undervalues the risk insured, the insurer may apply average to any claim put forward; only paying a proportion of the insured's loss (see following section regarding average clause).

The amount payable may be further limited by the application of voluntary or compulsory excesses.

There are some situations in which, although there may be no strict liability to pay a claim, an insurer wishes to do so or at least make some contribution to a loss. It may occur if undue hardship would result for the insured or to enhance an insurer's reputation for fairness. There may also be some wider connectional interest for the insurer that influences the decision. Such payments are not common. However, because they are made with no admission of liability, they are termed *ex gratia* payments as they are made *out of favour*.

5.5.8.3 Average Clause

In property insurance, the amount payable by an insurer is limited to the sum insured under the policy. The sum insured is the total value declared by the insured. This figure is used to determine the premium.

Where an insured understates the value of the subject matter of the insurance, there is said to be underinsurance. Underinsurance may be accidental, through lack of knowledge, or deliberate, to save premium. Underinsurance is a particular issue at present given the significant building cost inflation of recent years.

For example, a customer may believe that it would be extremely unlikely that his home would ever be completely destroyed. To save premium costs, he declares the full value of his property to be € 100,000, instead of the correct reinstatement value of, say, € 250,000. He believes that the coverage is 'safe for any claims up to € 100,000.'

He is wrong! The average clause protects insurers against this contingency. If the policyholder does not fully insure his property, then he cannot expect the insurer to pay the full reinstatement cost. In this example, the policyholder has insured his property for 40% of its reinstatement value. Therefore, the insurer can only pay him 40% of the reinstatement cost in the event of a claim.

If a claim were to arise for damage to the amount of, say, € 50,000, the insurers could only pay him € 20,000. This is legally and morally correct.

The insurer can only pay the policyholder the amount that the policyholder has paid for. Put simply, you get what you pay for! In this example, the policyholder may have saved 60% of the premium but, in the event of the above-mentioned loss, he has lost € 30,000. Even if his house was destroyed, he can only be paid € 100,000. This would give him the indemnity that he had paid for, but he would still be at a loss of € 150,000.

It is not possible for insurers to check the adequacy of the sum insured every time they take on a new risk. Instead, they limit their own liability by applying a policy term known as the average condition. What this does, in effect, is to state that if there is underinsurance at the time of any loss, the insured is considered to be his own insurer for the amount he has chosen not to insure, and so even partial losses are shared in proportion to the amount of underinsurance.

The formula (called the average formula) used to calculate a claim, subject to average, uses the sum insured, the value at risk and the loss, is as follows:

$$\left(\text{Sum insured} \,/\, \text{Value at risk}\right) \times \text{loss}$$

Example

Sum insured: € 180,000.

Value at risk: € 400,000.

Loss: € 125,000.

Therefore, the claim paid = (€ 180,000 / € 400,000) x € 125,000 = € 56,250.

5.5.8.4 Claims Settlement

The final stage in the claims process is the actual settlement. The claim has been notified, all parties have carried out their respective duties and all that remains is for the claim to be settled. Insurers can settle claims that arise and are accepted under the contract in several ways, as follows:

- Payment of money;
- Paying for repairs;
- Replacement (contents);
- Reinstatement (contents).

The repair, replacement and reinstatement options available apply only if stated in the policy. They invariably are for household contents insurances.

A regulated entity must ensure that any claim settlement offer made to a claimant is fair, considering all relevant factors, and represents the regulated entity's best estimate of the claimant's reasonable entitlement under the policy.

A regulated entity must allow a claimant at *least 10 business days* to accept or reject the offer.

Where the claimant waives this right, and accepts the settlement offer within this timeframe, the regulated entity must retain a record of this decision.

5.5.8.5 Claims Professionals

You should be aware of the functions carried out by some specialists in the area of claims settlement:

- Loss adjusters: these are people appointed by the insurers in situations where the claims are large and/or more complex. They will investigate the circumstances of the claim and negotiate settlement.

  Whilst they are appointed and paid by the insurers, loss adjusters act impartially and are professionally qualified.

The loss adjuster ensures that the insurer's interests are preserved. Their duties include:

- Checking that the cover is in force and is adequate at the time of the loss;
- Providing preliminary and on-going estimates of the potential loss;
- Completing a claim report, providing detailed comments on the incident leading to the claim, the property lost or damaged and details of the claim itself;
- Recommending to insurers what settlement (or alternative action) should apply.

The insurer will decide what action to take or what offer is appropriate, in light of the report.

- <u>Loss assessors</u>: these are people appointed by the claimant. They do a quite different job from that of the loss adjuster. Their job is to look after the insured's interest only and not to take an impartial view. They are employed by the insured for that purpose and their costs are not recoverable from the insurer.

5.5.9 Block or Individual Policy

The *advantages* of arranging required household insurance cover under the **lender's block policy** are:

- Convenience:
- The application for the cover is usually built into the loan application form.
- Premiums are collected by the lender with the loan repayments.
- Automatic renewal of cover each year by the lender, on behalf of the borrower.
- The lender's interest in the cover is automatically provided for.
- The policy will probably offer a combined buildings and contents package.
- Possible cheaper cost:
- Because it is a block policy, the premium cost may be cheaper than could be obtained for the same cover with the same insurer by the borrower effecting an individual policy.

The *disadvantages* are:

- The premium and the nature of the cover may not necessarily be the most competitive in the marketplace at that time.

The *advantages* of arranging individual buildings insurance cover are:

- The opportunity to search the market each year and possibly obtain the cover at a cheaper cost than under the block policy.
- The individual can choose their own intermediary and insurer.
- The individual can seek a tailored package of contents cover to suit their particular circumstances compared with the standard contents cover that is usually provided under a lender's block policy.

The *disadvantages* of arranging individual buildings insurance cover are:

- Having to arrange fresh cover each year.
- Having to search the market to obtain the most competitive quote.
- Where switching insurers, having to arrange for a new insurer to note the lender's interest in the policy, and arrange to provide a copy of the policy (or at least the schedule) to the lender each time cover is switched to a new lender.

5.6 Structural Defect Cover

Structural defect cover is an insurance policy to cover newly built homes in the event of a structural defect occurring (normally within the first 10 years). In Ireland, this cover has been provided through the National House Building Guarantee Scheme (HomeBond) or Premier Guarantee.

Builders register with a scheme, which then provides insurance cover to protect structural defects for the first 10 years and covers the loss of money deposited with a builder for the construction or purchase of a new property.

These schemes not only provide structural defect cover for the participating members, they also provide advice, technical information and a dedicated site audit survey.

Most lenders require that if a borrower is purchasing a newly built property, that the property is registered with one of these schemes and that the borrower provides documentation at the application stage, which is supplied by the builder to prove that the property is registered. Whilst both schemes offer almost identical cover, we will look at the characteristics of HomeBond in the next section.

5.6.1 HomeBond Insurance Services Ltd

HomeBond was set up in 1978 to provide a regulatory framework for the private house-building sector. The HomeBond scheme specifies a high standard of construction and carries out inspections of dwellings in the course of construction to ensure compliance with HomeBond standards of construction and HomeBond guarantees.

While the builder registers as a member with HomeBond and pays the appropriate fee for the insurance, HomeBond insurance is an insurance policy between the underwriter and the home buyer.

HomeBond Insurance Services Ltd provide two *first party* insurance policies for newly built homes, which offer protection for up to 10 years for the first homeowner and subsequent owners too, in housing developments or individual homes on private sites.

5.6.1.1 Latent Defects Insurance

Underwritten by Allianz plc with four elements of cover for non-compliance in design, workmanship, and/or materials of a functional requirement of the building regulations:

- Structural insurance – 10 years' cover for the repair of major structural defects;
- Smoke penetration/water ingress – five years' cover for remedial work in the event of smoke penetration/water ingress;
- Physical danger – five years' cover for certain physical fire safety risks;

- Damage – 5 years' cover where damage affects the use of a significant portion of the habitable areas for ordinary and reasonable residential purposes.

Deposit cover is also provided for the first owner for the loss of money deposited for the construction or purchase of a new home. (Limits and exclusions apply to all cover)

5.6.1.2 Mechanical and Electrical Inherent Defects Insurance

Underwritten by HSB Engineering Insurance Ltd with five years' cover for actual or impending damage arising from faulty or defective design, workmanship or materials in new mechanical and electrical fixed service equipment comprising:

- Space and/or water heating, ventilating and air conditioning systems;
- Lifts and fixed mobility equipment;
- Electrical distribution and lighting;
- Building security and environmental control;
- Water and waste processing.

It is in the purchaser's best interest when buying a newly built or recently built property to ensure that the property is protected against structural defects as they may only materialise long after the builder has left the site.

It is highly unlikely that a lender will lend on a newly built property unless the property has a structural defect insurance policy and guarantee in place.

5.6.1.3 Course of Construction Insurance

In the case of *self-builds,* a borrower must also effect insurance known as *own home under construction* or *property in the course of construction* insurance.

This insurance policy normally covers against all risks of loss or damage to the property being built. Cover includes loss against fire, storm and flood damage during construction.

Most importantly, it should also cover public liability, in the event of an individual being injured whilst on the property construction site or their property (for example, car) is damaged whilst on the site.

The insurance is a once off premium and valid for a period up to 12 months from the date work commences on the site or until the borrower obtains a certificate of completion and moves into the property (whichever is sooner).

After 12 months, the policy must be renewed and normally this can be done in blocks of three months and a new premium paid at each extension.

Review

Now consider the main teaching points, which were introduced in this chapter. They are listed below. Tick each one as you go through them.

- [ ] The main features, benefits, and limitations of the different generic types of life assurance and general insurance policies which can be used in connection with a housing loan
- [ ] The obligations on mortgage lenders, under the Consumer Credit Act, 1995, in relation to the provision of mortgage protection insurance cover
- [ ] The relative advantages and disadvantages for the housing loan borrower of arranging required insurances under a block policy arranged by the mortgage lender, compared with arranging such cover on an individual basis
- [ ] Structural insurance cover available for newly built properties and its main features and benefits

Sample Questions

The answers to these questions can be found in your Study Hub.

1. The Consumer Credit Act states that any insurance which a mortgage lender may require a borrower to take out and keep on a property with any insurer or through any intermediary:

   A. may be effected by the borrower with any insurer and through any intermediary.
   B. must be effected by the borrower with an insurer agreed by the mortgage lender.
   C. must be effected by the mortgage lender on behalf of the borrower with any insurer and through any intermediary.
   D. may only be effected by the borrower with tied agents of the mortgage intermediary.

2. A specified illness policy:

   A. pays a monthly income to the policy holder if they contract one of a number of specified illnesses.
   B. pays a lump sum to the policyholder if they contract any one of a generic set of illnesses.
   C. pays a lump sum to the policyholder if they contract one of a number of specified illnesses.
   D. pays a monthly income to the policy holder if they contract any one of a generic set of illnesses.

3. Household Insurance covers WHICH of the following risk(s)?

   (i) Legal liability.
   (ii) Serious illness.
   (iii) Home loan arrears.

   A. (i) only.
   B. (ii) only.
   C. (iii) only.
   D. (i), (ii), and (iii).

4. Róisín's house is worth € 400,000. She insures it for € 250,000. Later, the house is damaged and the builder charges € 300,000 for the repairs. How much does Róisín receive from the insurer?

   A. € 112,500
   B. € 187,500
   C. € 250,000
   D. € 300,000

06

Arranging a Housing Loan

Chapter 6 outlines the process that both an individual completing a housing loan application and the regulated entity must follow from the time of the initial enquiry to the completion of the housing loan.

The chapter outlines the rules and regulations that a regulated entity must comply with at each stage of the process and introduces the concept of suitability when considering any product for a consumer. It also outlines the documentation that the borrower needs to provide to the regulated entity as part of their loan application for an informed lending decision to be made.

There must be legal advice involved in the completion of a property transaction in Ireland, so the process that is involved at the completion stage is briefly explained.

Learning Outcomes - after studying this chapter you should be able to:
outline the individuals and entities who can arrange a housing loan;
discuss the regulatory requirements under the Consumer Credit Act, 1995, the Consumer Protection Code and the European Union (Consumer Mortgage Credit Agreements) Regulations, 2016 in relation to a regulated entity's interaction with its consumers;
outline the 'knowing the consumer' and 'suitability' requirements when processing an application for a housing loan;
describe the underwriting process and discuss the subsequent mortgage documentation that needs to be forwarded to a borrower; and,
describe the conveyancing process from the perspective of the buyer, the seller, the borrower and the lender.

Chapter weightings	Number of questions which may appear		
In the exam, questions are taken from each chapter based on the following approximate chart:	Chapter	Minimum	Maximum
	6	13	16

6.1 Introduction

Before we look at the main items of information and documentation which a lender will seek from a borrower when arranging a housing loan, we will look first at the various individuals who can arrange a housing loan for a consumer. We will also look at how these individuals are authorised and regulated.

6.1.1 Mortgage Intermediaries

As a result of the European Union (Consumer Mortgage Credit Agreements) Regulations, 2016, the definition of a *mortgage* intermediary changed. Mortgage intermediaries continue to be authorised by the Central Bank and are licensed under the Consumer Credit Act, 1995.

A *mortgage intermediary* is defined as a person, other than a mortgage lender or credit institution, who, in return for commission or some other form of consideration:

- Arranges, or offers to arrange, for a mortgage lender to provide a consumer with a housing loan which falls outside the scope of the European Union (Consumer Mortgage Credit Agreements) Regulations (such as an equity release product); and/or
- Introduces a consumer to an intermediary who arranges, or offers to arrange, for a mortgage lender to provide the consumer with a housing loan.

In other words, a mortgage intermediary could be an individual who introduces clients (for a fee) or an individual who might only arrange equity release products.

It is an offence for a person to engage in the business of being a mortgage intermediary unless:

- He/she is the holder of an authorisation granted for that purpose by the Central Bank; and
- Holds a letter of appointment in writing from each undertaking for which he/she is an intermediary.

6.1.2 Mortgage Credit Intermediaries

Mortgage credit intermediaries are authorised under the Consumer Mortgage Credit Agreements Regulations, 2016 (CMCAR), to:

- Present or offer credit agreements to consumers;
- Assist consumers by undertaking preparatory work or other pre-contractual administration in respect of credit agreements; and/or
- Conclude credit agreements with a consumer on behalf of a creditor.

Mortgage Credit Intermediaries may also be authorised to provide advisory services, that is, the provision of personal recommendations to a consumer in respect of one or more transactions relating to credit agreements.

A person, other than a credit institution or a person admitted carrying out credit intermediation activities in another EEA Member State, shall not carry out mortgage credit intermediary activities or provide advisory services unless:

- He/she is the holder of an authorisation granted for that purpose by the Central Bank; and

- Holds a letter of appointment in writing from each undertaking for which he/she is an intermediary.

Advisory services mean the provision of *personal recommendations* to a consumer in respect of one or more transactions relating to credit agreements and constitutes a separate activity from the granting of a credit and from credit intermediation activities.

Advisory services shall only be provided by:

- A creditor;
- A mortgage credit intermediary;
- A barrister, solicitor or accountant providing advisory services if;
  - He or she is subject to regulation by a professional body, and those services are provided in an incidental manner in the course of a professional activity;
- Any of the following (but only in the context of managing existing debt):
  - An approved intermediary authorised under section 47 of the Personal Insolvency Act 2012;
  - A debt management firm authorised by the Central Bank;
  - A charitable organisation within the meaning of section 2(1) of the Charities Act 2009 (No.6 of 2009);
  - The Money Advice and Budgeting Service.

6.1.3 Tied Agents

A *tied mortgage branch agent* is a person who has entered into a legally binding agreement with *one* mortgage lender to:

- Arrange housing loans only with that lender and not arrange or offer to arrange or be involved in the provision of a housing loan by any other mortgage lender;
- Not permit any premises, which he uses in the course of arranging or offering to arrange the provision of housing loans, to be used for the purposes of arranging or offering to arrange the provision of a housing loan by any other mortgage lender;
- State on his letter headings and business forms, which are used for the purposes of arranging or offering to arrange the provision of a housing loan by the mortgage lender, that he acts solely on behalf of the mortgage lender;
- Not deal with any housing loans that are referred to him by a mortgage intermediary; and
- Display the name of the mortgage lender on any premises used by the agent for the purposes of arranging or offering to arrange a housing loan by that mortgage lender.

The mortgage lender to which the tied mortgage branch agent is tied is legally responsible for any act or omission of the agent in respect of any matter relating to a housing loan offered or made by that mortgage lender, as if the agent was an employee of that mortgage lender.

Effectively, in relation to housing loans, the actions of a tied mortgage branch agent are those of the mortgage lender with whom the agent has entered into an agreement, which is current and valid.

6.1.3.1 Disclosure of Tied Status

A mortgage credit intermediary can enter into an agreement with one creditor to become a tied credit intermediary. This means that the intermediary can refer client applications for housing loans **only** to that lender.

Where a tied credit intermediary is also providing advisory services, they must consider a sufficiently large number of credit agreements in their product range for the consumer's needs.

A mortgage credit intermediary must disclose its *tied status,* if tied to one lender or one insurer "*at the first reasonable opportunity and in any event before any commitment is made by the borrower*".

A creditor to whom the mortgage credit intermediary is tied must take full and unconditional responsibility for the mortgage credit intermediation activities.

6.1.4 Use of the Term 'Independent'

The Consumer Mortgage Credit Agreements Regulations 2016 refer to the use of the term *independent* by intermediaries and states:

> *"A creditor or mortgage credit intermediary shall not use the term 'independent advice' or 'independent advisor' in the course of providing advisory services unless:*
>
> - *The creditor or mortgage credit intermediary considers a sufficiently large number of credit agreements available on the market; and*
>
> - *If the number of creditors considered is less than a majority of the market, the creditor or mortgage credit intermediary is not remunerated."*

However, it is also important to note that the *Consumer Protection Code 2012 (amended 2015)* imposes restrictions on the use of the terms *independent* and *broker* by intermediaries.

Under the Consumer Protection Code, the term *independent* may only be used by an intermediary in its legal name, trading name or any other description of the firm where:

- The principal regulated activities of the intermediary are provided based on a fair analysis of the market; and

- The intermediary allows the consumer the option to pay in full for its services by means of a fee.

The Code defines the term *fair analysis of the market* as:

> *"... providing services on the basis of a sufficiently large number of contracts and product producers available on the market to enable the intermediary to make a recommendation, in accordance with professional criteria, regarding which contract would be adequate to meet the consumer's needs."*

The Code also states that an intermediary cannot refer to any individual service it provides as *independent* unless:

- That service is provided on a fair analysis basis; and
- It offers the client the option to pay for that service by means of a fee.

Where an intermediary allows the consumer the option to pay for its services by means of a fee, the option of payment by fee and the amount of the fee must be explained in advance to the consumer.

Where the intermediary charges a fee and receives commission in respect of the product or service provided to the consumer, it must explain to the consumer whether the commission will be offset against the fee, either in part or in full.

The term independent may only be used in any trading name or other description of a regulated activity where the intermediary:

- Provides the regulated activity based on a fair analysis of the market; and
- Allows the consumer the option to pay in full for the regulated activity by means of a fee.

Where a regulated entity does not provide all its regulated activities in an independent capacity, it must explain the different nature of its services in a way that seeks to inform the consumer. It must ensure that there is no ambiguity about the range of services that it provides in an independent capacity.

The term *broker* may only be used where the principal regulated activities of the intermediary are provided based on a fair analysis of the market.

Where an intermediary does not provide a product or service based on a fair analysis of the market, it must clearly disclose to the consumer the names of those product producers whose products or services it intends to consider as part of its analysis.

Where an intermediary is tied to a single producer of a product or service, it must disclose this fact to the consumer in all communications with the consumer in relation to that product or service.

6.1.5 Obligation for Public Registers

A housing loan lender must maintain a publicly accessible register of all *mortgage intermediaries* and *mortgage credit intermediaries* to which it has issued a current appointment. On the termination of the appointment of an intermediary, a mortgage lender must provide to the Central Bank a confirmation in writing that such intermediary has been removed from the lender’s register of mortgage intermediaries or mortgage credit intermediaries.

Under CMCAR, the Central Bank must establish a single information point to allow quick and easy public access to information from the register of mortgage credit intermediaries, which shall be compiled electronically and kept updated constantly. This single information point shall also provide the identification details of the competent authorities of each EEA member state.

6.2 Advertising Housing Loans

6.2.1 Consumer Mortgage Credit Agreements Regulations (CMCAR)

Under CMCAR, any advertisement for a housing loan must:

- If mentioning a rate of interest or making any claim in relation to the cost of the loan, contain a clear and *prominent* statement of the APRC, using a representative or typical example, provided it is indicated that this is only a representative example (for example, "*Typical APRC is…"*) The APRC must be included in the advertisement at least as prominently as any other interest rate present.

- Include the borrowing rate, indicating whether it is fixed, variable or a combination of both, together with particulars of any charges included in the total cost of credit to the consumer. The total amount of credit must also be outlined.

- State whether security is required - for example, mortgage over property - and/or insurance. If the loan is subject to any restrictions, those restrictions must be clearly indicated in the advertisement.

- Show a comparison of the relevant terms and conditions of each of the loans compared where the advertisement compares the cost (for example, level of repayments or cost of credit) of different or competing loans (CCA)..

The lender must also provide specific information in printed advertisements for residential mortgage credit such as the maximum percentage of the value of the property which will normally be advanced and the maximum multiple of borrower income which will normally be provided.

Advertisements must also abide by rules laid out under the Consumer Credit Act, 1995; however, if there any inconsistencies between the various legislations, a provision provided for under CMCAR will override the other.

6.2.2 Consumer Protection Code Disclosures

The Consumer Protection Code includes very specific disclosure warnings that are required when advertising home loans. These are in addition to the requirements imposed by the Consumer Credit Act, 1995, although some overlap. These warnings relate to what happens if a borrower does not keep up repayments on their loan, the obligations imposed on a lender when advertising interest rates and warnings that must be given when a borrower chooses a particular loan product.

6.2.3 Disclosure in Relation to Regulatory Status

All regulated entities subject to the Consumer Protection Code must include a regulatory disclosure statement ("*Full legal name of provider (and trading name) is regulated by the Central Bank of Ireland*") on all:

- Advertisements;

- Business stationary;

- Electronic communications with consumers including on the home page of its website, if any.

The regulatory disclosure statement cannot be used on any business stationery, advertisement, or electronic communication in connection with a product or service for which the firm is not regulated by the Central Bank.

In such instances, regulated entities are expected to use separate business stationery in respect of their regulated and unregulated activities. This provision seeks to avoid situations where a consumer is inadvertently misled about the regulatory status of a service that does not require authorisation from the Central Bank.

Example

Mortgage Brokers Ltd are an authorised mortgage intermediary. They also act as an auctioneer and seller of overseas properties.

Mortgage Brokers Ltd must not use its regulatory disclosure statement on its business stationery, advertisements, emails or websites when promoting its auctioneering or overseas property investment, as the firm is not regulated by the Central Bank in relation to these services.

6.3 Contacting a Client

The Consumer Protection Code, 2012 imposes restrictions on regulated entities in relation to making personal visits and telephone contact with consumers. However, when a lender is dealing with borrowers in arrears or in pre-arrears, mortgage lenders are not required to comply with the provisions on consumer contact (personal visits or telephone contact) under the Consumer Protection Code, 2012. These provisions will be dealt with separately in Chapter 8.

6.3.1 Unsolicited Personal Visits

Under the **Consumer Protection Code, 2012**, a regulated entity must not make an *unsolicited* personal visit, at any time, to a consumer who is an individual.

However, personal visits to individuals whether existing customers or not, can be made where the consumer has given informed consent to a personal visit from the provider.

If the individual has given consent, the personal visit is, by definition, **not unsolicited**.

For a specific personal visit, the consumer must be informed of:

a. The purposes for which a personal visit is to be made, including, in the case of sales and marketing, the types of product to be discussed during the personal visit, and

b. The time and date for the personal visit.

Key Learning Point

A regulated entity must obtain informed consent separately for each personal visit and must maintain a record of this consent.

6.3.1.1 Unsolicited Personal Visits in Respect of Arrears

When an individual who is a borrower in arrears and where attempts at contact with the individual have failed, a lender can make an unsolicited visit to a borrower before deciding to commence legal action (CPC 2012 Guidance re 3.37).

An 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.

The *Code of Conduct on Mortgage Arrears* (see Chapter 8) offers protection to consumers in relation to their family home and has specific rules regarding unsolicited personal visits. Where the arrears **do not** relate to the consumer's family home - for example, an investment property - then the Consumer Protection Code guidelines apply.

Key Learning Point

Unsolicited personal visits can be particularly difficult for some borrowers, especially when they are in arrears. The Central Bank is very clear that, whilst it acknowledges that unsolicited visits may be necessary in certain situations when an individual is not engaging with a lender, it is important that such visits represent a positive experience for the borrower and are conducted in an appropriate manner.

6.3.2 Unsolicited Telephone Contact

6.3.2.1 Existing Customers

An unsolicited telephone call can be made by a provider to a consumer, who is an individual and an existing customer of the provider, only in one of the following specific circumstances:

- If the provider has within the previous 12 months, provided that consumer with a product or service that is the purpose of the unsolicited contact;
- If the consumer holds a product which requires the provider to maintain contact with the consumer in relation to that product;
- If the purpose of the contact is limited to offering protection policies only.
- If the consumer has given his/her consent in writing to being contacted in this way by the provider.

For this purpose, *protection policies* are defined as including:

- All general insurances, such as motor and liability insurance;
- Life assurance protection policies, be they linked or non-linked, where the purpose and intention of the policy is solely to provide protection;
- Permanent health insurance;
- Annuities, both conventional and unit-linked;

6.3.2.2 Potential Customers

A *regulated entity* may make telephone contact with a *consumer* other than an existing *customer*, only if:

a. The *consumer* has signed a statement, within the previous 12 months, giving the *regulated entity* permission to make telephone calls to him or her for specified purposes and the contact is in respect of such specified purposes;

b. The *consumer* has a listing in the business listing section of the current telephone directory, classified telephone directory or in trade/professional directories circulating in the State and the contact is made via the business telephone number;

c. The *consumer* is a director of a company, or a partner in a firm with an entry in one of the directories listed in b above and contact is made via the business telephone number of the company or firm in question and is in connection with their role as director of the company or partner in the firm;

d. The *consumer* is the subject of a referral[19] for which the consumer has provided express consent, received from an entity authorised to provide financial services in Ireland, another entity within the same group, a solicitor or a *certified person*; or

e. The purpose of the contact is limited to offering *protection policies.*

6.3.3 Allowed Times of Unsolicited Contact

Unsolicited contact may only be made between 9.00am and 9.00pm Monday to Saturday (excluding bank holidays and public holidays), unless otherwise requested by the consumer. When making an unsolicited contact in accordance with the Code, the mortgage agent must immediately and in the following order:

- Identify himself or herself by name, the name of the mortgage agent on whose behalf he/she is calling and the commercial purpose of the contact;
- Inform the consumer that the call is being recorded, if this is the case;
- Disclose to the consumer, the source of the business lead or referral supporting the contact (where appropriate); and
- Establish if the consumer wishes the call to proceed. If not, the caller must end the contact immediately. A mortgage agent must abide by a request from a consumer not to make an unsolicited contact to him/her again.

6.4 Providing Terms of Business

The Consumer Protection Code states that a mortgage agent must give each new consumer a copy, on a standalone basis (that is, not built into some other document) their *terms of business* letter before providing the first service (that is, provision of advice or arranging a housing loan) to that consumer.

The terms of business document must set out the basis on which the regulated entity is providing its regulated services and must include:

- The legal name (and trading name, if different), address and contact details of the regulated entity;
- The identity of the financial group, if any, to which the regulated entity belongs;
- Confirmation that the regulated entity is authorised, licensed or registered and the name of the competent authority that has authorised, licensed or registered it;
- A statement that the provider is subject to the Consumer Protection Code;
- A description of the regulated activities that the regulated entity provides.

[19]Such a referral must be followed up by an indication to the consumer by the regulated entity that the referral has been made and asking for consent to proceed.

- If the regulated entity acts as an intermediary, a description of the level of service it provides for each product type, that is, whether fair analysis of the market or limited analysis of the market and an explanation of that type of service in a way that seeks to inform the consumer;
- If the regulated entity is tied for any of the regulated activities it provides, it must specify the name of each of the product(s) and/or service(s) for which it is tied and the name of the regulated entity to which it is tied for those product(s) and/or service(s);
- A general statement of the charges imposed directly by the regulated entity;
- A summary of the regulated entity's policy in relation to how it will use a consumer's personal data;
- A general statement of the charges imposed directly by the mortgage agent for its services;
- A summary of the regulated entity's policy in relation to conflicts of interest;
- An outline of the action and remedies which the regulated entity may take in the event of default by the consumer;
- A summary of the complaints procedure operated by the regulated entity;
- If the regulated entity is a member of a statutory compensation scheme, the name of the scheme and the nature and level of protection available from the scheme; and
- The effective date of the terms of business document.

6.5 Knowing Your Customer – Fact-Finding

Fact-finding is the term used to describe the process of determining a client's needs as required by the Consumer Protection Code. The regulated entity finds out about their customer's financial needs and resources in order to be able to provide financial advice appropriate to that client's financial needs and resources.

6.5.1 Consumer Protection Code

Under the Code, a regulated entity must gather and record enough information from the consumer prior to offering, recommending, arranging or providing a product or service appropriate to that consumer.

The Code states that a fact-find is NOT required…

> *"if the consumer has specified both the product and the product producer by name and has not received any assistance from the regulated entity in the choice of that product and/or product producer."*
>
> *However, provision 5.24 of the CPC states that this exemption from a fact-find does not apply where a personal consumer is seeking: (i) a credit amount above € 75,000; (ii) a mortgage; or (iii) a home reversion agreement.*

6.5.2 Collecting Client Information

In relation to housing loans, the key fact-finding information is collected by:

- The mortgage lender in the form of the loan application form; and/or
- The mortgage intermediary / mortgage credit intermediary, who may have their own generic loan application form which may be acceptable to several lenders as a preliminary basis of determining whether that lender is prepared to make a loan offer to that applicant.

In general, such application forms are designed to seek the following common information about the borrower and their financial situation:

- Name, gender, date of birth, marital status, number of children.
- Details of current job (how long with current employer, etc.).
- Current income, before and after tax. A split up of the applicant's income into fixed and variable (for example, commissions, bonuses, overtime, etc.).
- A declaration signed by the personal consumer (or his or her representative), certifying income and/or ability to repay is not enough evidence and is not acceptable.
- Details of current financial assets, for example, current home value, investments, etc.
- Details of existing debt and financial commitments, for example, loan repayments, maintenance payments to former spouse, etc.
- Credit history: has applicant defaulted on any previous loans?
- Details of the type and amount of housing loan or equity release being sought.
- Details of property to be purchased or re-mortgaged or sold in connection with the loan or equity release product being sought. For example, its age, current value, etc.
- Direct debit: (usually detachable, usually signed and only sent to the lender after the loan has been approved and the applicant has signed the letter of approval).
- Declaration and signature by applicant.

6.5.3 Compiling Supporting Documentation

Housing loan lenders will typically seek some or all the following information, in conjunction with a completed application form, in respect of each applicant in order to make an underwriting decision:

- **Proof of identity and address**: For example, passport or driving licence and two utility bills showing the borrower's permanent address, for example, phone and electricity bill. This information is required to try to prevent fraudulent loan applications and is required, in any event, under the Criminal Justice (Money Laundering & Terrorist Financing) Act, 2010 in respect of preventing or detecting money laundering or the offence of financing terrorism.
- *If an employee* (that is, not deemed to be self-employed):
    - Tax statement from Revenue to support income documents.

- Copy of last three consecutive payslips.

- A salary certificate signed and stamped by the applicant's employer. This may require the employer to certify the split of the applicant's income as between basic annual salary plus fixed allowances and fluctuating extras, such as commissions, overtime, bonuses, etc. Most lenders require their own certificate on headed paper to be completed by the employer.

• *If self-employed:*

  - Last three years' accounts (certified by an accountant).

  - Projected income for coming year.

  - Confirmation from accountant that all taxes have been paid in full.

  - Revenue notice of assessment.

  - Business account statements for the last six months.

• If applicant has an existing housing loan:

  - Up to date annual statement from current mortgage lender.

• If applicant has other *personal or car* loans*:*

  - Six months' up to date statements from relevant lender.

  - Copy of recent (last three months') *bank* statements.

• For all borrowers:

  - Records of any *other savings and investments,* normally in the form of six months' bank statements.

6.5.4 Certifying the Accuracy of the Information

The Consumer Protection Code requires financial services providers to endeavour to have the consumer certify the accuracy of the information it has provided at the fact-finding stage.

This would usually be done by the consumer signing, within the *fact-find* or a*pplication form*, a declaration where the consumer certifies that all information provided and recorded in the form is accurate.

A regulated entity must assess the reasonableness of the information contained in the documentation submitted by a personal consumer in support of a mortgage application and take all reasonable steps to ensure that the documentation submitted is legitimate and authentic.

6.6 Obtaining a Valuation Report

The mortgage lender will require an independent valuation report on the property to be purchased with the housing loan, from a professional valuer. The borrower is obliged to arrange for this report to be sent to the lender and pay the requisite fee to the valuer (see Chapter 4 regarding CMCAR).

This fee is refundable by the lender if the loan application is subsequently refused.

Under the Central Bank *Consumer Protection Code,* the lender *must* ensure sight of an original valuation report before drawdown of the funds.

Under the Central Bank requirements[20], (S.I. No. 47 of 2015), a lender shall appoint an appraiser to calculate the market value of the residential property and the valuer should be sufficiently independent from the housing loan underwriting process so that he or she can provide an impartial and objective valuation. This means that the valuer must not be connected to the seller or the agent acting on behalf of the seller.

In addition, the valuation report must be undertaken not earlier than a period of four months before the date on which the advance under the housing loan is made by the lender. In other words, if a valuation report is more than four months old, it may need to be done again.

Given the timelines involved in property transactions in many cases a purchaser will now have to obtain a second valuation of the property prior to drawdown of their loan cheque. This has consequences potentially if a purchaser who has entered into a binding contract on the strength of the original loan approval and then finds that a downward revaluation resulted in a reduction in the loan. While, at the time of writing, we can see an upward movement in property prices, for borrowers who have already entered into a legally binding contract to purchase the property at an agreed price, a downward revaluation could cause major legal problems.

This requirement could be seen as quite stringent. However, as the new macro-prudential mortgage lending regulation is dependent on the value of the property, it is felt by the Central Bank that due consideration must be given to ensure the accuracy of the calculation of the loan-to-value ratio.

6.7 Making a Recommendation

6.7.1 Suitability

Except in the case of *execution only* (see 6.9.3), the Consumer Protection Code requires that a mortgage lender or intermediary must ensure, having regard to the facts disclosed by the consumer and other relevant facts about that consumer of which the provider is aware, that:

- Any housing loan offered to a consumer is suitable to that consumer;

- Where it offers a selection of housing loan options to the consumer, the options contained in the selection represent the most suitable for that consumer from the range available to that mortgage lender or intermediary; OR

- Where it recommends a housing loan to a consumer, the recommended product is the most suitable product for that consumer.

The terms *suitable* and *most suitable* are not defined in the Code, but must be considered in the context of:

- The range of housing loans which the mortgage lender or intermediary is authorised to advise on and arrange.

[20] *The Central Bank (Supervision and Enforcement) Act 2013 (section 48) (housing loan requirements) Regulations 2015.*

- The consumer's identified financial needs and circumstances based on the facts disclosed by the consumer and other relevant facts about that consumer of which the provider is aware.

The requirements in relation to *suitable* products can be summarised as follows:

- Only *suitable* housing loans for the consumer's needs can be considered;

- Where a range of housing loans is recommended to the consumer, from a limited range, each of the products must be the most suitable for the consumer from the range available; OR

- The mortgage lender must recommend the most suitable housing loan for the consumer.

A similar *reasons why* statement requirement applies where a mortgage agent is recommending an insurance policy (life or general) to be used in connection with a housing loan.

6.7.2 Reasons Why Statement

A *reasons why* statement (also known as a *suitability statement*) is a letter or document given to a consumer by a financial services provider, before providing the product or service, which sets out the reasons why a particular financial product or service recommended to the consumer is considered to be the *most suitable* product or service from among similar products and services that the provider is entitled to advise on and recommend.

This statement is usually referred to as a *reasons why* statement, as it sets out the reasons why a product is being recommended to the consumer as being the *most suitable* product for that consumer having given due consideration to the fact that:

The provider must give a copy of this written reasons why statement to the consumer and retain a copy. A regulated entity should endeavour to get the client to sign the reasons why statement.

6.8 Guarantors

Historically, if a borrower was unable to meet the criteria for housing loans of a lender, they might ask a parent to offer a guarantee and *go as guarantor* for the housing loan. This means that if the borrower defaulted on the loan, then the lender could revert to the guarantor for the monthly repayments, partial repayment, or repayment of the loan in full.

Where a housing loan is being advanced subject to a guarantee, the Consumer Protection Code requires that the terms of the guarantee must outline the obligations of the guarantor under it, and must contain the following warning:

> ***Warning:*** *As a guarantor of this credit, you will have to pay off the debt amount, the interest and all associated charges up to the level of your guarantee if the borrower(s) do(es) not. Before you sign this guarantee, you should get independent legal advice.*

If any of the terms of the loan agreement change, the credit institution must notify the guarantor in writing.

6.9 Completing the Loan Application Form

The mortgage lender or mortgage intermediary will normally proceed to completing the mortgage application form with the client on conclusion of the previous steps, namely:

- Contacting the client;
- Providing terms of business;
- Fact-finding;
- Identifying and compiling supporting documentation;
- Meeting the money laundering obligations; and
- Making a recommendation to the client.

Information provided on the mortgage application form provides the basis for the legal contract between the borrower and the lending institution. Therefore, it is essential that the information provided is accurate and truthful and can be fully supported by documentation and finally signed off by the client as required under the Consumer Protection Code.

Lending institutions produce their own mortgage application forms which vary in layout; however, the principles of the information sought remain the same.

Many of the large mortgage brokers or mortgage packaging centres have produced their own generic application forms which are acceptable to most lenders.

The questions asked in the mortgage application form are done so for specific reasons. Non-disclosure can lead to the application being declined. Each lender has their own application form, and specific reasons for asking the questions therein. Mortgage Credit Intermediaries may also use their own generic applications forms approved by lenders.

For example, lenders ask some basic information about name, gender, date of birth, marital status, and number of children.

The reason for all the questions is not only to identify the borrower, but also to enable the underwriter to ensure the facts are supported and build up a picture of the borrower.

6.9.1 Building the Picture

If your role in the mortgage process is to prepare information received from a borrower and to make a presentation of their loan needs, then any presentation you prepare should be both a quantitative and a qualitative evaluation of the individual's current position.

When structuring a review of an individual's circumstances and/or making a case to an underwriter, you should consider:

Personal details	Create a brief picture of the client for the underwriter.	Full name, age, status, number of children.
Proposal sought	Outline the applicant's requirements.	Amount of loan required, term requested and deposit available.
Income	Outline occupation, stability of all income.	Occupation, experience, employer, industry sector.
Cost and funding	Show the total cost of the property purchase and how the borrower intends to fund the purchase.	If the individual is re-mortgaging (that is, not purchasing) you still need to show the costs (that is, total existing debt, consolidated loans, outlay, etc.) versus the funding (that is, new loan).
Pros and cons	Highlight the strengths of the case and any weakness, showing how you addressed the weakness with the client.	This is your opportunity to highlight to an underwriter that if you see weaknesses in the proposal, you have addressed your concerns with the individual. You must use the cons to strengthen the individual's case.
Recommendation	Recommendation why you feel the application should be approved.	Give strong, considered and valid reasons why you support the application.

This list is not exhaustive but gives you an indication of why information is required.

For example, if a potential borrower:

- Applies for a mortgage in the name of Sean Ó hAodha, then the identification must be in the same name and not John Hughes (that is, the English version). This ensures all loans can be correctly identified in credit searches, etc.

- Is married and if purchasing a family home, then the application should be in joint names. If the property is not jointly owned but is a family home, then a Family Home Declaration must be completed by the non-owning spouse.

- Is separated or divorced, the lender needs to see legal documentation and review issues such as maintenance, joint borrowings with ex-spouse, division of assets, succession rights, etc.

- Has young dependants, this will influence their net disposable income. Therefore, the age of the dependants is an important factor to give the underwriter an overall view of the borrower's situation and commitments. Don't necessarily assume that overheads will only apply to younger children (childcare, etc.), as many parents must fund school/college fees for older children.

- Is still on probation or has moved jobs recently, this must be investigated further. Is there a possibility that the potential borrower may not be in a secure occupation?

- Is earning income that is irregular. The lender needs to clarify how much is guaranteed income and how sustainable it is.

- Is declaring additional income, this must be supported with appropriate documentation such as bank statements, savings, etc. and supported by confirmation that any tax liability is paid.

- Is self-employed, how long have they been in business, what sector are they involved in, are they tax-compliant, how sustainable is the business and the income they draw from the business, how many staff do they have working for/with them?

- Has gathered the funds required for the deposit, how were those funds accumulated? Lump sum deposits into a bank account, shortly before an application need to be investigated. Did they receive a loan from some other source such as a credit union or family member? If someone has provided financial assistance in the purchase of a house, will they attempt to claim a legal interest in the property later? This needs to be ruled out at the outset by the mortgage lender.

It is ethical practice and in the best interest of the client to include all the information available to you on the application form. It is vital to explain anything that is out of the ordinary to the mortgage underwriter rather than to ignore it completely. Ignoring something because it is complex to explain, or which may seem to have a negative impact on the loan application, could ultimately result in a loan being declined rather than approved *with conditions*.

6.9.2 Application Timelines

Changes made to the Consumer Protection Code, effective 1 Jan 2019, have now made mortgage applications a timebound process.

Under the new rules, lenders must acknowledge receipt of a completed mortgage application within three business days and decide within 10 business days following receipt of all required information for assessment of a mortgage application. If it is not possible to reach a decision within 10 business days following receipt of all the required information, they must inform the personal consumer of the reasons why the assessment will take longer than 10 days and the anticipated timeframe within which a decision will be made.

6.10 The Underwriting Process

Before approving a loan, a lender will review the loan application form completed by the borrower(s) and confirm the information therein using the supporting documentation they have requested from the borrower(s).

Lenders will also make their own enquiries, such as contacting employers, using the services of the Central Credit Bureau and possibly reviewing other accounts held by the individual(s) within their organisation.

The person who carries out this work for a lending institution is known as a *loans underwriter.* In assessing a loan application, the underwriter works within the parameters set down by the lender’s credit policy. This policy is set by each lender and should adopt the principles of prudent lending.

The acronym **CAMPARI** can be used to describe the principles of prudent lending adopted by a lending institution when addressing the needs of a borrower.

C	Character	A lender will review the credit history (that is, how they have handled debt in the past), and review any savings record of the loan applicant.
A	Ability to repay	A lender will ensure that the individual has the ability and capacity to repay any loan by reviewing employment and income status.
M	Margin	When assessing an application, the lender needs to identify if the profit margin is adequate for the lending institution in relation to the level of risk the credit represents.
P	Purpose of the loan	Is it a legal and viable transaction? Is the loan to purchase a residential or investment property? Is the loan to consolidate debt, release equity (and for what purpose), invest in a start-up business, etc?
A	Amount	The ratio between the borrower's contribution and the amount to be lent.
R	Repayment	A lender will examine what percentage of the borrower's overall income will be spent on repaying the loan and any other financial commitments they may have.
I	Insurance/security	The property must be *marketable* and good security against the loan. The lender must also assess if collateral security such as a life policy is offered.

Mortgage underwriters check all information given, and can do so by various means, such as credit bureau searches, contacting employers and reviewing bank statements which are requested as part of the supporting documentation.

As part of the underwriting decision process, an underwriter will also review all the supporting documentation to ensure that activity through the potential borrower's bank statements accurately reflects the income and outgoings declared in the loan application form.

For example, an underwriter will check:

- That salary lodgements match the proposed salary application documents.
- Is there proof of payment of monthly rent?
- If the savings the client has declared have been built up by regular monthly lodgements to a savings account. If not, then how the deposit will be funded must be declared.
- Does the applicant rely on any form of short-term credit on a regular basis?
- Are there signs, for example, that they make cash withdrawals on a credit card?
- Is there an overreliance on overdraft facilities to live from month to month?
- Have they missed utility payments, bounced direct debits or missed other financial commitments?

- Does the borrower have any excessive lifestyle habits which might impact on future ability to meet their mortgage repayments, despite current repayment capacity? For example, do they have an online betting account where the indications are that spending could get out of control?

A good underwriter rarely misses something out of the ordinary, and as previously mentioned, a loans adviser needs to anticipate all potential questions and be able to address any issues upfront with the applicant.

6.10.1 Mortgage Intermediary Certification to Mortgage Lender

The Consumer Protection Code specifies that in respect of *each* mortgage application:

> *"Before a mortgage can be drawn down, a mortgage intermediary must submit to a mortgage lender a signed declaration that such mortgage intermediary has had sight of all original supporting documentation including bank statements, P60/certificate of earnings and other supporting documentation evidencing the* ***consumer's identity*** *and* ***ability to repay****."*

Therefore, mortgage lenders must ensure that they receive a signed declaration from a mortgage intermediary confirming that the mortgage intermediary has seen all original documentation supporting the consumer's loan application, before the lender can release a mortgage draw down.

The mortgage intermediary certification above must certify in relation to documentation the mortgage intermediary *has had sight of*. The Central Bank will not accept an undertaking from the mortgage intermediary that they will have sight of such documents.

6.11 Insurance

The lender will usually require the following insurances to be in place, *before* it will complete the process and advance a housing loan to an applicant:

- Mortgage protection life assurance cover, enough to repay the estimated loan outstanding at any time during the anticipated term of the loan; and

- Buildings insurance, for the estimated rebuilding cost of the property, with acknowledgement from the insurance company of the lender's interest in the policy.

Where a borrower is arranging suitable cover themselves (that is, not under the lender's block policies/group scheme), they will have to produce evidence for the lender that the policies are issued and in force, *before* the lender will complete the loan process.

6.11.1 Tying and Bundling Practices

The Consumer Mortgage Credit Agreements Regulations, 2016 prohibits creditors or mortgage credit intermediaries from engaging in *conditional lending*, that is, where the housing loan being arranged is offered to the consumer on the condition that they use some other service of the mortgage agent.

> *"A creditor shall not sell, or offer to sell, to a consumer a credit agreement to which these Regulations apply in a package with other distinct financial products or services or conveyancing services, auctioneering services or other services relating to land which that person may require whether or not in connection with the loan where that credit agreement is not made available to the consumer separately". Section 13 (1) Consumer Mortgage Credit Agreements Regulations, 2016*

The exception to this provision is where the creditor may request the consumer to open a savings or payment account with the purpose of servicing the loan through this account.

A creditor can bundle products together, provided they can demonstrate to the Central Bank that by bundling them there is a clear benefit to the consumer, considering the availability of the products on the market and the prices that are offered accordingly.

The *Consumer Protection Code* also imposes a similar requirement:

> *A regulated entity must not make the sale of a product or service contingent on the consumer purchasing another product or service from the regulated entity.*

For example, a bank cannot offer a loan subject to the condition that the borrower takes out a life assurance policy (whether or not connected with the housing loan) with their own life company, or through their own agency.

The prohibition on linking services applies to any other service whether or not in connection with the loan.

An insurance intermediary, for example, cannot offer to arrange a pension mortgage housing loan on the condition that the individual take out a pension policy with him.

Builders and auctioneers, who are also mortgage intermediaries, are also prohibited from selling a house on better terms to a borrower who arranges the housing loan through them rather than through another mortgage intermediary.

6.11.2 Mortgage Protection Cover

As indicated previously, the housing loan borrower will usually have the option of arranging mortgage protection cover either:

- By joining the lender's group scheme;
- Effecting a new policy, of suitable term and cover, and then offering an assignment over the policy to the lending institution; or
- Offering an assignment over an existing policy on the housing loan applicant(s) of suitable term and cover.

A borrower is obliged, under the conditions of the mortgage, to maintain the payments on the life policy for the full term of the mortgage.

6.11.2.1 Waiver of Life Cover

Should an individual be unable to effect mortgage protection cover for whatever reason and the lender is willing to continue to advance the loan to the borrower without a suitable mortgage protection policy, the borrower may be required to complete a *waiver of life cover* document. While this is not a legal requirement, most lenders feel it is prudent that the borrower completes the waiver should any issues arise in the future.

This document is witnessed and should there be more than one party to the mortgage, both parties must sign the document.

A typical *waiver of life cover* document will state:

- The borrower has been approved for a loan by a specific lending institution.
- The lending institution has offered to arrange life cover in compliance with S126 of the Consumer Credit Act 1995.
- That the borrower does not wish to take out life cover for one or more of the following reasons:
  1. They would not be acceptable to an insurer and the reasons why.
  2. They would only be acceptable to an insurer at a significantly higher premium than that payable by borrowers generally.
  3. They are over the age of 50.
  4. The dwelling is not intended to be used as a principal private residence.

  (In the case of 1 or 2 supporting documentation may be required.)
- The borrowers confirm that they understand the implications of not having life cover.
- The other party to the mortgage declares that they are aware that the joint borrower does not have life cover.

This *waiver of life cover* is then attached to the mortgage deed or held on file with the lending institution.

6.11.3 Insuring the Property

The Consumer Credit Act, 1995 imposes several obligations on housing loan lenders in relation to requiring borrowers to insure a mortgaged property:

- Any insurance which a lender requires a borrower to effect and keep effected on the property mortgaged to the lender may be effected by the borrower with any insurer and through any intermediary of the borrower’s choice.
- When the lender requires a borrower to effect such insurance for the first time, he shall notify the borrower in writing that the insurance may be effected by the borrower with any insurer and through any intermediary of the borrower’s choice and of the nature and extent of the required insurance.
- A lender cannot impose a requirement regarding the nature and extent of insurance which differentiates between insurance effected through the insurance agency of the lender and insurance otherwise arranged by the borrower themselves.

- A lender cannot impose a condition on a borrower in relation to insurance on a mortgaged property which would require the borrower to pay a fee to the lender or to incur a cost which, in either case, would not be paid or incurred by the borrower effecting insurance through the insurance agency of the lender.

The objective of the requirements above is to prevent housing loan lenders from either restricting borrowers in their choice of insurer or intermediary when effecting household insurance required as a condition of granting a housing loan.

6.11.4 Selling Optional Insurance Benefits

Some insurance products, for example, buildings insurance or mortgage protection cover, may include optional benefits. For example, mortgage protection cover may contain an option to add on accelerated serious illness cover.

The Consumer Protection Code requires that:

> *A regulated entity must not charge a consumer a fee for any optional extra(s) offered in conjunction with a product or service, unless that consumer has <u>positively indicated</u> that they wish to purchase the optional extra(s).*

Therefore, an application form for a housing loan or associated insurance cannot be framed in such a way as to require the applicant to opt out of optional benefits. They must positively opt in, for example, tick a box, for any optional benefits.

6.12 Approval in Principle (AIP)

Some lenders, prior to issuing a formal letter of offer, may indicate *approval in principle,* or *pre-loan approval* where the lender is - subject to many caveats - prepared in principle to advance a certain level of loan to the applicant. This AIP can last from three to 12 months depending on the lender.

Approval in principle is normally used by borrowers to:

- Assess how much they can afford to borrow.
- Understand the documents they will need to gather and will require for full loan approval.
- Enable them to place a booking deposit on a property (within a price range) before seeking full loan approval.

Many borrowers, especially first-time buyers, find that obtaining approval in principle gives them peace of mind and helps them focus on property within their price range.

When the right property comes along, for many first-time buyers, the ability to provide an approval in principle to the vendor/estate agent helps speed up the negotiations. This is particularly important in a rising property market.

Lenders have different approaches to the provision of an AIP. For example, some provide AIP on first meeting with a borrower based on the borrower's verbal indication of salary without requiring documentation. Others seek all income and bank documents, run an ICB check and fully underwrite the case before providing an AIP.

6.13 Mortgage Agreement

6.13.1 Introduction

Once a borrower has found a property and the loan is formally approved by the lender, the loan offer is issued. The borrower should have the loan offer in place before signing any contract to purchase the property. This can lead to a requirement to have an additional valuation report done on a property before the loan is drawn down. This is because the new regulations issued by the Central Bank require that a valuation report must not be more than four months old at the time of loan drawdown.

The loan offer is the legal basis for the relationship between the lending institution and the borrower. The borrower should be advised to keep this document safe should any query arise in the future that leads to a dispute.

6.13.2 The Loan Offer

The loan offer, if issued to a consumer as defined in the Consumer Credit Act 1995, must comply with the conditions of the Act.

A loan offer, that is a housing loan agreement between the lender and borrower, will normally contain the following information:

- **Principal details of the loan.** This must be in a specific format as defined by the Consumer Credit Act, 1995 (CCA). The CCA requires a lender to provide details of the effect on the monthly repayment of a 1% increase in the first-year interest rate. This must be on the front page of the loan offer.

- **Impact of stress test notification**, that is, the effect of a 2% interest rate increase. This is a requirement under the Consumer Protection Code (see 4.3.3 – Affordability/Stress Testing).

- **European Standardised Information Sheet (ESIS)** – information in relation to the loan provided as outlined in S.15.2 European Union (Consumer Mortgage Credit Agreements) Regulations, 2016.

- **Consumer Credit Act, 1995 warnings** such as:

> *“Warning your home is at risk if you do not keep up repayments on a mortgage or any other loan secured on it”.*

> *“The payment rates on this housing loan may be adjusted by the lender from time to time”.*

> *“Warning, there is no guarantee that the proceeds of the insurance policy will be sufficient to repay the loan in full when it becomes due for repayment.”*

- **Certain conditions** – these conditions of offer fall into two categories:
  - All lenders have standard conditions of offer, applicable to all mortgages.
  - There may also be specific conditions laid down for an individual borrower and specific loan.
- **Suitability statement** – a statement which sets out the reasons why the product(s) or service(s) offered or recommended is/are considered suitable, or the most suitable, for the borrower's needs, objectives and circumstances.
- **Acceptance form** – where the borrower consents to the terms and conditions of the lender and, if applicable, that they have received and read the suitability letter issued by the lender.
- **Solicitor's pack letter**: A copy of the letter issued to the client's solicitor which includes the solicitor's pack which is a set of documents which must be completed by the solicitor. It normally contains the lender's cheque requisition and the Law Society of Ireland approved solicitor's letter of undertaking and solicitor's certificate of title. (This is described in more detail later in this chapter).
- **Distance marketing information** – This document is for information purposes and is applicable only where the contract between the borrower and the lender is concluded at a distance and the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004 apply. A distance contract is a contract where there is no face to face meeting between the borrower and the lender or one of their authorised agents or appointed mortgage intermediaries / mortgage credit intermediaries.

6.13.2.1 Principal Details of the Loan

Under the Consumer Credit Act, 1995, the lender must outline on the front page of the loan offer the information as demonstrated below.

You will note that the *Consumer Credit Act 1995* (CCA) requires a lender to provide details of the effect on the instalment amount of a 1% increase in the first-year interest rate (see point 10 in the example below).

Form of notice to be included on front page of a housing loan agreement (Consumer Credit Act 1995 (CCA))

Important information as at dd mm yy

1.	Amount of credit advanced	: €
2.	Period of agreement	:
3.	Number of repayment instalments	:
4.	Amount of each instalment	: €
5.	Total amount repayable	: €
6.	Cost of this credit (5 minus 1)	: €
7.	APRC*	:
8.	Amount of endowment premium (if applicable)	: €
9.	Amount of mortgage protection premium (if applicable)	: €
10.	Effect on amount of instalment of 1% increase in first year in interest rate**	: €

* Annual percentage rate of charge.

** This is the amount by which the instalment repayment will increase in the event of a 1% increase in the interest rate at the start of the first year on which the above calculations are based.

6.13.2.2 Impact of Stress Testing

As previously mentioned in Chapter 4, the *Consumer Protection Code* 2012 requires the lender to calculate the effect of a 2% interest rate increase in certain circumstances. Lenders are required to provide the information under provisions 5.9 and 5.12 of the Consumer Protection Code, in addition to the information required to be issued to consumers under the CCA. An additional page is normally supplied in the loan offer which outlines the effect of a 2% increase in the interest rates. The requirement for this test does not apply to mortgages where the interest rate is fixed for a period of five years or more.

Example (Based on an Example from the EBS Loan Offer)

Property to be mortgaged

Joe Fish
4 Main Street
Letterkenny
Co Donegal

Ref: 12345678 Date: 01/06/2024

Loan Offer

Dear Mr Fish,

I am pleased to inform you that EBS has approved a repayment home loan of € 000,000.00 towards the purchase of the above property at a cost of € 000,000.00 subject to the following terms and the attached EBS home loan conditions.

Note: an increase in interest rates of 2% would translate into an additional € 000.00 per month.

Type of loan:	Repayment
Total amount of loan:	€ 000,000.00
Cheque issue amount:	€ 000,000.00
Monthly repayment (fixed Yrs 1-2):	€ 0,000.00 (see important note)
Interest rate (Fixed Yrs 1-2):	0.00% (see important note)
After two years:	Variable (currently 0.00%)
Repayment period (years):	30 approx.

Important Note on Fixed Rate:

As the fixed interest rates we offer change from time to time, EBS cannot guarantee that the interest rate specified above will be the same on the date you drawdown your loan. The interest rate that will apply to your loan for the agreed fixed period will be the appropriate fixed interest rate prevailing on the date you drawdown. If we no longer offer fixed interest rates on the date you drawdown, the appropriate variable interest rate prevailing on that date will apply to your loan.

In line with the terms of the fixed rate, an early redemption charge is payable in the following cases where the fixed rate period has not expired:

1. If a capital payment or full repayment is made to the loan (including payments received from insurance claims).
2. If the loan is converted to a variable rate or another fixed rate.

The redemption charge is calculated as follows: amount repaid early/being converted to another rate multiplied by (original cost of funds minus cost of funds for fixed rate period remaining) multiplied by remaining term in days divided by 365.

If we assume the change in cost of funds is a decrease of 1% and the above loan balance (or fixed portion) was converted to another rate six months after drawdown; an example of an early redemption charge on your account would be as follows:

Balance outstanding after six months * 1% * number of days remaining on fixed rate/365.

6.13.2.3 European Standardised Information Sheet (ESIS)

In addition to the legal requirement under the Consumer Credit Act to provide the information notices as outlined above, institutions must also comply with European Union (Consumer Mortgage Credit Agreements) Regulations, 2016 (CMCAR).

Creditors must issue the *European Standardised Information Sheet (ESIS)* for the purpose of enabling borrowers compare mortgages. This document cannot be modified by lenders and must remain in this format.

This sheet which is usually attached to the letter of offer includes the following information:

1. Introductory text: consumer/lender details, notice on which the document is produced and how long the information is valid for.

2. Lender and contact details and, where applicable, details of the credit intermediary.

3. Main features of the loan (amount, duration, type, CPT, LTV).

4. Interest rate and other costs (indicate type of rate and duration of fixed period). Annual percentage rate of charge (APRC) based on national regulation or effective rate, where relevant.

5. Amount of credit advanced and currency.

6. Duration of home loan agreement.

7. Number and frequency of payments (may vary).

8. For repayment home loan, amount of each instalment (may vary).

9. For interest-only home loan:

   a. Amount of each regular interest payment.

   b. Amount of each regular payment to the repayment vehicle.

10. Additional non-recurring costs where applicable.

11. Additional recurring costs (not included in 8).

12. Early repayment.

13. Rights of the borrower and internal complaint schemes.

14. Illustrative amortisation table.

15. Non-compliance with the commitments linked to the loan and the consequences for the borrower.

16. Obligation to domicile bank account and salary with lender.

Under the EU Mortgage Credit Directive (MCD), there was a requirement to introduce a minimum **seven-day cooling off period** after receiving the loan offer, during which the consumer could compare other offers or seek advice.

This was one of the national discretions allowed for in the MCD. In Ireland, the CMCAR decided to allow **a period of 30 days** for the consumer to decide to accept the offer.

6.14 The Conveyancing Process

It is not possible in Ireland to complete the purchase or sale of a property and arrange a mortgage without legal advice and assistance. **This is the area of law known as *conveyancing***. The conveyancing process in Ireland (that is, transfer of ownership from the vendor to the purchaser) must be carried out by a solicitor. The solicitor is responsible for carrying out the work following instructions by the borrower to act on their behalf.

Once all the steps for arranging a housing loan are completed between the borrower and lender, and the loan offer is issued as outlined previously that is:

- Meeting the borrower;
- Fact-finding and collection of information and supporting documentation;
- Obtaining the valuation report on the property;
- Making a recommendation on a suitable product;
- Completing the underwriting process;
- Arranging insurances;
- Issuing the loan offer/mortgage agreement;

The borrower's solicitor is required to finalise their part of the process. The solicitor must carry out a review of the loan offer and complete the related legal work. This work involves a review of various legal documents related to the purchase of the property, for example, contract of sale and the property title.

The solicitor provides the lending institution with an undertaking that the legal work will be completed to enable the property and mortgage process to enter the completion stage (also known as closing). The borrower's solicitor can also act on behalf of the lending institution.

During this completion stage, separate but related processes take place:

- Ownership of the property passes from the vendor to the purchaser, that is, the borrower[21].
- A mortgage in favour of the lender is placed on the property to the level of the loan granted to the borrower.
- The solicitor stamps and registers the title deeds in the land registry.
- The solicitor forwards any outstanding documentation to the lender.

6.14.1 Contract of Sale

A *contract of sale* is a legally binding document which outlines the terms and conditions on which the vendor is selling the property and the purchaser is buying the property. The signing of this document by both parties binds them into the property transaction.

[21] *Also known as conveyancing that is, conveying the interest in the property from one individual to another.*

The ***contract of sale*** includes the following information:

- Names and addresses of the vendors and purchasers.
- The purchase price, deposit, balance and closing date.
- A description of the property and the type of title being offered, (freehold or leasehold, Land Registry or Registry of Deeds).
- It lists the planning and search documents, copies of which will be furnished by the vendor's solicitor before the contract is signed. Where a new house is involved this would include site plans, specs, floor area, certificate, etc.
- It also contains certain non-title information on such matters as services, property contents, and conditions of sale.
- Any special conditions that the vendor's solicitor deems necessary considering the title being offered. For example, any qualifications/clarifications concerning difficulties with planning, easements, rights of way, title, and any required alteration to the general conditions in the contract.
- The purchaser's solicitor can insert special conditions into the contract of sale in agreement with the vendor's solicitor. This cannot happen if the property is being sold at auction.

6.14.2 Title Documents

The purchaser's solicitor will also receive the *title documents* from the vendor's solicitor, which will need to be reviewed before the contract of sale is signed.

The *title documents* are the documents that transfer the property from person to person and they include details of the property, such as freehold or leasehold.

They include the title deeds which give a description of the property, and outline any burdens, liens, rights of way, etc, attached to the property.

Title documents **also include:**

- Planning documents;
- Searches;
- Family home declarations;
- Deeds of charge/mortgage;
- Declarations.

Once this documentation is received, the purchaser's solicitor carries out the following steps:

- **Pre-contract enquiries** – a pre-contract enquiry is checking the title of the property, search on planning issues, checking that the vendor has the right to sell the property and raising any queries with the vendor's solicitor.
- A **purchase deed** is drafted. This document will transfer the property into the purchaser's name.

- The **contract of sale** is signed by the borrower and this sets a closing date for the property purchase as specified in the contract.

- **Good marketable title** is confirmed to the lending institution by the solicitor following title searches. A title search is where the purchaser's solicitor ensures there are no burdens or charges registered against the property. This means that the property title complies with the standards of conveyancing practices in Ireland. In other words, the property, if required, can be sold by the lender without difficulties.

  This is confirmed to the lender by way of the *certificate of title*. This is a standard Law Society-approved form which confirms (amongst other things) that the property has *good marketable title*.

This document contains details of the solicitor's firm and confirms that they have professional indemnity insurance. The solicitor advises the lender that they will have a *first legal charge* over the property to be mortgaged.

6.14.3 Mortgage Documents

The solicitor is also responsible for ensuring that the mortgage in favour of the lender is properly executed. This confirmation is included in the *solicitor's undertaking.*

To enable the solicitor to comply with their undertaking to the lender, they must:

- Review the loan offer with the client and ensure the client has complied with all the special conditions of the loan offer.

- Prepare the mortgage deed for signing. This will then be lodged with the title deeds in the land registry or registry of deeds.

- Satisfy themselves regarding the status of the property in relation to the family home/shared home legislation. They must confirm if the property is a family home or not.

- Ensure there are no parties (other than the borrower) who may have a beneficial interest in the property. The borrowers must sign a *deed of confirmation* to this effect.

- Ensure the assignment of life policy is completed.

Prior to closing, the solicitor will return the signed solicitor's undertaking and the *certificate of title* to the lender. Once satisfied, the lender will confirm that all is in order to release the loan cheque.

The borrower's solicitor will then send to the lender a cheque requisition form indicating the closing date. On the day of closing, the solicitor arranges for any remaining mortgage documents to be signed by the borrower.

6.14.4 Solicitor's Undertaking

As mentioned, the ***solicitor's undertaking*** *is submitted to the lender by the solicitor.* The solicitor's undertaking is a standard document approved by the Law Society. In relation to property transactions, a signed s*olicitor's undertaking* is a legally binding promise from a solicitor that, amongst other things they will send the lender an executed mortgage deed[22], stamped if required, the registered mortgage, all title deeds and a certificate that there is *good marketable title*.

[22]*All parties have agreed to the terms and conditions of the contract and confirmed agreement by signing the written document.*

This ensures that if the borrower defaults on the loan and the lender must dispose of the secured property, the lender would be able to sell the property without difficulty, subject to market conditions, and thereby realise its worth.

Within the document known as the **solicitor's undertaking**, the following are confirmed by the solicitor:

- Whether the mortgaged property is registered or unregistered.

- Having reviewed the title, the solicitor can confirm that the borrower will acquire good marketable title.

- Having prepared the mortgage deed, the solicitor confirms that the borrower has executed the mortgage deed. This means the borrower has signed in accordance with the legal requirements the lender's standard mortgage deed document.

- A deed of confirmation is signed, if applicable. This is usually required when there is a third-party interest in the property, say, a parent who is living in the property but who has no interest or legal right to the property.

  It is required by the lender to ensure that the third party confirms they have no interest in the property and must be signed in the presence of a solicitor to ensure that the third party has taken independent legal advice.

- Whether the property is a family home or not. If it is not the family home, but only one spouse is on the title deeds and mortgage, then the non-owning spouse must sign a deed of confirmation that it is NOT the family home.

- There is enough money available to pay the stamp duty and the title deeds will be lodged with the appropriate registry as soon as is practicable (but within four months unless previously agreed with the lender).

- That the solicitor will furnish the stamped and registered deeds, the solicitor's certificate of title, the mortgage - that is, the legal document showing the lender's interest registered - and any deed of confirmation or life policy that is required.

6.14.5 Post-Closing Items

Once the transfer of title is complete the solicitor is responsible for completing issues such as paying off outstanding loans, which might have been a condition of the lender's loan offer. The solicitor will also arrange for the legal stamping of the title deeds and transferring any stamp duty to Revenue, if applicable.

6.15 Loan Refusal

Under the Consumer Credit Act, 1995, where a lending institution refuses to provide a housing loan to an individual, the individual is entitled to ask the lender within 28 days of the loan refusal to disclose to him or her *"...the name and address of any person, from whom he sought information concerning the financial standing of the consumer, who gave information which influenced the refusal."*

In addition to the above requirement, the Consumer Protection Code, 2012 requires that where a lender refuses a loan then they must set out the reason why the loan was not approved.

> *"Where a personal consumer's formal application for credit is turned down by the regulated entity, it must clearly outline to the personal consumer the reasons why the credit was not approved. The regulated entity must offer to provide the reasons, on paper or on another durable medium, to the personal consumer. If requested by the personal consumer, the regulated entity must provide the reasons, on paper or on another durable medium, to the personal consumer."*

However, for any loans that are regulated under the EU (Consumer Mortgage Credit Agreements) Regulations, 2016, the following provisions apply when a loan has been refused based on a credit reference search.

> *"Where the credit application is refused, the creditor shall inform the consumer without delay of the refusal and, where applicable, that the decision is based on automated processing of data. Where the refusal is based on the result of the database consultation, the creditor shall inform the consumer of the result of such consultation and of the particulars of the database consulted." (S.I No. 142/2016, Section 19.7)*

In effect, this means that a regulated entity must advise a consumer without delay of a loan refusal and not wait for the consumer to ask the reason why.

6.15.1 Valuation Report

As indicated previously, where a loan application is refused, a housing loan lender must:

- Refund the cost of the valuation report to a housing loan applicant; and
- Give the applicant a copy of the valuation report.

6.16 Credit Reporting Act, 2013

The Credit Reporting Act 2013 provided for the establishment and operation of a statutory Central Credit Register (CCR) by the Central Bank. The reporting obligations apply to over 500 credit information providers (CIPs), such as banks, credit unions, credit card providers, asset finance houses, retail credit firms, NAMA, loan book purchasers, local authorities and licensed moneylenders.

The Government gave a commitment as part of the EU/IMF programme of financial support for Ireland to develop a legal framework that would facilitate the collection and centralisation of financial information on borrowers. One of the aims is to help lenders make informed lending decisions and to protect potential borrowers from excessive debt. As the register is operated by the Central Bank, it also allows the Bank to gain better insight into financial markets and it supports several functions such as prudential supervision and financial stability.

6.16.1 Credit Information Subjects / Credit Information Providers

The CCR contains a *single borrower view* of all credit agreements relating to a borrower, (known as a *credit information subject* (CIS) in the Act), who obtains credit from lenders (known as *credit information providers* (CIPs), in the Act).

CISs include consumers, individuals, sole traders, partnerships, companies and other entities that are resident in the State at the time of making the credit application, or where the credit is governed by Irish law. CISs will also include guarantors who provide guarantees or indemnities in the future.

A *credit information provider* means:

- A regulated financial services provider;
- NAMA;
- A local authority;
- Licensed moneylenders;
- Firms that have acquired loan books from financial institutions in recent years;
- Asset finance houses; or
- Any person not listed above who provides credit, other than:
  - The bank or the central bank of any country or territory other than the State; or
  - A pawnbroker, within the meaning of the Pawnbrokers Act 1964.

The Act includes entities that are regulated by the Central Bank and those that are not.

A *credit information subject* means a person who:

- Has made a credit application;
- Has made a credit agreement for the provision of credit to the person; or
- Is a guarantor.

6.16.2 Legal Obligations

There is a legal obligation on Credit Information Providers to:

- Submit *personal and credit information* on loans over € 500 and
- Access the Central Credit Register when considering credit applications for € 2,000 or more.

Otherwise, Credit Information Providers *may* access the Central Credit Register when:

- A borrower has made an application for a new loan <€ 2,000 – this is called a *New Application Enquiry*
- A borrower has applied to have an existing loan restructured
- There are arrears on an existing loan, or the borrower has exceeded the limit on an overdraft or credit card – these are called *Monitoring Enquiries.*

The system also requires reporting and is regulated by the Central Bank. This mandatory reporting requirement on credit information providers ensures that the credit register contains up to date and robust data.

6.16.3 Central Credit Register

Since 30 June 2017, personal and credit information have been submitted for the relevant products on a monthly basis. This information relates to relevant loans existing at that date and any new loans of € 500 or more taken out since then in line with the relevant phase. Any missed payments on these loans as of 30 June 2017 were reported, but the actual amount of any arrears was not.

6.16.3.1 What Loans are Included?

Credit is broadly defined - a loan, deferred payment or other form of financial accommodation - but there are several specific exclusions such as pawnbrokers and utilities such as mobile phones, gas and electricity.

Relevant credit agreements as outlined above are shown on the CCR if;

- The loan is for € 500 or more; and
- The borrower lives in the State at the time of applying for the loan;

OR WHERE

- The loan agreement or loan application is governed by Irish law.

Loans that are **not** included at this time include;

- Utility Bills
- Pawnbrokers
- Income / Salary Information
- The Courts Service: information about instalment orders or attachments of earnings
- The Insolvency Service of Ireland: Information about Debt Relief Notices, Debt Settlement Arrangements, Personal Insolvency Arrangements or Bankruptcy etc.
- Deposit Accounts
- Tax Liabilities

There is an audit trail on each record, controls on access, data protection requirements as well as measures to mitigate the opportunities for identity theft.

6.16.3.2 Credit Reports

The Central Credit Register matches information together to form a Single Borrower View which, on request, is provided in the form of a credit report.

The consent of the Credit Information Subject is not required for this processing.

For compliance with data protection obligations and the Act, Credit Information Providers must ensure that the information they submit to the Central Credit Register is accurate, complete and up to date.

When a Credit Information Provider makes a New Application Enquiry, the information is captured on the Credit Information Subject’s credit report under the Summary of Credit Applications. This information is deleted after six months. A footprint is also created and notes that the footprint is in connection with a new application for credit.

When a Credit Information Provider makes a Monitoring Enquiry, only a footprint is created and the reason for the enquiry - for example, breach of terms - is recorded on the footprint. Footprints are visible on credit reports provided to Credit Information Providers for two years, and to Credit Information Subjects (if a Credit Information Subject requests their credit report) for five years. Credit reports requested by a Credit Information Provider do not contain the names of any other Credit Information Providers. In other words, while the details of a loan and repayment performance will be included, the name of the Credit Information Provider will not. Credit reports requested by Credit Information Subjects identify the names of all Credit Providers included in the credit report.

6.16.3.3 Credit Information Subjects Rights

Credit Information Subjects have four key rights:

1. **Insert an explanatory statement on a credit report**

   Credit Information Subjects have the right to place an explanatory statement of 200 words or less, relating to any of their information held on the Central Credit Register, and this will be included on their credit report.

2. **Apply to have information amended**

   Credit Information Subjects have the right to make an application to their Credit Information Provider and the Central Bank to amend information held on the Central Credit Register about them, if they believe it is inaccurate, incomplete or not up to date.

3. **Report and be informed of suspected impersonation**

   Credit Information Subjects have the right to give notice to a Credit Information Provider or the Central Bank if they reasonably believe they have been, are being, or may be about to be impersonated by any person.

4. **Obtain a credit report**

   Credit Information Subjects who are individuals can submit a request for their credit report at any time free of charge, subject to such requests not being excessive in line with the General Data Protection Regulation. This is called ‘fair usage’. Credit Information Subjects who are not individuals (for example companies) may submit a request for a credit report once a year free of charge. There will be a charge of €6.35 for any subsequent request within the year.

Sample Credit Report

Central Credit Register Credit Report

Report Created On 26/01/2018 17:00

Credit Information Subject (CIS)

CIS Code	200000316	Last Update	30/06/2017
Forename	ROBERT	Surname	SMITH
Date of Birth	06/04/1972	Gender	Male

Identification Data

Identification Type	PPSN	Identification Number	1234567TW

Address Data

Current Main Address			
Full Address	8 HAMPTON STREET, URLINGFORD, CO KILKENNY, IRELAND	Eircode	-
Last Update	30/06/2017		
Current Additional Address			
Full Address	701 WOODCOURT HEIGHTS, RATHGAR, CO DUBLIN	Eircode	-
Last Update	30/06/2017		
Historical Address			
Full Address	70 HAMILTON AVENUE, LOUGH ATALIA ROAD, GALWAY	Eircode	-
Last Update	30/06/2017		

Contact Data

Contact Type	Mobile Phone	Contact	086XXXXXXX

Summary of Credit Agreements & Credit Applications

Summary of Active Credit Agreements

CCR Contract Code	CIP Name	CIP Contract No.	Product Type	Role	Financed Amount / Credit Limit €	Outstanding Balance €	Current Credit Status	Linked CIS	Note
P35437710	Test CIP 1	8000045086	Personal Loan	Borrower	2,000	1,820	Not applicable	-	-
Q00002036	Test CIP 1	M100133432	Mortgage - Home Loan	Borrower	180,000	114,279	Not applicable	-	-
H06821789	Test CIP 2	CA00000231 67281116	Credit Card	Borrower	4,000	2,200	Not applicable	-	-
					Outstanding Total Balance	118,299			

Summary of Closed Credit Agreements

CCR Contract Code	CIP Name	CIP Contract No.	Product Type	Role	Financed Amount / Credit Limit €	Date of Closure	Last Credit Status	Linked CIS	Note
G00001547	Test CIP 1	4001	Overdraft	Co-Borrower	5,000	26/07/2017	-	-	

Summary of Credit Applications in last 6 months

CCR Contract Code	CIP Name	Contract Status	Product Type	Role	Credit Amount Sought €	Contract Request Date	Linked CIS	Note

Sample

CCR Contract Code	CIP Contract No.	Product Type	CIP Name
Q00002036	M100133432	Mortgage - Home Loan	Test CIP 1

Contract Data

Product Type	Mortgage - Home Loan	CIP Name	Test CIP 1
CCR Contract Code	Q00002036		
CIP Contract No.	M100133432		
		Last Update	31/12/2017
Contract Phase	Active	Role	Borrower
Start Date	20/06/2002	Linked CIS	-
Maturity Date	20/06/2032	Consumer	Y
Contract Actual End Date	-	Original Currency	Euro

Financed Amount	180,000	Payment Frequency	Monthly
		Payment Method	Direct Debit
Total Number of planned payments	360	Date of First Payment	10/07/2002
		Date of Next Payment	10/01/2018
Next Payment Due	380	Date of Last Payment	10/12/2017
Last Payment Made	380		

Outstanding Balance	114,279	Number of Payments Past Due	-

Reorganised Credit

Reorganised Credit	-	Date of Reorganised Credit	-
Original CCR Contract Code	-	Reorganised CCR Contract Code	-

Performance Data

Year/Month	Outstanding Balance	No. of Payments Past Due	Credit Status	Restructure Event
2017/12	114,279	-	Not applicable	Interest Only < 12 months
2017/11	114,279	-	Not applicable	Interest Only < 12 months
2017/10	114,279	-	Not applicable	Interest Only < 12 months
2017/9	114,279	-	Not applicable	-
2017/8	114,756	-	Not applicable	-
2017/7	115,231	-	Not applicable	-
2017/6	115,705	-	Not applicable	-

Footprint

FOOTPRINT: Record of Access in the last 5 years

ACCESSED BY	Enquiry Date	Function	Purpose
Test CIP 2	*13/11/2017	Monitoring Enquiry	Breach of Terms
Test CIP 1	*04/09/2017	Monitoring Enquiry	Restructure

**Note: Enquiry commences 20 March 2018, dates above for illustrative purposes only*

Sample

Review

Now consider the main teaching points, which were introduced in this chapter. They are listed below. Tick each one as you go through them.

- [ ] Mortgage intermediary and insurance intermediary authorisation and obligations under the Consumer Credit Act and the Consumer Protection Code
- [ ] Making a recommendation for a mortgage product and the Consumer Protection Code Requirements
- [ ] The completion of the mortgage application form and the approval in principle
- [ ] The closing of the property and mortgage transaction – conveyancing process and lender process and requirements
- [ ] The Central Credit Register and the Credit Reporting Act, 2013

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Sample Questions

The answers to these questions can be found in your Study Hub.

1. If an individual wishes to set up as a mortgage intermediary in Ireland, they must be authorised by the:

   A. National Consumer Agency.
   B. Financial Services Ombudsman.
   C. Central Bank of Ireland.
   D. Banking and Payments Federation Ireland.

2. When a mortgage credit intermediary is providing a terms of business to a new consumer, the document MUST include:

   (i) the regulatory status of the mortgage credit intermediary.
   (ii) a general statement of charges imposed directly for its services.
   (iii) the agent's VAT number.

   A. (i) only.
   B. (i) and (ii) only.
   C. (i) and (iii) only.
   D. (i), (ii) and (iii).

3. Andy, a first-time buyer and employee of MakeIT Services, applies to Delta Bank for a housing loan. Which of the following documentation is he likely to be asked to provide to Delta Bank?

   A. Projected income for the next three years.
   B. Employment Detail Summary.
   C. A revenue tax clearance certificate.
   D. An up-to-date mortgage statement.

4. Under the Consumer Protection Code, 2012, linking services is prohibited. The term linking services refers to:

   A. a lender offering a loan to a borrower, on condition that the borrower uses some other financial service of the lender.
   B. a mortgage intermediary acting solely for one mortgage lender and not providing any other service.
   C. a mortgage broker offering the borrower the option of taking other financial services, separate from the housing loan.
   D. a mortgage intermediary acting solely for one mortgage lender and only offering the services of that lender.

07

Re-mortgaging and Stage Payments

Chapter 7 deals with re-mortgaging and debt consolidation.

Not everyone who takes out a housing loan does so for the purpose of buying a property. At times individuals have built up some equity in the value of their property and wish to release this equity for several reasons. Chapter 7 looks at some of these types of equity release products.

This chapter also outlines those transactions which older borrowers undertake. They may already have repaid their original housing loan and are at a stage in their lives where they may need to receive a payment against the value of their property. The two main types – lifetime loans and home reversion agreements - are compared against each other.

Learning Outcomes - after studying this chapter, you should be able to:
outline the types and features of loans used for debt consolidation and equity release;
calculate the total cost of credit of a debt consolidation loan; and,
describe the features of both a home reversion agreement and a lifetime loan and discuss the differences between them.

Chapter weightings	Number of questions which may appear		
In the exam, questions are taken from each chapter based on the following approximate chart:	Chapter	Minimum	Maximum
	7	3	5

7.1 Re-mortgaging

A re-mortgage is a housing loan taken out with a new or existing lender to:

- Release equity to carry out home improvements.
- Consolidate existing debt in a bid to reduce overall monthly loan repayments.
- Release equity for other non-debt related purposes such as the purchase of an investment property, holiday home, etc. As the additional loan would be given on a secured basis, the interest rate would normally be lower than that available on an unsecured loan.
- Reduce the interest rate applied to their loan or extend the loan term, where there would usually be little or no increase in the actual loan amount.

A re-mortgage can take place by moving to a new lender (switching) or restructuring the loan with an existing lender.

Historically, in pursuit of a lower interest rate or an extended loan term, an individual would opt to move their mortgage to another lending institution as lenders tended to offer lower rates to new customers. In recent years, a substantial proportion of borrowers were in negative equity and not in a position to search out rates that were more competitive by re-mortgaging. Neither were they in a position to borrow against the value of their home to release equity for, say, home improvements, even if their income could sustain such a loan, due to property prices. However, as is the cyclical nature of financial markets, with property prices and incomes once again rising, we see lenders enter the market (either directly or via brokers) with suitable re-mortgage products and they are now actively marketing them to consumers.

In general, the decision to re-mortgage must be a considered decision for the following reasons:

- Although the mortgage was already approved and granted by one lending institution, where an individual is switching their mortgage, they must go through the full mortgage process with the new lender. This can be very time consuming and all supporting documentation must be provided.
- There are costs involved in re-mortgaging, like the costs in taking out the original mortgage (excluding stamp duty as the property is not being purchased):
    - Legal fees;
    - Valuation fee;
    - Fixed rate penalty (if switching from a fixed rate with an existing lender).
- Additional life assurance costs.
- If an introductory rate for new business is offered and is lower, a borrower must look at the long-term rates offered by the lending institution to ensure that once their special introductory rate is finished, they do not end up on a higher interest rate than that which was offered by their previous lender’s re-mortgage product.

The Central Bank introduced changes to the Consumer Protection Code 2012, effective from 1 Jan 2019 to provide additional transparency and to facilitate mortgage switching for consumers. These changes include the following:

- The standardised pack of switching information from the lender must include, at a minimum, the lender's mortgage switching guide, including prescribed information, application forms, information on timelines, the mortgage process and the documentation that will be required from the consumer.

- The same protection to all consumers in relation to incentives will be applied to all mortgage holders; *i.e.* new, existing and switching mortgage holders. This is to ensure consumers have enough knowledge and understanding of the nature and scale of the benefit of an incentive to them, including the potential impact of an associated benefit on the cost of their mortgage.

- In relation to potential switching savings, the changes require all lenders to provide, if requested, an indicative comparison of the total interest payable on the consumer's existing mortgage and the interest payable on the new mortgage or interest rate offered by the lender. Where the lender provides this information, they must also provide a link to the relevant section of the Competition and Consumer Protection Commission's (CCPC) website to allow consumers to compare potential mortgage switching savings available from other lenders.

The same rules referred to in 6.10.2 regarding mortgage application timelines must be applied to consumers switching mortgages.

Some borrowers re-mortgage for the purpose of debt consolidation. Debt consolidation is where the borrower is effectively funding current loans over a longer period for example, 20- to 25-year term. If an individual must fund lifestyle spending, then it is in some cases an immediate indication that the individual is having difficulty managing their current financial situation. For regulated entities, the process of offering and managing debt consolidation in Ireland is predominantly governed by the Consumer Protection Code. We will look at the re-mortgaging process for debt consolidation in brief.

7.2 Debt Consolidation Housing Loans

7.2.1 What is a Debt Consolidation Loan?

A debt consolidation housing loan is a housing loan used to pay off other more expensive *unsecured* personal loans and debts, such as car loans, personal loans, credit card balances, etc. The consolidation loan may be secured on a previously mortgage-free property or as a top-up loan on an existing housing loan.

The new consolidation loan amount is repaid in the normal manner, for example, using a capital and interest mortgage. The borrower must make repayments and the loan eventually must be repaid.

Typically housing loan borrowing rates will be considerably lower than the interest rates charged on unsecured loans such as credit card balances, car loans, personal loans, etc.

While such consolidation can have the effect of reducing loan repayments in the short run compared to the repayments the individual was already making on the original loans, it should be noted that:

- The new or increased housing loan is now secured on the individual's home, raising the prospect of the borrower potentially losing their home if they subsequently default on this housing loan. Effectively, previous borrowings which were not secured on the individual's home are switched for borrowings which are so secured.

- The housing loan repayments may have to be made for a much longer term, that is, the remaining term of the housing loan, compared to the much shorter-term nature of the existing borrowing. For example, a car loan might only have three years left to run.

The borrower may well pay more in the long run under the housing loan than he or she would have paid had they continued paying off their short-term debt.

- There may be fees and costs related to the consolidation of loans into the housing loan. For example, a revised valuation of the property may be required by the lender, legal fees and increased mortgage protection insurance premiums may be payable etc.

- The lender may charge a higher interest rate on a loan for debt consolidation than was charged on the existing mortgage.

- By increasing the mortgage amount, the borrower will increase the loan-to-value (LTV) ratio of the mortgage, and possibly trigger an increase in the mortgage interest rate in respect of the whole mortgage amount.

- If the borrower is not financially disciplined, there is the danger that they will, following consolidation of their debt into a housing loan, revert to their old habits and start again to run up new short-term expensive debt - for example, credit card balances - which can increase the risk of default on the housing loan.

A lender must carry out an affordability and suitability assessment prior to advancing additional credit to a personal consumer, whether by way of a top up on an existing loan or by a new agreement to provide credit.

Example

An individual who already has a € 100,000 housing loan and € 58,000 of other short-term loans is seeking to consolidate debt.

The consolidated loan assumes the borrower re-mortgages with the lender for € 58,000, that is, increases his mortgage to € 158,000, with the € 58,000 funds released then used to repay the € 58,000 of other short term more expensive loans.

Original mortgage and personal loans:

Loan details	Amount owing	Remaining term	Typical APRC	Monthly payments	Projected cost of credit*
Existing mortgage	€ 100,000	20 years	4.1%	€ 607.29	€ 45,750
Home improvement loan	€ 30,000	7 years	7.9%	€ 462.04	€ 8,811
Car loan	€ 18,000	5 years	8.5%	€ 366.58	€ 3,995
Personal loan	€ 10,000	5 years	10.1%	€ 210.80	€ 2,648
Total	**€ 158,000**			**€ 1,646.71**	**€ 61,204**

New *consolidated* housing loan:

Loan details	Amount owing	Remaining term	Typical APRC	Monthly payments	Cost of credit
New mortgage	€ 158,000	20 years	4.1%	€ 959.52	€ 72,285

Change in monthly cash flow repayments: **- € 687.19**

Additional cost of credit of consolidated loan: € 72,285 less € 61,204 = **€ 11,081**

This means that the borrower has lowered their monthly outgoings. However, as they have now extended the term of the loan, the cost of credit has increased; that is, they will pay an additional € 11,081.

7.2.2 Cost of Credit

We see in the example above that we refer to the *cost of credit*. The total cost of credit is the total projected loan repayments based on the current interest rate charged and charges to be paid on the loan, less the capital sum borrowed.

Example

The projected loan repayments: € 959.52 per month x 12 = € 15,514.25.

You then multiply by 20 (that is, 20 years) to get € 230,284.80 (based on current interest rate charged) and any charges paid on loan.

Less the capital sum borrowed, that is, € 230,284.80 - € 158,000 = € 72,285 (rounded up).

By comparing the cost of credit, a borrower can understand the true cost of their loans and they can determine if an offer which might look cheaper is in fact the best option for them.

While in the short run, this borrower manages, through a debt consolidation housing loan, to reduce immediate monthly repayments by almost € 690, in the long run, they pay more in interest with the consolidation loan. The reason for this is because the repayments must be made over a much longer term than the personal loans.

7.2.3 Consumer Protection Code

When a regulated entity is advertising debt consolidation loans, the Consumer Protection Code imposes two restrictions on such advertising:

- *Advertisements for the consolidation of two or more debts MUST, where sample figures are offered in the advertisement, indicate the difference between the total cost of credit of the consolidated mortgage and the total cost of credit of the individual debts that are the subject of consolidation.*

  For example, in the example on the previous page, the additional total cost of credit, that is, € 11,081, must be included in the advertisement, if any sample figures are provided in the advertisement.

- *An advertisement for a debt consolidation mortgage must carry the following warning:*

  > *Warning: This new loan may take longer to pay off than your previous loan. This means you may pay more than if you paid over a shorter term.*

7.3 Equity Release

The term *equity release* generally refers to a way to release capital from the equity of a residential property and refers to three different arrangements:

- *Re-mortgaging*, with a new lending institution or the existing provider to release equity in the property to fund non-debt related acquisitions.
- *A lifetime mortgage*, with no capital repayments and interest which is not paid but rolled up into the loan until the borrower dies or moves into permanent long-term care, at which stage the property is sold and the mortgage cleared.
- *A home reversion agreement* selling a reversionary interest in the property to a financial institution. This is not a loan and hence there are no repayments.

7.3.1 What is Equity?

The term *equity* in relation to a property is usually taken to mean the excess of the value of the property at that time, over the amount of any outstanding loans secured on that property.

Example

An individual's home is currently valued at € 450,000, and has a housing loan outstanding of some € 60,000, which is secured by way of a legal mortgage on that property.

The *equity* in this property at that time would be € 450,000 less € 60,000 = € 390,000.

7.3.2 What is Negative Equity?

The term *negative equity* in relation to a property refers to the situation where at that time the value of the property is less than the amount of loans outstanding on that property.

Example

An individual's apartment is currently valued at € 275,000, and has a housing loan outstanding of some € 300,000, which is secured by way of a legal mortgage on that property.

The *negative equity* in this property is € 25,000.

Negative equity happens where the value of the property falls sharply after its purchase by the borrower, particularly where the loan secured on it was a very high percentage (say, more than 80%) of the value of the property.

Borrowers most at risk of negative equity are first-time buyers who purchased property during the property boom, when 92% to 100% mortgages where available. Those who borrowed additional funds based on the value of their property during the period of rising/inflated property prices are also badly affected.

In addition, a borrower who is struggling to meet mortgage repayments may find themselves in negative equity as the arrears on their loan begin to climb. This is because the arrears will be rolled up into the original amount borrowed, thus pushing the loan-to-value upwards, resulting in negative equity.

7.3.2.1 Negative Equity Loans

The Central Bank guidelines allow certain home loan lenders to offer to qualifying borrowers a *negative equity loan*.

A negative equity loan is specifically aimed at a small percentage of borrowers who may be in negative equity, but who are not in arrears on their loan repayments. It is aimed at those individuals who can afford to continue to make mortgage repayments on their current loan and wish to move home, and who have a *balance of funds* available as a deposit.

For example, an individual has a mortgage for € 300,000, and can afford the mortgage repayments on this loan, but their property if sold, will only realise € 250,000. In this instance, it is very difficult for this individual to move property, as they would have to find the additional € 50,000 in cash resources to repay the lender on top of any percentage deposit required. The fact that they cannot move property means that they may not be able to take up a new job, increase their family, or so on.

So, let us assume this individual needs to move to another part of the country for work purposes and has found a larger property, which can be purchased for € 250,000. A lender in this circumstance will allow the individual to sell their current property and purchase the new property and carry over the additional € 50,000 *negative equity* to the new property.

If the borrower meets the required criteria, a lender may offer up to 90% funding on the new property plus the residual debt. However certain conditions will apply:

- The borrowers must not be in arrears or pre-arrears.
- Certain restrictions may be placed on the amount that can be borrowed. This would be based on the total loan value and type of property (that is, apartment, house, etc).
- When trading up the property must be of greater value than their current residential property, although some lenders have relaxed these criteria, due to the disparity between property prices outside urban areas and those within.

Certain lenders may also allow a borrower to *trade down* to a lower value property and carry over some residual debt.

Whilst being exempt from CBI Regulations on LTV limits, negative equity borrowers still come within the scope of the LTI rules. All such loans must also comply with the affordability and suitability provisions set out in the Consumer Protection Code. Such products are assessed on an individual basis and subject to a stringent affordability criterion. With property prices rising again, this type of lending may not be as necessary as in previous years.

Example

Current situation	
Current property value	€ 250,000
Current mortgage	€ 300,000
Negative equity	€ 50,000
Proposed purchase of new property valued at € 250,000	
Residual debt	€ 50,000
90% funding	€ 225,000
New loan	€ 275,000
New situation:	
New loan	€ 275,000
Residual debt paid off	€ 50,000
Funds remaining	€ 225,000
Personal input from own resources	€ 25,000 (excluding costs)
Purchase price	€ 250,000

7.3.3 Lifetime Loan

Sometimes a homeowner may be equity rich, that is, have a lot of equity in their property, but cash poor, with little disposable income. They may be unable to get a mortgage from a mainstream lender as they would not qualify because of their income or age.

In this situation, they may choose to release equity in their home through a *lifetime loan* or through a *home reversionary* scheme. The property does not need to be unencumbered - that is, without debt attaching at the time of the application. However, any debt to another lender secured against the property must be repaid from the money received through the *lifetime loan* or *home reversionary* scheme.

With a lifetime loan, the owner-occupier would borrow funds on the security of the property, on an interest-only basis and usually at a fixed rate. The interest payments are not repaid on a monthly basis, they are capitalised or *rolled up* each year; that is, they are added to the loan amount. So, the loan amount is continuously increasing.

The Consumer Protection Code defines a *lifetime loan* as:

> *"...a loan secured on a borrower's home where:*
>
> - *Interest payments are rolled-up on top of the capital throughout the term of the loan;*
> - *The loan is repaid from the proceeds of the sale of the property; and*
> - *The borrower retains legal title to their home whilst living in it."*

A lifetime loan is therefore a housing loan, but with no immediate repayments to the lender and where the borrower continues to live in their own home.

In this case, an older homeowner with a mortgage-free property borrows funds on the security of the property, on an interest-only basis and usually at a fixed rate. The interest is not paid but is capitalised or rolled up, that is, added to the loan amount. So, the loan is continuously increasing.

The loan term usually runs to the borrower's death, or earlier if the borrower moves out of the property and/or moves into long-term residential care. On death (or earlier as the case may be), the property will normally be sold and then the outstanding loan – the original loan plus interest - is repaid from the sale of the property.

Some lenders may insist that the loan is paid off, which will usually necessitate the property being sold, if:

- The borrower moves out of their home for any reason, for longer than six months;
- The home is not insured; or
- If the home is not maintained to a standard which the lender believes will maximise its market value.

This type of loan is usually offered only to homeowners who are over 60.

The loan available will usually be between 10% and 50% of the value of the property, subject to an overall minimum or maximum loan amount. The older the borrower, the higher the percentage of the value he or she will be entitled to borrow. A lifetime loan is only provided on a property that is not subject to another mortgage although, as mentioned above, if there is a loan outstanding secured against the property, this can be cleared from the proceeds of the lifetime loan.

Because the interest is not paid but added to the loan amount each year, the loan outstanding can accumulate rapidly as interest is charged on an increasing loan amount; that is, interest becomes charged on interest. The interest rate on lifetime mortgages is normally higher than that applying to other housing loans.

7.3.3.1 Rule of 72

The *rule of 72* is an approximate way to guess how long it takes a lump sum to double at a given rate of interest; you divide the rate of interest into 72, and the result is a pretty close approximation of how many years it will take for money invested at that rate to double.

Example

Take a 5.5% assumed fixed mortgage interest rate. The rule of 72, says that a loan, with no interest or capital repayments made, will double at 5.5% per annum interest rate over approximately 72/5.5 years, that is, 13.1 years.

The risk with a lifetime loan, where no interest must be paid during the individual's lifetime, is that the loan outstanding, which will have to be repaid from the sale of the property on death or earlier), will exceed the value of the property if the individual lives for a long time.

For example, at a fixed rate of 5.5% per annum (which is what one provider of this loan type charges) a € 100,000 loan would escalate as follows:

After years	Loan outstanding
5	130,696
10	170,814
13	200,577
15	223,248
20	291,776

As calculated already approximately, by the *rule of 72*, the loan doubles over 13 years and nearly trebles over a 20-year period.

If the property value increases faster than the build-up in the loan, then obviously the *equity* content of the house, available to dependants after the borrower's death, or earlier, will still increase.

However, if the property value does not increase as fast as the build-up in the loan, then the loan will start to reduce the *equity* content of the house available to dependants after the borrower's death.

In certain circumstances, the loan could eventually grow to more than the value of the property resulting in *negative equity*. Some providers of lifetime loans guarantee that the loan due for repayment will not exceed the proceeds from the sale of the property.

Some lenders allow the borrower to take the loan in the form of:

- A lump sum; or
- Instalments; or
- A combination of both. For example, part of the loan may be taken as a lump sum initially with the balance being drawn down in instalments over several years.

As interest will only be charged on the amount of the loan drawn down, taking instalments (where possible) makes sense where a borrower does not require access to the entire loan amount immediately. However, where the lender charges a draw down fee for each lump sum or instalment, this must be considered in any decision.

Some lifetime mortgages may be *reversible*, that is, the borrower may be able to sell the property and then pay off then outstanding loan, whereas others may be *irreversible*, that is, the loan can only be repaid on death or possibly where the borrower moves into long-term care. Even where the mortgage is reversible, where the loan is based on a fixed interest rate, an early repayment fee may be charged.

Example

Mary takes out a lifetime mortgage of € 200,000, which is 50% of the value of her house, at a fixed rate of 6% per annum. The mortgage contains a *no negative equity* guarantee.

Mary dies some 20 years later when the loan outstanding is then € 640,000. The house is sold for € 550,000.

Mary's estate does not have to pay the € 90,000 shortfall to the mortgage lender, as the mortgage contained a *no negative equity* guarantee.

Lifetime mortgages, because of the potentially rapid build-up of the loan, are usually only available to homeowners in their late 60s.

7.3.4 Home Reversion Agreements

A *home reversion agreement* is defined as an agreement between a vendor (seller) and a home reversion firm that provides:

- *"For the conveyance by the vendor to the home reversion firm of an estate or interest in land (which includes the principal residence of the vendor or the vendor's dependants) for a discounted sum or an income (or both), and*
- *For the vendor to retain the right to live in the residence until the occurrence of one or more events specified in the agreement" (usually when the person dies or moves out of the property permanently).*

Part V of The Central Bank Act 1997 (as amended).

Although home reversion agreements could be considered a property transaction rather than a loan or form of credit agreement, home reversion firms are subject to regulation by the Central Bank. Home reversion firms are also subject to the Consumer Protection Code.

Under a home reversion agreement, the property owner *sells* part of their home now to a *home reversion firm*, for a discounted value, and in return:

- The property owner is entitled to remain in the home up to their death (or earlier if they move into long-term care);
- No repayments or rent are payable, while the owner resides in the house.

In general, the property owner receives a lump sum from the sale of the share of the property. While the definition includes both lump sum and income, the usual method of payment of the capital sum is as a lump sum.

On death, or if the property owner moves into long-term care, the property is sold and the financial institution gets its share of the proceeds, with the balance going to the homeowner or next of kin.

This product is usually only provided to property owners in their late 60s or older.

There is a significant *discount* to the market value of the percentage of the property which is sold to the financial institution, to reflect the fact that the financial institution will have to wait until the individual dies or moves into permanent long-term care before it can realise its share of the property value and get a return on its money. In the meantime, the lending institution gets no interest or return on its investment.

Its legal interest in the property, until the borrower dies or moves into long-term care, is *reversionary*, that is, it only *reverts* to the financial institution on the death or moving into long-term care of the individual.

Example

Mr Anderson is aged 74 and owns a house worth € 1,000,000, with no mortgage. He decides to sell a 50% reversionary interest in his house to a home reversion firm.

The financial institution may estimate that it will have to wait, say 12 years - that is, the individual's estimated remaining expectation of life - before the owner dies and it can realise its 50% share in the house. Using a discount rate of, say, 6% per annum, they may therefore be prepared to pay, say:

50% x € 1,000,000 / (1.06) ^12 = € 248,500, say € 250,000

for the 50% reversionary interest, so that the individual, in this case, is selling 50% of the house (worth € 500,000) for € 250,000.

When Mr Anderson dies, the house is sold, and the home reversion firm gets 50% of the proceeds and Mr Anderson's estate get the other 50%.

Of course, the home reversion firm is taking a gamble on how long Mr Anderson, in the example above, will live and hence how long before it gets to realise its share of the property. It is also taking a gamble on the property increasing in value; it could go down in value.

If, for example, Mr Anderson were to die suddenly just a year later, the financial institution would then get 50% of the sale proceeds of the house, that is, possibly € 500,000 for their € 250,000 investment. In such a scenario, Mr Anderson's dependants would have lost out heavily.

On the other hand, Mr Anderson might live to be 100, and the home reversion firm would have to wait much longer than expected to realise its investment.

So, there is an element of risk in selling a reversionary interest in a property, both for the homeowner and the financial institution buying the reversionary interest.

As the discounted value that the lender will offer is based on the life expectancy of the borrower, the older the borrower, the higher the percentage they will receive of the value of the share of the property being sold.

The agreement may be based on either:

- *A fixed share contract*, where, as the name suggest, the percentage of the property which the home reversion firm owns remains fixed from the start, and never changes regardless of how long the homeowner lives; or

- *A variable share contract*. Variable share agreements provide the homeowner with a higher lump sum than fixed share agreements for the initial share of the property sold. In return, the percentage of the property which the home reversion firm owns increases every year until such time as the financial institution redeems their reversionary interest in the property. Under a variable share contract where the initial share sold was 25% of the property, after 15 years that share might have increased to 50%.

A home reversion agreement is *not* reversible. However, the borrower, or dependants, may be able to negotiate to *buy back* the share of the property held by the home reversion firm. Of course, if the value of the property has significantly increased in the meantime, the borrower or beneficiaries may not be able to raise enough funds, particularly where the home reversion firm bought a significant share in the property.

7.3.5 Consumer Protection Code, 2012

The Central Bank's *Consumer Protection Cod*e imposes several requirements on regulated financial services providers in relation to lifetime mortgage and home reversion agreements:

- A provider must advise the consumer of the consequences of a lifetime mortgage or a home reversion agreement including details of the total costs involved, including all interest, charges, and the effect on the existing mortgage, if any.

- A provider must ensure that consumers are made aware of the importance of seeking independent legal advice.

- In relation to *a lifetime loan*, a provider must give the consumer an indication of the likely early redemption costs, which would be incurred if the loan was redeemed at five-yearly intervals, subsequent to the fifth anniversary. For example, in year five of the loan, the provider must supply the consumer with an indication of the likely redemption costs that may occur in years 10, 15 and 20. It must also outline the circumstances in which the loan will have to be repaid.

- In relation to a home reversion agreement, a regulated entity must inform the consumer prior to offering, recommending, arranging or providing a home reversion agreement to a personal consumer of the consequences of entering into the agreement and to provide on paper or another durable medium information on the following:

- *"The circumstances in which the agreement comes to an end, and*

- *In the case of a variable share contract, an indication of the potential change in the breakdown of the ownership of the property between that held by the home reversion company and the personal consumer, over the duration of the agreement".*

- A provider must include the following warning on any information document, application form or any other document given to the consumer in connection with a lifetime mortgage or home reversion agreement:

Warning: Purchasing this product may negatively impact on your ability to fund future needs.

7.3.6 Lifetime Mortgage versus Home Reversion Agreement

There are obvious advantages and disadvantages for both lifetime mortgages and home reversion agreements:

Advantages	Lifetime mortgage	Home reversion scheme
Raising cash:	10% to 45% of the value of the property can be granted as a loan, which would otherwise not be available.	10% to 80% of the value of the property can be sold depending on the individual's age and the property valuation, which would otherwise not be available.
No monthly repayments:	Individual is not required to make loan repayments during their lifetime.	Individual is not required to make loan repayments as they have sold a portion of the property.
	The borrower fully owns the property and can continue to live in the property.	The individual sells part of the property but continues to live in the property. They do not have to pay rent.
Property values:	The borrower can continue to benefit from any increase in value of their property.	If property values fall the individual benefits from having received money based on the higher property value.
Entering the contract:	The older the individual, the larger the percentage that can be borrowed.	The older the individual, the greater the payment for the same percentage share of the property.

Disadvantages	Lifetime mortgage	Home reversion scheme
Raising cash:	The interest rate charged will be higher than normally charged by a mainstream lender.	Cash received will be far less than the market value of the share in the property.
No monthly repayments:	As no repayments are made, interest will be added to the loan. The longer the loan remains unpaid, the larger the debt. The debt may exceed the value of the property.	An individual cannot buy back in instalments the percentage share of the property that was sold to the reversionary company.
Property values:	If property values fall, the individual may not realise from the sale of the property enough money to repay the loan outstanding.	If property values rise the home reversion company benefit from the increase in their portion of the property and the individual loses out.
Exit from the contract:	The contract can be terminated at any time once the loan and all accrued interest (and any fees) are paid in full.	An individual cannot change or reverse from this type of contract. However, they, or the beneficiaries of their estate, may be able to come to an agreement with the home reversion company to buy back the share in the property.

7.4 Stage Payment Loans

Where the borrower is building their own property and not using the services of one specific builder but subcontracting the work out to various tradespeople (this is known as *self-build*), the lending institution would generally release funds through a *stage payment* loan.

However, to enable the funds to be released the construction of the property must be supervised by a qualified architect/engineer/surveyor. The supervision ensures that the building of the property complies with various building regulations and building controls. Many of these regulations have only been introduced in the last few years following the discovery of structural defects on many newly built properties developed during the *property boom*. The architect/engineer/surveyor must have their own indemnity insurance which can be called upon should a defect be discovered after the property has been constructed.

A *stage payment loan* is a loan offered to those individuals who are building their own property on a piece of land which they already own. As finance will be required to enable them to build the property, but the lender will not have adequate security until the property is finished, a lender will offer this type of borrower a *stage payment* loan.

This means the lender will approve the full loan for the maximum amount applicable to the individual's circumstances; however, the lender will only release the funds in stages (normally four to five stages), as the property construction progresses.

For example:

- Stage 1: foundation level;
- Stage 2: wall plate level;
- Stage 3: roof level;
- Stage 4: fully completed property.

Very often a lender will hold back some funds (typically 10% of the loan amount and this is referred to as a **mortgage retention**). This amount is retained by the lender until a final inspection is carried out on the property by the initial Valuer and the Supervising Architect provides a Certificate of Compliance, which confirms the property is fully built and meets all relevant Planning and Building Regulations at the time of issue. This provides some level of comfort for the lender to ensure their security is adequate and the property is fully finished. The Certificate of Compliance will also give the property owner peace of mind and will be an important document in the future if ever they wish to sell the property.

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Review

Now consider the main teaching points, which were introduced in this chapter. They are listed below. Tick each one as you go through them.

The options available to release capital from the equity in a private residential property.	☐
The main features of a re-mortgage, including debt consolidation, equity release and switching.	☐
Difference between a lifetime loan and home reversionary scheme and the advantages and disadvantages of each.	

Sample Questions

The answers to these questions can be found in your Study Hub.

1. According to the Consumer Protection Code, 2012 in relation to potential switching savings, if a lender provides an indicative comparison on the total interest payable on the consumer's existing mortgage and the interest payable on the new mortgage, the lender must:

A. allow the consumer a maximum of five days to consider the amounts before withdrawing the offer.
B. provide the consumer with a link to all its competitors' websites.
C. include the cost of updated mortgage protection when showing potential savings.
D. include a link to the relevant section of the Competition and Consumer Protection Commission's website.

2. Compared to a short-term loan, a debt consolidation housing loan:

(i) has lower monthly payments.
(ii) has a higher cost of credit.
(iii) has a lower interest rate.

A. (i) only.
B. (i) and (ii) only.
C. (iii) only.
D. (i), (ii) and (iii).

3. In 2007, Fabrice bought his apartment for € 250,000, and borrowed € 240,000. Having availed of a number of alternative repayment arrangements, the mortgage outstanding is now € 220,000 and the apartment now has a market value of € 180,000. Calculate Fabrice's negative equity.

A. € 30,000
B. € 40,000
C. € 60,000
D. € 70,000

4. Ms. O'Connor owns a house worth € 780,000. She decides to sell a 60% reversionary interest in her house to a home reversion firm. The firm estimates Ms. O'Connor has a life expectancy of 10 years. They apply a discount rate of 5% per annum. How much will they pay Ms. O'Connor for the 60% reversionary interest?

A. € 287,000
B. € 313,000
C. € 374,400
D. €468,000

08

Arrears and Debt Management

To date, the manual has concentrated on housing loans and the importance of assessing affordability of borrowers prior to drawing down a loan. However, whilst affordability can be assessed prior to a loan being granted, many situations can subsequently arise where the borrower can no longer afford to repay the original borrowing within the terms and conditions laid out.

This chapter outlines the various protections that have been put in place for consumers under the Consumer Protection Code and the Code of Conduct on Mortgage Arrears to ensure fair treatment when any arrears situation is being dealt with by the regulated entity.

These regulations are differentiated by whether the arrears are on a loan secured on a borrower's primary residence or any other type of loan. In addition, borrowers who can't pay their borrowings are dealt with differently under the regulations from those who won't pay.

The solutions that may be available for individuals under the Personal Insolvency Acts are also described, as well as a brief introduction to the bankruptcy process.

Learning Outcomes - after studying this chapter you should be able to:
outline when and why arrears happen;
discuss the legislation relating to arrears management, including the Consumer Protection Code and the Code of Conduct on Mortgage Arrears, 2013;
describe and explain the steps of the Mortgage Arrears Resolution Process;
outline the various alternative repayment arrangements (ARAs) that are available under MARP and the impact of each solution on a borrower;
understand the life assurance implications for those in arrears;
describe the entities who can assist a borrower with negotiations on their debt; and,
outline the features of the three non-judicial resolutions available under the Personal Insolvency (Amendment) Act, 2015 and describe bankruptcy in Ireland.

Chapter weightings	Number of questions which may appear		
In the exam, questions are taken from each chapter based on the following approximate chart:	Chapter	Minimum	Maximum
	8	15	18

8.1 Introduction

Most people who take out a loan, whether it be to buy a car - that is, an unsecured loan - or to purchase a home - a secured loan - will normally do so with the full intention of repaying their debt.

Unfortunately, sometimes individuals find themselves in financial difficulty and unable to make their loan repayments, resulting in them falling into arrears on the repayments on their loan. When this happens, the borrower must act swiftly to avoid an unsustainable situation. Very often the cause of the financial difficulty is short term and borrowers get themselves back on track quickly. However, for others the situation may be long term.

In this chapter on arrears and debt management, we focus on specific statutory codes and legislation which offer protection and support to individuals facing mortgage arrears and are facing long-term unsustainable financial difficulty.

1. **Consumer Protection Code, 2012** deals with arrears and debt management for all types of personal debt, both secured and unsecured.

2. **Code of Conduct on Mortgage Arrears, 2013,** deals specifically with arrears where it relates to the borrower's principal private residence.

3. **Personal Insolvency Act, 2012,** introduced three non-judicial debt resolution remedies for personal consumers managing debt, which are each subject to specific terms and conditions.

4. **Bankruptcy (Amendment) Act, 2015:** if any of the remedies proposed under the Personal Insolvency Act, 2012 fail, then, by default, a person has entered bankruptcy.

8.1.1 Secured and Unsecured Debt

Secured debt is where a loan is given to the borrower and security is provided to a lender by the borrower to safeguard against non-payment of the debt by the borrower. This means the lender takes a lien – a legal right to security - over an asset belonging to the borrower. The lender can take the asset and sell it if the individual does not repay the debt. If the selling price for the asset fails to cover the debt, then the lender may pursue the individual for the shortfall.

Unsecured debt means that the loan is given by a lender without taking security, and in the event of non-payment of the loan, the lender cannot recover the debt from the borrower through forcing the sale of an asset.

8.1.2 Why Arrears Happen

Loan arrears can happen for a variety of reasons:

- Interest rates and repayments increase to such a level that the borrower is unable to meet the loan repayments;

- Accident, sickness or redundancy;

- Divorce or separation;

- Gambling or other addictions;

- One (or more) of the borrowers have their work hours reduced, thereby reducing the disposable income available to meet the mortgage repayments;

- The cost-of-living increases such as when the borrower has a family;

- Borrowers do not take the commitment seriously and refuse to engage or make repayments. However, these individuals fall into the category of *won't pay* rather than *can't pay*.

It is imperative that, when arrears happen, the borrower acts quickly to protect their credit rating and ensure the arrears do not spiral out of control by:

- Contacting their mortgage lender and entering into a repayment agreement with them until the situation improves;

- Discussing with the mortgage lender the various options available to restructure the debt or consolidating other loans to reduce the overall monthly repayments;

- Reviewing their own monthly outgoings to see where savings can be made;

- Preparing a budget plan or contacting a budgeting service to assist in the development of a budget plan;

- Reviewing any income protection policies which may have been in place when taking out the mortgage to see if there is a possibility of a claim;

- Contacting the local community welfare officer to see what financial assistance may be available.

Key Learning Point

There is an important difference between individuals who *won't pay* and individuals who *can't pay*.

Borrowers, who do not take their loan commitments seriously and **do not engage** with a mortgage lender to resolve an arrears problem, fall into the category of *won't pay* rather than *can't pay*.

This type of borrower - amongst others - would be classed as *not cooperating*.

It is also imperative that when a borrower contacts a mortgage lender to discuss their financial difficulties, that they are dealt with in a sensitive way by the lender. It can be a very stressful time and the customer is in a vulnerable situation. They should be treated in a manner which will encourage open dialogue between the borrower and the lender with a view to coming to a satisfactory conclusion.

8.1.3 Regulation

Whilst regulated entities (lenders) may differ in their internal credit and arrears handling policies, all regulated entities must comply with certain Central Bank codes and relevant legislation, in relation to arrears management.

These primarily include:

- **Code of Conduct on Mortgage Arrears, 2013 (CCMA)** (revised).

- **Consumer Protection Code, 2012 (CPC)** (applies to personal consumers to whom the CCMA does not apply[23]).

[23] *Unsecured debt or secured loans on residential investment properties.*

The **Code of Conduct for Mortgage Arrears (CCMA**) applies to borrowers in arrears or pre-arrears[24] but only where the arrears relate to a loan on the borrowers' primary residence, that is, family home. If a borrower has a primary residence and a residential investment property, then the protection offered by the Code of Conduct on Mortgage Arrears will only apply to arrears on the primary residence. Arrears on any other loans which do not relate to the family home are governed by the Consumer Protection Code, 2012.

The **Consumer Protection Code, 2012,** makes provisions in relation to arrears in respect of **ALL loans,** secured and unsecured, held by a personal consumer. However, the provision on arrears handling in the CCMA takes precedence over the Consumer Protection Code.

Key Learning Point

The **Code of Conduct on Mortgage Arrears** deals with issues relating to the handling of arrears on loans related to the primary residence, that is, the family home.

The **Consumer Protection Code, 2012** deal with arrears handling of all consumer loans except for those relating to the primary residence.

Remember that the **Consumer Credit Act, 1995** which we dealt with in earlier chapters also makes provisions for regulated entities when handling arrears on *consumer credit*, not just specifically housing loans.

Example

David and Mary own their own home and have a loan with Nore Bank. Their mortgage repayment on their primary residence is in arrears. They also have three investment properties with loans from Suir Bank and are also in arrears on the mortgage repayments of their primary residence.

In this situation:

- The **Code of Conduct on Mortgage Arrears** applies to the arrears arising on the loan secured on their private dwelling home.
- The **Consumer Protection Code** applies to the arrears arising on the loans secured on their rental properties.

The reason for this is the CCMA was designed to provide stronger effective consumer protection measures to safeguard borrowers and their family home.

The **primary residence** for the purposes of the CCMA is defined as:

- The residential property which the borrower occupies as his/her primary residence in this State; or
- A residential property which is the ONLY residential property in this State owned by the borrower.

[24] *Pre-arrears is (a) where a borrower contacts the lender to inform it that he/she is in danger of going into financial difficulties or (b) the lender 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.*

8.1.4 Consumer Protection Code, 2012 (CPC)

The provisions of the *Consumer Protection Code* apply to **all loans** provided by a regulated entity to *personal consumers*, including credit cards. The protection offered by the Code also applies to loans which relate to a property but only where the property is NOT the sole property owned by the borrower and the loan secured on the property is in arrears.

For the purposes of the Consumer Protection Code, a **personal consumer** means *“a consumer who is a natural person acting outside his or her business, trade or profession”;*

An example of a personal consumer:

- Jonathon, a builder, who takes out a loan to purchase a motorbike to get to work. Although the bike is to enable him to go to work, he is acting outside his normal business, trade or profession in its purchase.

- Peter, a doctor, has two residential properties purchased by way of a housing loan, which he lets out in return for an income. Here, Peter is acting outside his normal business, trade or profession.

- Francis, an accountant, has a holiday home purchased by way of a housing loan. This loan does not relate to his business, trade or profession.

For these types of loans, the *Consumer Protection Code* applies.

The definition of arrears under the Consumer Protection Code is as follows;

> *“Arrears arise where a personal consumer:*
>
> *a. Has not made a full repayment, or only makes a partial repayment, as set out in the original loan account contract, by the scheduled due date; or*
>
> *b. In the case of a credit card account, has not made the minimum repayment by the due date.”*

Where an account is in arrears and remains in arrears **10 business days** after the arrears first arose, a regulated entity - that is, the lender - must immediately communicate clearly with the personal consumer to establish in the first instance why the arrears have arisen.

The consumer can nominate a third party to deal with the issue on their behalf. However, this does not preclude the lender from contacting the consumer directly in relation to other matters.

If the arrears persist for 31 days, the Code requires that additional information be provided to the consumer and any guarantor on the loan within three business days. This information must include:

- The date the account fell into arrears;

- The number and total amount of repayments - including partial repayments - missed; this information is not required for credit card accounts;

- The amount of the arrears to date;

- The interest rate applicable to the arrears;

- Details of any charges in relation to the arrears that may be applied;
- The importance of the consumer engaging with the lender in order to address the arrears;
- Relevant contact points;
- The consequences of continued non-payment including, where relevant, sharing of data relating to the consumer's arrears with the Irish Credit Bureau or any other credit reference agency;
- If relevant, any impact of the non-payment on other accounts held by the consumer with that the lender including the potential for offsetting of accounts, where there is a possibility that this may occur under existing terms and conditions;
- A statement that the consumer may wish to seek assistance from MABS and give the contact details for the MABS National Helpline and the link to the MABS website; and
- Details of any payment protection insurance held by the consumer including the policy number.

In the event that the arrears persist, the above information must be updated and sent to the consumer on paper or another durable medium, every three months.

In respect of a mortgage, **where a third full or partial repayment is missed** and remains outstanding and an alternative repayment arrangement has not been put in place, the regulated entity must notify the personal consumer, on paper or another durable medium, of the following:

- The potential for legal proceedings and proceedings for repossession of the property, together with an estimate of the costs to the personal consumer of such proceedings;
- The importance of seeking independent advice, for example from MABS; and
- That, irrespective of how the property is repossessed and disposed of, the personal consumer will remain liable for the outstanding debt, including accrued interest, charges, legal, selling and other related costs, if this is the case.

The regulated entity must ensure that its level of contact and communications, or that of any third party acting on its behalf, with a personal consumer in arrears, is proportionate and not excessive.

Key Learning Point

The provisions of the ***Consumer Protection Code*** apply to all loans, both secured and unsecured including credit cards, provided by a regulated entity (a lender) to a *personal consumer*.

The ***Code of Conduct on Mortgage Arrears*** provisions go beyond the provisions of the *Consumer Protection Code* in relation to arrears handling on loans. However, the code only applies when the property is the sole property owned by the borrower and the loan secured on the property is in arrears.

8.1.5 Code of Conduct on Mortgage Arrears (CCMA), 2013

The Code of Conduct on Mortgage Arrears (CCMA) issued by the Central Bank applies to borrowers in both an arrears and in a pre-arrears situation[25]. However, it only applies to the borrower where the loan is secured by his/her **primary residence**. This means the CCMA does not apply to loans of a borrower secured by residential investment property. Therefore, if a borrower has a primary residence and a residential investment property and both loans secured against these properties are in arrears, then the CCMA will only apply to the loan secured on the primary residence.

As previously stated, the **primary residence** for the purposes of the CCMA is defined as:

- The residential property which the borrower occupies as his/her primary residence in this State; or

- A residential property which is the ONLY residential property in this State owned by the borrower.

Examples of such a situation are:

- Individuals who purchased a residential property as their private dwelling home and lived in it for a time. However, they have now moved home to live with relatives in order to earn rental income from renting out their home to assist with the mortgage repayments;

- Individuals who may have had to emigrate or move to a different location within Ireland for work purposes and maybe are unable to sell their property;

- Individuals who purchased a property, found themselves unable to service their debt, and decided to let the property instead.

Key Learning Point

The Code of Conduct on Mortgage Arrears does not protect borrowers who purchased a property solely for investment purposes or as a holiday home, etc, and who have another property in which they live as their primary residence.

8.1.5.1 When Arrears Happen

Mortgage arrears arise as soon as the borrower fails to make a full mortgage repayment, or only makes a partial mortgage repayment, by the due date.

According to the Central Bank's most recent Code of Conduct on Mortgage Arrears (July 2013), *arrears* are defined as arising 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".*

[25] *Pre-arrears is (a) where a borrower contacts the lender to inform it that he/she is in danger of going into financial difficulties or (b) the lender 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.*

Key Learning Point

The term *borrower* means and includes all parties named on the loan account. So even if a property is purchased as tenants in common, the loan is always *joint and several*. In other words, all borrowers are responsible for the full loan, even if their interest (share) of the property in not 100%.

8.1.5.2 Definitions

Before we proceed further to look at the implications of the CCMA, let's first look at some of the following definitions which apply to the CCMA, 2013:

Arrears	Arrears arise on a mortgage loan account where a borrower has not made a full mortgage repayment, or only makes a partial mortgage repayment, as per the original mortgage contract, by the scheduled due date.
ASU	A centralised and dedicated arrears support unit (ASU), which must be adequately staffed, to manage cases under the Mortgage Arrears Resolution Process (MARP).
Not cooperating borrower	A borrower can only be considered as not cooperating when they fail to make a full and honest disclosure of information to the regulated entity within an agreed timeframe or where a three-month period elapses where the borrower has not entered into an alternative repayment arrangement, and during which the borrower has failed to meet his/her mortgage repayments and also failed to make contact with the regulated entity. A warning letter, classifying the borrower as not cooperating must also be first issued to the borrower by the regulated entity.
Repossession	Any situation where a regulated entity 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 regulated entity, or by court order.
Split mortgage	Where a regulated entity agrees to split a borrower's mortgage loan into an affordable mortgage loan, which the borrower continues to repay, and a remaining balance, which is set aside or warehoused to a later date.
Standard financial statement	A document which a regulated entity must use to obtain financial information from a borrower in order to complete an assessment of that borrower's case. The document is issued by the Central Bank to regulated entities and may be subject to change from time to time by the Central Bank.
Unsolicited personal visit	Any visit to a borrower's primary residence that has not been requested by, or agreed in advance with, the borrower.
Voluntary sale	The voluntary sale by the borrower of the primary residence in order to repay part, or all, of the mortgage loan.
Voluntary surrender	The voluntary surrender, by the borrower, to the lender, of the primary residence.

8.1.5.3 General Obligations of the Lender under the CCMA

The CCMA imposes obligations on regulated entities in relation to borrowers in arrears on mortgages on their principal private dwelling. A regulated entity must have set procedures in place for dealing with borrowers in mortgage arrears and those in pre-arrears and at least one person with specific responsibility for dealing with arrears and pre-arrears cases.

The CCMA requires regulated entities to apply a Mortgage Arrears Resolution Process (MARP) to all applicable borrowers who are in arrears. Assessment of the individual's financial situation must be done through the regulated entity's centralised and dedicated *arrears support unit* (ASU) which must be established in accordance with the requirements laid down under the CCMA.

A regulated entity must apply the MARP framework to relevant borrowers in the following cases:

- A mortgage account where arrears have arisen on the account and remain outstanding 31 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.

The **MARP framework** sets out for the borrower how the regulated entity will implement the **four steps** of the Mortgage Arrears Resolution Process (see 8.2)

Under the CCMA, regulated entities are restricted from imposing charges and/or surcharge interest on arrears arising on a mortgage account, **unless** the borrower is not cooperating.

This does not mean, however, that interest is not charged on arrears. By their nature, arrears are added to the loan amount outstanding that is, capital, which is subject to interest charges. But it does mean that a regulated entity cannot impose further charges or surcharge interest on the arrears.

A regulated entity can however, impose, in accordance with the mortgage deed, further charges and surcharges on borrowers deemed not to be cooperating.

Key Learning Point

A regulated entity must apply their Mortgage Arrears Resolution Process (MARP) to applicable borrowers who are in arrears and this is done through a centralised and dedicated arrears support unit (ASU) which will assess cases referred to it.

8.1.5.4 Not Cooperating Borrower

A borrower is always encouraged to engage with their lender when difficulties first arise.

Those individuals who refuse to engage with the regulated entity can be classified by a regulated entity as **not cooperating.**

Examples of a borrower who is not cooperating could be where the borrower(s):

- Fails to make a full and honest disclosure to the regulated entity of information that would have a significant impact on his/her financial situation; or

- Fails to provide information, relevant to their financial situation, within the timeline specified by the regulated entity which under the CCMA is required to be reasonable and fair and reflect the type of information requested.

Key Learning Point

If a borrower does not engage with the regulated entity or attempts to frustrate the MARP process by not providing information requested, then the regulated entity can classify the borrower as not cooperating within the guidelines laid down by the Code of Conduct on Mortgage Arrears (CCMA).

A borrower can only be considered as not cooperating when they fail to make a full and honest disclosure of information to the regulated entity within an agreed timeframe or **where a three-month period elapses** where the borrower has not entered into an alternative repayment arrangement, and during which the borrower has failed to meet his/her mortgage repayments and also failed to make contact with the regulated entity.

A warning letter, classifying the borrower as not cooperating, must first be issued to the borrower by the regulated entity. This letter gives the borrower **20 business days'** warning prior to classifying them as not cooperating.

Prior to classifying a borrower as not cooperating, a regulated entity must adhere to the provisions of the CCMA in relation to informing the borrower of the implications of being classified as not cooperating. The regulated entity must also outline the actions that can be taken against the borrower.

A borrower can appeal the decision by a regulated entity to be classified as not cooperating.

It is important to note that if a borrower actively engages with the regulated entity but ultimately decides to refuse the alternative repayment arrangement, **this is NOT considered to be not cooperating**.

Key Learning Point

If the regulated entity, having given the borrower the required notice, proceeds to classify the borrower as **not cooperating**, the regulated entity must notify the borrower in writing that they have been classified as not cooperating and that legal proceedings to repossess a property can commence immediately.

Once successfully classified as not cooperating, a borrower falls outside the protection of the MARP process and legal proceedings can proceed immediately after the classification.

Being classified as not cooperating can impact on a borrower's eligibility to avail of a personal insolvency arrangement (see 8.12).

8.2 Mortgage Arrears Resolution Process (MARP)

We will now briefly look at the **four steps** of the Mortgage Arrears Resolution Process (MARP) where the regulated entity will seek to provide ***alternative sustainable repayment solutions*** or explore alternative options with the borrower. The four steps are:

1. Communication with borrower(s);

2. Obtaining financial information;

3. Assessment of the standard financial statement;

4. Resolution.

8.3 MARP Step 1: Communication with Borrower(s)

As previously mentioned, when an applicable borrower (that is, protected under the CCMA) is experiencing mortgage arrears, the provisions under the Consumer Protection Code, 2012 regarding communication no longer apply.

Under the CCMA, a regulated entity's communications policy is determined internally and approved by its board of directors and must comply with the Central Bank's Code of Conduct on Mortgage Arrears. Communications by regulated entities with borrowers must be proportionate and not excessive and not be aggressive, intimidating or harassing. Borrowers must be given enough time to assimilate information and to act.

As soon as a borrower goes into arrears, the lender must communicate promptly and clearly with the borrower to establish in the first instance why the full repayment has not been made.

Like the provisions under CPC, certain information must be provided to a borrower (who is protected by the CCMA) and any guarantor where arrears remain outstanding on a mortgage loan for 31 calendar days from the date the arrears rose. The regulated entity must send a letter outlining specific information and a MARP information booklet outlining details of its Mortgage Arrears Resolution Process (MARP) procedures. The letter must include the following information:

- The date the mortgage fell into ***arrears***;
- The number and total monetary amount of repayments (including partial repayments) missed;
- The monetary amount of the ***arrears*** to date;
- Confirmation that the lender 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:
  - The imposition of charges and/or surcharge interest on ***arrears*** arising on a mortgage account and details of such charges;
  - That a lender 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 ***borrower***s 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.

8.3.1 Unsolicited Telephone Communication (CCMA)

A regulated entity can engage with the borrower in line with their internal communications policy for individuals in arrears.

Whilst it may not be possible to record all telephone conversations between a regulated entity and borrower -for example within a branch network - the regulated entity must *maintain recordings* of all arrears support unit (ASU) telephone calls to or from a borrower in relation to his/her arrears or pre-arrears.

8.3.2 Unsolicited Personal Visits (CCMA)

8.3.2.1 Advance Written Notice of Personal Visit

A regulated entity can only make unsolicited personal visits to the borrower's primary residence if all other attempts at contact have failed, and the regulated entity is about to classify the borrower as *not cooperating*.

Understandably an unsolicited visit from a lender can be very stressful for a borrower who is in arrears and already in a vulnerable and exposed situation. Nonetheless, under the CCMA, such a visit is deemed to be warranted in situations where no attempt is being made by the borrower to respond to the lender's communications.

Where a regulated entity wishes to make an unsolicited personal visit, they must give the borrower at least **five business days'** notice, in writing, and provide the specified timeframe within which it intends to make the visit. The specified timeframe must be no longer than **15 business days** from the date of notification (including the five business days' notice).

8.3.2.2 During the Visit

During the personal visit, a regulated entity must explain the standard financial statement to the borrower and offer to assist the borrower to complete the standard financial statement.

Nevertheless, the regulated entity cannot compel the borrower to complete the standard financial statement during the visit.

Key Learning Point

There are specific provisions regarding how a regulated entity communicates with a borrower who is in an arrears or pre-arrears situation when they are protected by the CCMA (that is, arrears relate to the family home).

This communication policy differs to that outlined in the Consumer Protection Code which would apply to all other consumers.

The CCMA lays down specific rules regarding how a regulated entity communicates with a borrower who is not cooperating.

8.4 MARP Step 2: Financial Information

So, having dealt with Step 1, the communication process, we now look at the process for obtaining financial information. Like the process for the original mortgage application, a regulated entity must assess a borrower's financial situation when reviewing alternative repayment arrangements. This is done through a standard financial statement (SFS) which is the document used by the regulated entity to obtain financial information from the borrower during the MARP process.

The document for completion must be presented to the borrower at the **earliest opportunity** and the regulated entity must offer to assist the borrower in its completion.

In brief, the SFS requests information on:

- The borrowers' personal details;
- Monthly income;
- Monthly household expenditure;
- Current debt repayments;
- Property; and
- Non-property related assets.

The CCMA requires in all arrears cases that the regulated entity gives adequate time to the borrower for the return of the information.

8.5 MARP Step 3: Assessment

Once the completed standard financial statement (SFS) is received by the arrears support unit, the lender assesses the information provided by the borrower. The CCMA stresses that the regulated entity is required to examine each case on its individual merits considering the borrower's personal circumstances, their overall indebtedness, and the previous and current repayment capacity. In other words, alternative repayment arrangements must be tailored to the borrower's needs and circumstances, rather than a one size fits all approach.

The gathering of information and the assessment of the borrower's completed SFS may take some time and in recognition of this, the CCMA allows the regulated entity to put a temporary alternative repayment arrangement in place, where a delay would only further exacerbate a borrower's arrears or pre-arrears situation.

For example, a regulated entity may agree to a three-month moratorium on capital repayments. However, this is without prejudice and does not mean that ultimately on review of the SFS that this is the *alternative repayment arrangement* (ARA) agreed upon.

This will allow the regulated entity enough time to complete a full review and present it to the borrower for consideration.

Key Learning Point

To enable a regulated entity assess a borrower's financial situation, they must gather the information in a *standard financial statement* (SFS), and this financial information is reviewed by the *arrears support unit* (ASU). This information forms the basis of any *alternative repayment arrangement* (ARA) that might be agreed between the lender (regulated entity) and the borrower.

8.6 MARP Step 4: Resolution

8.6.1 Alternative Repayment Arrangements (ARAs)

A regulated entity must explore all options for possible alternative repayment arrangements, when considering a MARP case, in order to determine which options are viable for each case.

Some of the options available may be short-term and some may be long-term resolution proposals. In certain circumstances, a regulated entity may offer the borrower a combination of both short-term and long-term proposals. **Outlined below are possible resolutions offered by a lender when addressing mortgage arrears:**

Proposed action	Description	Most suited to	Impact of the proposed action
Moratorium	A lender agrees to freeze the repayments on the mortgage account for a specified period, normally three to six months. The borrower, with the consent of the lender, makes no mortgage repayments during this period.	A borrower who is currently in financial difficulty (such as reduced income due to sickness) but who believes their financial situation will improve in the short term.	The borrower makes no loan repayment for the period of the moratorium. The unpaid interest that falls due is capitalised, that is, added to the loan amount. The overall loan amount outstanding to the lender increases.
Extension of the loan term	A lender will extend the term of a loan. For example, change a 20-year term to a 30-year term.	A borrower who is failing to meet their full monthly payment due to a long-term or permanent change in their circumstances but who can meet a lower payment	This results in a decrease of the monthly capital portion of the mortgage repayment, which is repaid. Therefore, the debt will take longer to repay.

Proposed action	Description	Most suited to	Impact of the proposed action
Interest-only facility	The lender agrees to accept interest-only mortgage repayments on the loan for a limited period.	This suits individuals who are failing to meet their full monthly repayments but who can meet a lower payment. A lender will normally only agree to this type of facility if there is adequate equity in the property and where there is a good probability that the borrower's circumstances will change in the short term and they will be able to recommence capital and interest repayments soon.	In the short term, the borrower's monthly loan payments are reduced. However, during this period there is no reduction in the capital balance outstanding. Once the capital and interest repayments recommence, the monthly repayments will be higher to enable the loan to be repaid with their loan term agreed.
Payment agreement	The lender agrees to a specific monthly repayment, which is lower than the required repayment, in line with the borrower's income. This is reviewed with the borrower on an on-going basis.	This suits individuals who are failing to meet their full monthly repayments and who are not able to meet the full interest repayment on their loan, over the short term, but can meet a lower payment. They would need to have the prospect of increased repayment capacity in the medium term.	Any shortfall in interest paid is capitalised. There may be no repayments or limited repayments against the capital balance. This means the borrower is now paying interest on top of accrued interest. Since some of the interest charged is not being repaid, the capital balance owed is increasing on a monthly basis.
Capitalising the arrears	The lender would add the arrears to the loan outstanding.	This action is considered when the borrower has re-established a pattern of mortgage repayments in line with the original mortgage contract; however, arrears remain outstanding. There must be adequate equity in the property.	The borrower's capital balance outstanding to the lender has increased and the borrower is now paying interest on top of previously accrued interest.

Proposed action	Description	Most suited to	Impact of the proposed action
Mortgage-to-rent scheme	Individuals who are having trouble paying their mortgage voluntarily allow the lender take possession of their home. The lender then sells the property to a third party, for example, a housing association, who rents it back to the borrower.	This may suit a borrower who otherwise will be forced to voluntarily sell their property and move onto a social housing list. However, the lender MUST approve the mortgage-to-rent scheme.	There is limited disruption to the borrowers' family life as their family remain in the home despite their financial situation. They pay rent to the local authority at a rent they can afford, and the proceeds of the sale of the property go towards repaying their debt.
Sale of the property	The borrower would voluntarily sell the property themselves and use the sale proceeds to repay the mortgage debt.	This may suit an individual borrower who realises that their debt is unsustainable and would prefer to clear the loan outstanding.	The borrower takes responsibility for the sale of the property. The loan account may be cleared in full; however, there is a possibility that the sale proceeds may not realise enough money to adequately cover the loan amount outstanding and any additional costs, which may have been incurred in the sale process.
Voluntary surrender agreement	This is where the borrower will surrender possession of the property under a voluntary agreement and the lender can exercise its "Power of Sale" thus avoiding the normal expense incurred in litigation by the lender to obtain a repossession order.	This may suit an individual borrower who realises, in agreement with their lender, that their debt is unsustainable and to avoid further debt agrees that the lender can sell the property.	The lender takes responsibility for the sale of the property. The loan account may be cleared in full; however, there is a possibility that the sale of the property may not realise enough to cover the amount outstanding and any additional costs, which may be incurred in the sale process.

Advantages and Disadvantages of ARAs

When a borrower finds themselves in an arrears situation, very often they will accept any proposed action which is offered. However, it is important that borrowers understand the implications of the proposed solution and often it is recommended that the borrower receive independent financial advice.

The proposed actions outlined earlier offer many ***advantages*** to a borrower. It provides a borrower:

- With an opportunity to get themselves back on a sound financial footing, reduce their monthly repayment and maintain a clean credit record;

- Who consolidates their personal loans and other debt into a mortgage, to reduce their overall monthly outgoings, due to the lower interest rate;
- Who opts for voluntary sale, the control of the actual sale of the property, the asking price and the overall costs;
- With peace of mind that the threat of repossession of the property is alleviated.

The ***disadvantages*** to a borrower of the proposed actions:

- The indebtedness to the lending institution has increased;
- The term of the loan may have been extended;
- The balance that remains unpaid has been added to the overall debt;
- If the arrears are capitalised, the borrower could find themselves back in the same situation again, at which stage, if there was no equity in the property, there would be limited options available to them.

The Personal Insolvency (Amended) Act, 2015 has made provisions to ensure that a borrower who has entered a mortgage restructure is not excluded from applying for a *personal insolvency arrangement*, should the restructure not succeed in returning the borrower to solvency.

Key Learning Point

There are several alternative repayment arrangements available to a borrower. Each has its advantages and disadvantages. Ultimately the debt is spread over a longer period or an individual is required to consider selling their property. ARAs do not automatically allow for a write off of unpaid debt.

8.6.2 Lender Not Willing to Offer Alternative Repayment Arrangement to Borrower

If a **regulated entity does not offer a borrower** 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 lender must advise the borrower in writing of the other options available to the borrower. These options could include voluntary surrender, trading down, mortgage to rent or voluntary sale. The regulated entity must outline the implications of each option for the borrower.

The borrowers must be notified of their right to appeal the decision of the regulated entity not to offer an alternative repayment arrangement to the lender's *appeals board*.

However, the borrower is now outside MARP and the protections of MARP no longer apply. Legal proceedings may commence three months from the date the letter is issued or eight months from the date the arrears arose, <u>whichever date is later</u>.

8.6.3 Borrower Not Willing to Enter Alternative Repayment Arrangement

If the **borrower is not willing to enter** into an alternative repayment arrangement offered by the regulated entity, the lender must inform the borrower in writing of the other options open to the borrower, including voluntary surrender, trading down or voluntary sale, and the implications of these for the borrower and the borrower's mortgage loan account.

Due to the implications for personal insolvency, a non-judicial debt resolution process, a lender **cannot** classify a borrower as not cooperating if the borrower declines the lender's offer of an alternative repayment solution. A lender must allow the borrower a reasonable period to consider submitting an appeal to their *appeals board*, which must be at least **20 business days** from the date of notification of the decision of the lender's ASU.

8.7 Appeals

The CCMA requires a regulated entity to have an appeals process in place which will enable a borrower to appeal a decision of the regulated entity regarding the type of alternative repayment arrangement, or where a regulated entity declines to offer an alternative repayment arrangement to a borrower.

A borrower can also make an appeal where a regulated entity classifies a borrower as not cooperating.

8.8 Life Assurance Implication for Loans in Arrears

It is important to note that most of the alternative repayments options to mortgage arrears will have implications for the borrower in relation to any life assurance used as security against their borrowings.

When a borrower takes out mortgage protection cover, it is initially structured to provide life cover to match the initial loan amount borrowed. For some mortgage protection policies, the level of cover reduces in line with the loan over the mortgage term at an assumed rate of interest, say, 6%. So, if an individual has a build-up of mortgage arrears, this additional arrears balance will not be covered by their mortgage protection policy. Similarly, an individual who capitalises mortgage arrears thereby increasing their borrowing, should be aware that an increased level of life cover would be required to protect the additional borrowings.

Example

John took out a capital and interest mortgage in 2008 for € 250,000 on a property, which he used as his main residence valued at € 350,000.

John also arranged a mortgage protection policy, which was designed to pay out a lump sum upon his death equal to the anticipated capital outstanding, if he died during the term of the policy. A mortgage protection policy is designed to reduce in value in line with the reducing balance on his mortgage account.

In late 2010, John lost his job and was unable to make his mortgage repayments. At that time, his outstanding mortgage was € 248,000 and his mortgage protection policy cover was valued at a similar amount.

Over the following months, John accumulated arrears on his mortgage. However, John subsequently found employment and was able to re-establish regular mortgage repayments.

John negotiated with his lender to *capitalise* his arrears, which now totalled € 10,000. His revised loan following the capitalisation of arrears was now € 258,000. However, the value of John's property is now € 250,000 so he is in *negative equity*.

If John died today, because his mortgage protection policy cover was decreasing, the policy would only have paid out € 248,000 (assumed).

Therefore, a shortfall of € 10,000 in John's life cover would arise, which could not be recovered from the sale of the property but which is still owed to the lender.

This shortfall would be charged against John's estate, that is, the other assets, if any, left by John following his death.

8.9 Repossession of a Property

A regulated entity, in conjunction with the borrower, must take the decision, having explored all options that if any ARAs outlined are unsustainable then it may be in the borrower's best interest, to consider a permanent solution whereby the borrower voluntarily surrenders the property. Alternatively, the regulated entity applies to the courts to repossess the property.

A regulated entity cannot apply to the courts to commence legal action for repossession of the borrower's **primary residence** until every *reasonable effort* has been made to agree an alternative repayment arrangement with the cooperating borrower or his/her nominated representative. In general, if a borrower is cooperating with the lender, then the regulated entity must wait at least eight months from the date the loan went into arrears before applying to the courts to repossess a property.

As we have seen under the CCMA, a regulated entity must notify the borrower in writing before it applies to the courts to commence legal action for the repossession of the primary residence.

Notwithstanding this, a regulated entity may at any time apply to the courts to commence legal proceedings for repossession of a borrower's primary residence where a borrower is in mortgage arrears in the case of fraud perpetrated on the regulated entity by the borrower or in the case of breach of contract by the borrower other than the existence of arrears.

A regulated entity can commence legal proceedings to repossess a property that is not the primary residence that is, rental property or holiday home, in accordance with the terms and conditions outlined in the mortgage deed.

8.10 MABS (Money Advice and Budgeting Service)

MABS is a free confidential service for people in debt or in danger of getting into debt. Originally established in 1992, to help combat the problems faced by individuals who had borrowed from moneylenders, the service was expanded to help all individuals who were struggling with personal debt. MABS is funded and supported by the Citizens Information Board which has statutory responsibility for it.

As the service expanded, the range of issues dealt with changed from managing debt with moneylenders to helping individuals deal with a range of creditors from utility providers to credit card and finance companies.

Mortgage lenders will refer customers for guidance to the MABS service in relation to home loans. During a MABS engagement on behalf of the borrower, lenders will not commence legal action and will suspend any legal action already commenced, subject to compliance with an ongoing payment scheme.

The MABS adviser's role is to establish the borrower's ability to repay, and to assist the borrower prioritise the debts in terms of secured and unsecured loans.

Thereafter the priority for repayment to a debtor is based on the consequences for non-payment of debts (such as essential utilities and necessities).

MABS is also an approved intermediary, under the Personal Insolvency Act, and can apply for debt relief notices on behalf of eligible individuals.

8.10.1 Abhaile

Abhaile is a service introduced in 2017 which is available to homeowners in serious mortgage arrears that is operated by MABS, in conjunction with the Insolvency Service of Ireland (ISI), the Legal Aid Board and the Citizens Information Board. The aim of the scheme is to help homeowners find a resolution to home mortgage arrears.

Abhaile provides vouchers for free financial and legal advice and help from experts who are available through MABS. This is a valuable service to those who are in severe financial difficulties with their mortgage loans - home loans only - as normally there is a charge involved for individuals to access this support. (See Section 8.12 following, regarding Personal Insolvency Practitioners).

To qualify for Abhaile, the borrower must be:

- In mortgage arrears on their home.
- Insolvent - the individual is unable to pay debts in full as they fall due.
- At risk of losing home due to arrears.
- Reasonably accommodated: The costs of continuing to live in the property are not disproportionately excessive, *e.g.* a family of four living in a six-bedroom house when cheaper housing is available to suit the family size.

Once it is deemed by MABS that an individual qualifies for Abhaile and it identifies which of the services offered is the most appropriate, a voucher will be provided to allow the individual avail of a free meeting with the relevant professional.

The services offered include:

- Personal Insolvency Practitioner Service
- Accountant Service
- Consultation Solicitor Service
- Duty Solicitor Service
- Personal Insolvency Court Review Service

Key Learning Point

MABS is a free service and provides advice and support to individuals who are experiencing financial difficulty. MABS is also authorised by the Insolvency Service of Ireland (ISI) to apply for debt relief notices on behalf of individuals under the Personal Insolvency Act.

8.11 Debt Management Firms

Debt management firms offer a debt management service to individuals who are in financial difficulty. The firms negotiate with lenders to arrive at a sustainable situation and reduce the borrowers' loan repayments to an acceptable level. This may be done by negotiating amendment of loan terms, splitting the mortgage or by way of debt write off.

Whilst most do not charge an initial consultation fee, debt management firms normally charge the borrower a fee for their services and time spent in negotiations with a lender on specific debt settlement arrangement. They will also administer a debt management plan and deal with queries from creditors. They may charge a fee based on the number of debt plans to be managed.

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Since August 2013, debt management firms in Ireland are required to be authorised by the Central Bank as defined in Section 28 of The Central Bank Act 1997.

The following regulations and codes apply to debt management firms:

- The Central Bank (Supervision and Enforcement) Act 2013;
- The Central Bank Act 1997;
- Consumer Protection Code 2012 (Revised January 2015 to include new chapter for Debt Management Firms (Chapter 13));
- Minimum Competency Code 2011 & 2017.

Under Part V of The Central Bank Act 1997, a **debt management firm** is defined as meaning:

> *"…a person who for remuneration provides debt management services to one or more consumers, other than an excepted person".*

The Act defines **debt management services** as meaning:

> a. *"Giving advice about the discharge of debts (in whole or in part), including advice about budgeting in connection with the discharge of debts,*
>
> a. *Negotiating with a person's creditors for the discharge of the person's debts (in whole or in part), or*
>
> b. *Any similar activity associated with the discharge of debts".*

Certain persons (firms) can provide debt management services and are specifically excluded from the requirement to be regulated.

These include:

- Money and Advice Budgeting Service (MABS);
- Charities;
- Banks;
- Insolvency Service of Ireland;
- Personal insolvency practitioners;
- Barristers, solicitors, or accountants who provide debt management advice in an incidental manner and who are regulated by their own professional body.

8.11.1 Consumer Protection Code 2012 – Debt Management Firms

The revised amendments in 2015 to the Consumer Protection Code, 2012 in relation to debt management firms set down requirements that debt management firms must adhere to in the areas of:

- Provision of information to a consumer;
- Restrictions imposed on a debt management firm in relation to knowing the consumer and suitability statements (such as a statement of advice).

Under the Consumer Protection Code, a *debt management firm* must not provide *debt management services* to a *consumer* unless the *consumer* has signed an agreement which clearly specifies:

- The services that will be provided;
- The *charges* payable for those services;
- When the *charges* will be payable and how they can be paid;
- The likely duration of the agreement;
- Whether or not the *debt management firm* is authorised to hold client funds and make payments on behalf of the *consumer* to his or her creditors; and
- Any *charge*s that will be payable if the *consumer* withdraws from the agreement and when those *charge*s will be payable.

This document is designed to:

- Help the consumer understand the nature of the service provided and the risks of using the service.
- Notify the consumer that the debt management firm will charge for their services and must highlight that there are sources of free debt advice offered by firms such as MABS.
- Provide the consumer with a service level agreement and information on the collection and management of client funds.
- Notify the consumer of their right to complain to the Financial Services and Pensions Ombudsman if their complaint to the debt management firm is not resolved to their satisfaction.

The document should also include the following warnings:

- You may be responsible for undertaking the actions proposed and you may engage a third party to assist you.
- Your creditors are not obliged to accept reduced repayments or freeze interest or charges.
- Your creditors' collection activities may continue even though you have engaged a debt management firm.
- If you cancel payments to your creditors, you will be in breach of your agreement with them and your account(s) will go into arrears or further into arrears.

- If you reduce your payments it may mean it takes longer to pay off your creditors and you may pay more than if you paid over a shorter term.

- If you undertake a proposed course of action it may affect your credit rating, which may limit your ability to access credit in the future.

- If you are a property owner, as part of any arrangement, you may be required to sell or re-mortgage your property to pay off some or all your debts. Your ability to do so may be restricted and a mortgage may only be offered at a higher interest rate. If you are a property owner, failure to make the negotiated payments to creditors could result in you losing your home.

A debt management firm MUST seek to agree a long-term solution for the borrower which is suitable to the borrower's needs and objectives.

Once a course of action is proposed by a debt management firm, they must prepare a written statement for the borrower setting out the reasons why the course of action proposed is suitable and affordable for that consumer. This is known as a *statement of advice.* This statement must include a description of the actual and potential consequences of the proposed course of action.

Once the statement of advice is issued to the borrower, the debt management firm MUST allow the consumer at least five business days to consider the statement. Once this five business day period has expired and it has received consent to do so, the debt management firm may begin negotiations with the consumer's creditors.

The firm must also provide to the consumer on a durable medium, a notification of the outcome of negotiations with creditors within three business days of such outcome. For ongoing negotiations, the firm must provide updates on at least a monthly basis until the process of negotiation is completed.

A debt management firm must not agree to a negotiated outcome with the consumer's creditors without their prior written permission and must retain a record of the consumer's agreement.

If insolvency is the most suitable course of action, then the debt management firm must advise the consumer of the opportunity to avail of the services of a personal insolvency practitioner.

8.12 Personal Insolvency (Amendment) Act, 2015

8.12.1 Introduction

Prior to the Personal Insolvency Act being introduced in 2012, a borrower who faced financial difficulty had little option in Ireland other than to declare themselves bankrupt through the judicial system and seek protection against a creditor from the courts.

Protection against a creditor means the creditor cannot demand payment or take any action against the debtor until in theory the debtor has had space and time to come up with a workable solution for repayment of the debt.

Declaring themselves bankrupt enabled the debtor - the individual who owes money - settle their debts by arrangement with their creditors - the individual who lent the money - while protected by the courts. As this is a legal process, the act of bankruptcy is an onerous and costly procedure.

The *Personal Insolvency Act, 2012,* introduced new laws in relation to personal insolvency in Ireland, in recognition of the need to lessen the difficulties experienced by debtors who are unable to meet their commitments. The aim of the Act was to lessen the adverse consequences for economic activity in Ireland.

The Act introduced **three non-judicial debt resolution processes**, which are each subject to specific terms and conditions. *Non-judicial* refers to the financial settlements which are made outside of the court. The insolvent individual is not required to appear in the courts for any legal hearings.

In July 2015, the Personal Insolvency (Amendment) Act, 2015, was introduced which amended the Personal Insolvency Act, 2012 and all amendments are now in effect.

8.12.2 Non-Judicial Resolutions

The **three non-judicial debt resolutions** processes available under the Personal Insolvency Act, 2015 (as amended) are:

1. **Debt relief notice (DRN)** to allows for the write-off of qualifying unsecured debt up to € 35,000, subject to a three-year supervision period where a debtor has no income or assets;

2. **Debt settlement arrangement (DSA)** covers unsecured debt only, without any limit;

3. **Personal insolvency arrangement (PIA)** for the agreed settlement of secured debt up to € 3 million[26] and unsecured debt.

The Personal Insolvency Act also established an organisation called the Insolvency Service of Ireland (ISI) whose primary role is to authorise and regulate *approved intermediaries*[27], also known as AIs, and *personal insolvency practitioners* or PIPs, who will act on behalf of the debtor in the insolvency process.

The ISI is also responsible for processing applications for protective certificates (protection for individuals from legal proceedings by a specified creditor whilst applying for either a debt settlement arrangement or a personal insolvency arrangement) and maintains various public registers.

The ISI is also responsible particularly for collecting, analysing and disseminating data on insolvency and promoting public awareness and understanding.

Key Learning Point

The Personal Insolvency Act, 2012 is a non-judicial system which provides protection to individuals unable to pay their debts. It is the alternative to seeking bankruptcy through the judicial system, which is onerous and can be costly.

[26] *Unless creditors consent to a higher level.*

[27] *Such as MABS or other organisation, as deemed appropriate by the Insolvency Service of Ireland*

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8.12.3 Entering into an Insolvency Arrangement

Entering into an insolvency arrangement is not an insignificant undertaking. It is one which should only be taken after due consideration is given and all other avenues have been explored by the debtor.

Before an individual considers entering into an insolvency arrangement, they must ensure that their current financial problems are a result of genuine insolvency and not just a liquidity problem. An individual can be considered insolvent if:

- In respect of a debt incurred by a natural person (not a corporate) whether through personal consumption or in the course of that person's business, trade or profession, they cannot repay their debt when payment falls due; and

- Their assets are worth less than their liabilities; and

- Where there is no realistic prospect of the individual being able to pay their debts in the foreseeable future.

On the other hand, a *liquidity* issue arises when an individual cannot pay their bills due to a lack of financial resources at a particular time while their assets are valued at more than their liabilities. In effect, the individual could resolve their debt problems by selling off their assets or restructuring their finances.

The Personal Insolvency (Amended) Act, 2015 has made provisions to ensure that a borrower who has entered a mortgage restructure is not excluded from applying for a personal insolvency arrangement, should the restructure not succeed in returning the borrower to solvency.

8.12.4 Insolvency Service of Ireland

The Personal Insolvency Act, 2012, established the Insolvency Service of Ireland (ISI). The main function of the ISI is to monitor the operation of the insolvency system in accordance with the Act. The ISI does not have a role in negotiating or agreeing debt settlement or personal insolvency arrangements.

The ISI is responsible for the authorisation of approved intermediaries and personal insolvency practitioners.

The ISI plays no role in providing legal advice, interpreting legislation, or providing financial advice. The ISI is directly involved in the implementation of the debt relief notices (DRNs), more so than the debt settlement arrangements (DSAs) or personal insolvency arrangements (PIAs).

8.13 Non-Judicial Debt Resolution Process

Unlike bankruptcy, the personal insolvency regime provides for a *non-judicial process*. Whilst *non-judicial* means that the financial settlements and arrangements are made outside of the court system, in this case, it does not mean that the courts are not involved in the process. In fact, it is the Circuit Court which determines applications for relief for liabilities of up to € 2.5 million while the High Court will determine all other applications for debt relief under a PIA arrangement (up to the threshold of € 3m).

So, it is important to note that whilst insolvency procedures will be conducted outside of the courts system, the three resolution processes will be supervised by the Insolvency Service of Ireland and the process commences with a judicial order from the courts. However, unlike the legal procedures for a bankruptcy process, the debtor will not have to appear before the courts.

8.13.1 Debt Relief Notice (DRN)

A *debt relief notice* is issued to permit the write off of qualifying unsecured debts, subject to certain conditions, to individuals who have little or no ability to clear the debt and where their liabilities outstrip their assets and it is unlikely that they will be able to clear their debt in the coming three years. This is determined by the approved intermediary (AI) when they are completing a review of the individual's circumstances along with an *asset test*.

A DRN will be issued to individuals:

- Whose qualifying debt is less than € 35,000;
- Who have not been the subject of a Debt Settlement Arrangement (DSA) or a Personal Insolvency Arrangement (PIA) now or within the past 5 years;
- Who are not bankrupt or subject to a bankruptcy measure or have been discharged from bankruptcy in the past 5 years;
- Who have not been the subject of a Protective Certificate issued in respect of a DSA or a PIA within the past year;
- Who have completed and signed a Prescribed Financial Statement (PFS) and made a statutory declaration that it is true and accurate;
- Who have available to them, net disposable income of € 60 or less a month after reasonable living expenses;
- Whose assets or savings are worth € 400 or less (subject to an asset test);
- Who are insolvent and have no realistic prospect of being able to pay their debts within the next three years;
- Who are domiciled in the State or, within one year before the application, ordinarily resided or had a place of business in the State; and
- Who, where applicable, have not in the preceding two years, entered into a transaction with any person to sell at an undervalue price, or give a preference to any person of their assets. This is normally done where an individual is trying to frustrate the courts and hide assets (for future personal use) which would otherwise be included in this process.

The following assets are not considered in the asset test:

- Essential household equipment and appliances and books, tools or equipment needed for employment or business, up to a total value of € 6,000;
- Books or equipment that are reasonably necessary to enable you or a dependant to participate in and complete a course of education at primary or secondary level only;
- A vehicle that has been adapted for a person with a disability, either you or one of your dependants;
- A motor vehicle up to a value of € 5,000*;

**A motor vehicle or piece of jewellery cannot be excluded from the asset test if the cost of buying it forms part of your qualifying debts.*

- One item of personal jewellery to a maximum value of € 750*;
- Any future pension entitlement or option that you cannot choose to access at present.

An Approved Intermediary (AI) must also have signed a statement of satisfaction as to the individual's eligibility and the truth and accuracy of the PFS.

8.13.1.1 Reasonable Living Expenses

Section 23 of the Act requires the ISI to have regard to certain criteria in preparing guidelines on a reasonable standard of living and reasonable living expenses.

This model allows for food for a nutritionally balanced diet, clothing, personal care, health, household goods, household services, communications, social inclusion and participation, education, transport, household energy, childcare, insurance and modest allowances for savings and contingencies.

Reasonable living expenses depend on several factors including:

- The composition of the household, that is, number of adults and children;
- Need for a car and the adequacy of local transport;
- Exceptional medical requirements;
- Childcare, mortgage payments or rent.

The ISI publishes guidelines on a reasonable standard of living and reasonable living expenses and revisits the guidelines on an ongoing basis as the need arises.

8.13.2 Objections from Creditors to the Issuing of a DRN

A creditor who has a debt included in a DRN can object to the courts to being included. However, the grounds on which they can object are limited and relate to the debtor's compliance with legislation or the process of the DRN. The objection must be made within 21 days of the creditor being advised of the DRN.

A creditor cannot object just because it is unlikely that will ever be able to recoup the debt.

A creditor can only object if:

- The debtor did not satisfy the eligibility criteria;
- There is a material inaccuracy or omission in the debtor's application which has caused material detriment to the creditor;
- Adjudication in bankruptcy has been made in relation to the specified debtor that has not been annulled or discharged;
- The debtor has, since the coming into effect of the DRN, committed an offence under this Act.

Even if a creditor does proceed to make an application, the court may dismiss the application or do one or more of the following:

- Terminate the DRN;
- Extend the supervision period concerned - there are exceptions where the DRN period can be extended;

- Make an order amending the DRN, including:
    - Removing the debt which was the subject of the objection; or
    - Make such other order as it deems appropriate.

There is a restriction on the debtor from applying for credit over € 650 during the DRN supervision period without informing the person from whom they are receiving the credit of their insolvency status.

The debtor must inform the approved intermediary and the ISI of any material change in financial circumstances during the supervision period.

8.13.3 Debtor Responsibility – Change in Circumstances

One of the main effects of obtaining a DRN is that during the three-year supervision period, there is no obligation on the debtor to make any payments to the creditor, provided their circumstances remain unchanged.

However, during the three-year supervision period, the debtor must inform the ISI, as soon as is practical, of any material change in their circumstances and, in particular, an increase or decrease in the level of his or her assets, liabilities or income.

During this period, if the debtor receives a gift or payment worth € 500 or more, they must surrender to the ISI, 50% of the value of that gift or payment.

The ISI will divide the payment on an equal basis amongst the listed creditors.

Example #1

John was granted a DRN in respect of unsecured loans totalling € 15,000. At the time of the granting of the notice, John’s net disposable income after allowing for reasonable living expenses was € 55 a month and his assets were € 150. John is 18 months into his supervision period when he receives a windfall of € 400. As the windfall is less that the threshold noted above, John is not required to declare this to the ISI.

Example #2

Alice was granted a DRN in respect of unsecured loans totalling € 18,000. At the time of the granting of the notice, Alice’s net disposable income after allowing for reasonable living expenses was € 45 a month and her assets were nil.

Alice is 12 months into her supervision period when she receives an unexpected inheritance from her grandfather to the value of € 3,000. As the inheritance is more that € 500, Alice must inform the ISI as soon as is practical and pay over to the ISI 50% - that is, € 1,500 - who will divide the money on an equal basis amongst Alice’s listed creditors.

A debtor whose income as stated in the original application, after deduction of income tax, social insurance contributions and other levies and charges during the supervision period concerned, increases by € 400 or more per month, shall pay over to the ISI, 50% of the value that increase.

Example #3

Brendan was granted a DRN in respect of unsecured loans totalling € 12,000. At the time of the granting of the notice, Brendan is unemployed, living on social welfare with net disposable income, after allowing for reasonable living expenses of € 50 a month. His assets were € 250.

Brendan is 16 months into his supervision period when he is offered a job with a local firm. As a result, Brendan will not be on social welfare and his net monthly income will increase to € 500.

As a result of this increase in income, Brendan must inform the ISI as soon as is practicable and pay over to the ISI 50% of the increase, that is, € 225.

Note: the figure is € 225 because Brendan is required to pay over 50% of the increase. Originally Brendan's disposable income was € 50, and it is now € 500; therefore, the increase is € 450. 50% of this increase is equal to € 225. The ISI will divide the money on an equal basis amongst Brendan's listed creditors.

If the debtor makes repayments totalling 50% of the original debt at any stage of the process the debtor will be deemed to have satisfied the debts in full, the DRN will cease to have effect and the debtor will be removed from the register and all of the remaining debts will be discharged immediately.

Example #4

Sandra was granted a DRN in respect of unsecured loans totalling € 18,000. At the time of the granting of the notice, Sandra's net disposable income after allowing for reasonable living expenses was € 45 a month and her assets were € 300.

However, after 18 months into her supervision period Sandra receives an unexpected windfall and receives an inheritance of € 40,000. As the inheritance is more than € 500, Sandra must inform the ISI as soon as is practical. Sandra's original debt is € 18,000 and once Sandra surrenders 50% of the original debt that is, € 9,000 (which is substantially less than 50% of the € 40,000 windfall); Sandra will be deemed to have satisfied the debts in full.

At this point the DRN will cease to have effect and Sandra will be removed from the register - that is, after 18 months - and all the remaining debts will be discharged immediately.

Only one DRN per lifetime is permitted and not within five years from completion of a debt settlement arrangement (DSA) or personal insolvency arrangement (PIA). A debt relief notice will not impose any requirements on a family home. The Insolvency Service of Ireland have currently waived its fees for the processing of the DRN, DSA and PIA.

8.13.4 Debt Settlement Arrangement (DSA)

A debt settlement arrangement (DSA) is suitable for those individuals:

- Who have large unsecured debt and who are unlikely to be able to repay this debt in the foreseeable future.
- Whose debts are above the financial threshold for a debt relief notice (that is, € 35,001) or below that figure if their income/assets would make them ineligible for a DRN.

- Who may have both secured and unsecured debt but do not have the financial ability to service their unsecured debts.

A DSA will allow the individual to seek protection from their unsecured creditors. However, they can maintain repayments on their secured debt - such as the family home - whilst they enter into a settlement agreement with all their creditors. The debtor will agree to pay an affordable amount that is less than the full amount due over a five-year period. These terms may be increased to six years in certain circumstances.

A DSA does not apply to lease or hire purchase agreements. It does apply to the residual debt that is, debt which was previously secured against an asset and which, following the sale of the asset, is the balance outstanding to the creditor.

Example

John owns a residential investment property which is valued at € 200,000 and the loan secured against the property including arrears is € 300,000. In agreement with the lender, John decides to sell the property for € 200,000. He repays the lender the € 200,000 but he still owes the lender the residual balance of € 100,000. However, as the property is sold, it is no longer *charged* against the property. This means the debt of € 100,000 is now unsecured.

John has other unsecured debt and decides to enter into a debt settlement arrangement. The debt of € 100,000 previously secured against his property which has now been sold qualifies to be included in the DSA.

It is important to note that the DSA does not impact on any secured loan, that is, family home loan, once the debtor can continue to pay the loan secured against that property. If they are unable to repay the loan secured against the family home, a PIA might be a more appropriate solution for them as secured debt cannot be included in a DSA.

For a debtor to apply for the protection of a DSA they must engage a personal insolvency practitioner (PIP), who is entitled to charge a fee for their services. The debtor must complete a Prescribed Financial Statement (PFS) and a declaration, compile a list of creditors and amounts owed and submit all to the PIP. The PIP sends on the application to the ISI for consideration and if they are satisfied that everything is in order, they will forward the application to the appropriate court. If the court approves the application, they will issue a protective certificate. This court-issued certificate offers an individual and their assets protection from legal proceedings by creditors while the individual applies for a DSA or PIA.

In general, a protective certificate remains in force for 70 days, but it may be extended in limited circumstances.

Once a protective certificate has been issued, another cannot be issued for another 12 months.

The debtor must also satisfy the following criteria prior to applying for a DSA.

The debtor must:

- Be domiciled in the State, or within one year before the date of the application for a protective certificate have ordinarily;
  - Resided in the State; or
  - Had a place of business in the State;

- Be insolvent;

- Make a statutory declaration declaring that he or she has not been able to agree an alternative repayment arrangement with his or her creditors, or that his or her creditors have confirmed to the debtor in writing their unwillingness to enter into an alternative repayment arrangement; and

- Complete a prescribed financial statement making a statutory declaration confirming that the statement is a complete and accurate statement of the debtor's assets, liabilities, income and expenditure.

The personal insolvency practitioner issues a certificate to the effect that, having considered the prescribed financial statement completed by the debtor, in their opinion there is no likelihood of the debtor becoming solvent within the period of five years commencing on the date of the making of the declaration.

The debtor must not:

- Have entered a previous DSA or PIA within the past five years; or

- Be subject to a DRN now or within the past three years; or

- Be an undisclosed bankrupt; or

- Have been discharged from bankruptcy less than five years prior to the date of the application for a protective certificate.

The protective certificate allows time for the debtor and the PIP to enter into arrangements with all unsecured creditors. Creditors cannot take any action (or continue action) against the debtor while the certificate is in force. The court may provide an extension to the time limit on the protective certificate but only if the debtor and the PIP satisfy the court that:

- They have acted in good faith and with reasonable expedition; and

- A proposal for a debt settlement arrangement which is likely to be accepted by the creditors, and successfully completed by the debtor will be made if the extension is granted.

The debtor shall not be eligible to make a proposal for a DSA where 25% or more of their debts, other than excluded debts and secured debts, were incurred during the period of six months ending on the date on which an application is made.

The qualifying debt and excluded debt for the purposes of a DSA are like those for a DRN. However, also included are business and commercial loans and debts under a personal guarantee.

A DSA will be deemed to have failed if an individual does not keep to the terms of the revised payment agreement and is in arrears on their payments **for a period of six months**.

However, a creditor or a PIP may apply to the courts to have a DSA terminated on certain grounds, including non-fulfilment of duties under the DSA process or if the individual is in arrears with their payments for a **period of three months**.

This means that failure to meet repayments for a period of three months can enable a creditor to apply to the courts for non-fulfilment of duties; however, in any event failure to make repayments for a period of six months automatically means the DSA has failed.

If a DSA fails, then the debtor is no longer protected by the courts and a creditor can pursue the debtor through the courts. In most cases, this effectively can induce the debtor to seek to file through the courts for bankruptcy.

8.13.5 Personal Insolvency Arrangement (PIA)

This type of arrangement is aimed at debtors who have large unsustainable secured and unsecured debt and are not able to meet the repayments on either. One of the aims of the PIA arrangement is to enable an individual to keep their family home and come to an agreement at the same time with their creditors. A PIA is not a write-off of debts. It is where a debtor can come to an arrangement with its creditors to make some repayments in return for a concession, a write down on the size of the debt.

The PIA differs from a debt settlement arrangement (DSA) as it includes secured debt and is intended as an alternative to the normal judicial bankruptcy process.

As is the case with DRNs and DSAs, an individual must meet certain criteria to proceed with a personal insolvency arrangement (PIA).

Under a PIA, a debtor's unsecured debts will be settled over a period of up to six years, extendable to seven years in certain circumstances, and the debtor will be released from those unsecured debts at the end of that period. Secured debts can be restructured under a PIA, for example, to provide for payments for a certain period or a write-down of a portion of negative equity. Depending on the terms of the PIA, the debtor may be released from a secured debt at the end of PIA period or the secured debt can continue to be payable by the debtor albeit on restructured terms.

The debtor must:

- Be insolvent.
- Be resident in the state or within one year of the application date have resided in the state or had a place of business in the state.
- Have a least one secured debt up to € 3m. These debts can include mortgage, term loans, overdrafts, etc.
- Engage the services of a PIP. A fee will normally have to be paid for a PIP's services, but if the individual is in danger of losing their home due to mortgage arrears they may be entitled to a free meeting with a PIP as part of the Abhaile scheme.
- Have considered other options available to them and attempted to resolve its financial difficulties with its secured creditors.
- Confirm that there is no likelihood of them becoming solvent within five years from the date of the application.
- Confirm in writing that if the debt relates to a principal private residence that they have complied with the lender's MARP for at least six months and that an alternative repayment arrangement was not offered or could not be agreed upon by the creditor.

The process for the issue of the protective certificate is the same as that of the DSA and once the certificate is issued by the courts, then the debtor has 70 days - though this may be extended in limited circumstances - in which it can come to an agreement with its creditors and during which the creditors cannot instigate or continue legal action to enforce the recovery of the debt.

Once an arrangement is agreed with the required percentage of creditors, the court must approve the arrangement and the detail will be registered by the ISI on their public register.

The maximum duration of a PIA is six years although the PIP must review the PIA annually and provide a report to the creditors involved. At the end of the six years and subject to the debtor complying with the terms of the agreement during this period, any unpaid unsecured debt will be written off. In some circumstances this be extended by an additional year.

8.14 Summary of the Personal Insolvency Act

In summary, the introduction of the Personal Insolvency Act is a positive step towards helping individuals who have accumulated unmanageable and unsustainable debt deal with this debt as best they can, and whilst there is no blanket debt forgiveness, the arrangements put in place will allow individuals to restart their life again after a reasonable period of time and under a non-judicial arrangement.

Below is a summary of the arrangements:

Key responsibilities	Debt relief notice (DRN)	Debt settlement arrangement	Personal insolvency arrangement
Type of debt covered	Unsecured	Unsecured	Unsecured and secured
Value of the debt	Up to € 35,000	No limit	No limit on unsecured, up to € 3m on secured
Duration of the agreement	3 years	5 years (possibly 6)	6 years (possibly 7)
Prepare application/proposal with debtor	Approved intermediary (AI)	Personal insolvency practitioner (PIP)	Personal insolvency practitioner (PIP)
Issue DRN	Circuit court	Not applicable	Not applicable
Register protective certificate	Not applicable	ISI	ISI
Public register DRN/DSA/PIA	ISI	ISI	ISI
Administer terms of DRN/DSA/PIA	ISI	Personal insolvency practitioner (PIP)	Personal insolvency practitioner (PIP)

It is important to note that the application to enter into an insolvency arrangement must be made through a third party:

- In the case of a DRN, it must be done through an approved intermediary (AI).
- For DSAs and PIAs, it must be done through a personal insolvency practitioner (PIP).

Creditors can object to an arrangement although in the case of a DRN, creditor consent is not always required.

Several common elements apply to the various arrangements. A debtor:

- Can only avail of each arrangement once and may NOT enter into the debt relief notice process within five years of completion of a debt settlement arrangement or personal insolvency arrangement.

- Cannot be forced to leave a principal private residence under a DSA or a PIA but may opt to do so following discussions with a PIP.

- Must not deliberately stop paying or underpay their creditors while the insolvency procedures are being set up as this could invalidate the process.

- Must complete a prescribed financial statement. The prescribed financial statement will require the debtor to provide detailed information relating to his or her income, assets, liabilities, and necessary household expenditure. The prescribed financial statement must be verified by means of a statutory declaration signed by the debtor.

- Has no right of appeal against a decision taken at a creditors' meeting in respect of a DSA or a PIA.

- Will not be able to apply for a DSA arrangement where 25% or more of their debts (other than excluded or secured debts) were incurred during the six months prior to when the application is made.

8.15 Bankruptcy

As mentioned, if any of the remedies proposed under the Personal Insolvency Act fails, then by default, the person has entered an act of bankruptcy. The legislation involving the *bankruptcy* process in Ireland is automatically triggered and the rules governing bankruptcy come into play.

To qualify for bankruptcy, debtors must show that they have made a reasonable effort to avail of a debt settlement arrangement, a personal insolvency arrangement or if debts were under € 35,000, a debt relief notice. The debtor must be domiciled in the state or in the previous three years have resided or had a dwelling house or place of business in the state.

Bankruptcy is a process where the property or assets of an individual who is unable or unwilling to pay their debts, called a debtor, are transferred to a person given charge of the property by the High Court, called an Official Assignee, to be sold.

The courts make a debtor bankrupt either at the request of the debtor to protect themselves from their creditors or at the request of the creditor. In either case, this request is made by application to the courts in a document called a petition. There is a requirement on the creditor to give 14 days' notice of an application to the debtor to allow them to enter into an insolvency arrangement, if they have not already done so. The petition must be filed in the Office of the Examiner of the High Court.

The courts then ensure that any of their assets are distributed fairly amongst their creditors. The distributions of these assets are carried out by an official known as the *Official Assignee*[28].

[28] *Previously the Office of the Official Assignee was based in the Courts Service. In 2014, it was integrated into the Insolvency Service of Ireland.*

When a creditor makes a petition for bankruptcy, the court must have regard to whether that creditor may have unreasonably refused a proposal for one of the alternative arrangements.

All the debtor's assets except for *necessities* to the value of € 6,000 (including a vehicle) are transferred to the Official Assignee who will then sell the goods, that is, property, etc., pay costs and fees and distribute the remainder amongst the creditors.

Necessities are described as items such as:

- Clothes;
- Furniture, tools and equipment related to a trade;
- Necessities for other family members or dependent relatives.

A creditor can file a bankruptcy summons on a debtor. If the debtor then fails to comply with the summons within 14 days or fails to return the goods, the creditor can file a petition to the courts for bankruptcy. Individuals can retain up to € 1,000 in one working current account, to allow for *reasonable living expenses*.

A petition is a request made by a creditor and filed in the Office of the Examiner of the High Court if the debtor has committed an act of bankruptcy.

To enable a creditor to file a petition the following conditions must be met:

- The petition must be presented within three months of the act of bankruptcy;
- The amount of debt owed must be set out in an affidavit;
- Debts must exceed assets by more than € 20,000;
- The debtor must either be resident in the State or within three years prior to presentation of the petition, have ordinarily resided, had a dwelling house or place of business, or carried on business within the State.

The creditor's petition must state whether they hold any security - for example, a mortgage or a charge - in respect of the debt. If so, the creditor must indicate whether he/she intends to give up the security for the benefit of other creditors or put a value on their security.

Under the bankruptcy process, the property or assets of an individual or company who is *unable or unwilling* to pay their debts are transferred to a trustee, a person given charge of the property by the court, to be sold. The proceeds of the property sale are then distributed to those who are owed money after all costs and expenses are paid.

The Official Assignee may not sell the family home without firstly obtaining permission from the High Court. Where the Official Assignee seeks this permission, the High Court will consider the matter having regard to the interests of the creditors and of any spouse or civil partner and dependants of the bankrupt person. If there is equity (that is, surplus in value of property above the amount of mortgage) in the family home, the Official Assignee will firstly seek to sell their half share to the spouse or civil partner.

If there is no equity in the family home, there is no immediate urgency for the Official Assignee to sell the property. If the Official Assignee has not within three years of the date of adjudication of bankruptcy issued a notice to sell the property, then the family home automatically reverts to the ownership of the bankrupt.

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8.15.1 Restriction on Individuals Who are Declared Bankrupt

If an individual has been declared bankrupt, it is an offence, which is subject to a fine of € 1,270 or a prison sentence of up to five years if:

- The individual does not disclose the bankruptcy when obtaining credit of € 650 or more;
- The individual trades under a different name than that which they were using when made bankrupt and do not disclose the bankruptcy; or
- The individual acts as a director, manager, liquidator or receiver of a company without informing the courts.

Where a person owns property jointly with a bankrupt, the bankruptcy splits the joint ownership. The non-bankrupt co-owner and the Official Assignee then hold separate interests in the property.

If an individual in the five years before the bankruptcy disposes of any financial assets, which include property, shares, high value items, etc., then this must be declared to the Official Assignee. If the Official Assignee feels that the property was sold below market value to frustrate the bankruptcy process - for example sold to family members, spouse, etc. - and the transaction was not entered into in good faith, then the transaction could be reversed.

Therefore, individuals who attempt to place property in their spouse’s name to reduce their assets could find themselves in court and the transaction reversed.

8.15.2 Cost of Bankruptcy

There is an initial fee of € 200 payable to the Official Assignee. After this amount has been paid, a petition and accompanying affidavit (incorporating a *statement of affairs*, together with all other relevant forms) must be filed by the debtor in the Office of the Examiner of the High Court.

The affidavit is filed to verify that everything said in the petition is true. This can be done by a solicitor for a nominal fee of around € 50.

After the court has adjudicated a person bankrupt, either the debtor or the petitioning creditor, as relevant, must place a notice of their bankruptcy in Iris Oifigiúil and on the ISI’s website within 21 days of the date of adjudication in order to notify creditors of bankruptcy.

Should the debtor wish to avail of independent advice, then additional fees may be incurred depending on the practitioner and the nature of the bankruptcy needs.

8.15.3 Release from Bankruptcy

An individual is automatically discharged from bankruptcy one year after the order of adjudication. Their name will remain on the register, as a discharged bankrupt.

An individual can be released from bankruptcy if **at any time during the one year**:

- All creditors have been paid in full;
- All unsecured creditors give their consent;
- There is no reasonable expectation that the debtor’s circumstances will change.

The Family Home

In bankruptcy, an individual's interest or share in the family home will transfer to the Official Assignee. This does not necessarily mean that the property will be sold, and in the first instance a schedule of payments will be agreed with the Official Assignee. For example, if the property is in negative equity there is no immediate urgency to sell. If there is equity available then the Official Assignee will seek to sell an individual share of the property to a spouse and, in any event, must seek permission from the High Court.

If the Official Assignee has decided not to sell an individual property within three years of their bankruptcy adjudication, ownership may automatically transfer back to the previously bankrupt individual.

Here is a summary of the various processes including bankruptcy which are available to individuals who are unable to clear their debts.

Arrangement	Type of debt covered	Value	Duration	Apply through
Debt relief notice (DRN).	Unsecured (and secured in certain cases).	Up to € 35,000 (previously € 20,000).	3 years.	Approved intermediary (AI).
Debt settlement arrangement (DSA).	Unsecured.	No limit.	5 years (+1).	Personal insolvency practitioner (PIP).
Personal insolvency arrangement (PIA).	Unsecured and secured.	No limit on unsecured,up to € 3m secured (though cap can increase if agreed).	6 years (+1).	Personal insolvency practitioner (PIP).
Bankruptcy.	Unsecured and possibly secured.	Over € 20,000.	1 year.	High Court (voluntary declaration or else creditors can petition).

Review

Now consider the main teaching points, which were introduced in this chapter. They are listed below. Tick each one as you go through them.

- The main reasons why arrears happen and the key legislation (Consumer Protection Code and Code of Conduct on Mortgage Arrears) that must be adhered to by regulated entities in relation to arrears management.
- The main provisions of the Mortgage Arrears Resolution Process and the various steps involved including a number or alternative repayment options which may be available to borrowers.
- The services provided by debt management firms and how they are regulated.
- The *Personal Insolvency Act, 2012* and the Personal Insolvency (Amendment) Act 2015 and the three non-judicial processes available to individuals who wish to protect themselves from their creditors whilst working to come to a payment arrangement to deal with their debt.
- Bankruptcy in Ireland.

Sample Questions

The answers to these questions can be found in your Study Hub.

1. Tom and Peter find themselves in a pre-arrears situation on their housing loan. This means they:

   A. have missed at least three months' mortgage repayments.
   B. are eligible to apply for a debt relief notice under the PIA.
   C. are in danger of going into financial difficulties and may not be able to make their mortgage repayments.
   D. have been in financial difficulties for some time and their loans are now considered unsustainable by their regulated entity.

2. A MARP booklet outlines:

   A. details of the Money and Advice Bureau only.
   B. details of the title of a property.
   C. details of a loan offer.
   D. details of a regulated entity’s mortgage arrears resolution procedures.

3. Bernard, who is in arrears, realises his mortgage repayments are unsustainable. The advantage of Bernard entering into a voluntary surrender agreement with the regulated entity is that:

   A. part of his loan debt will be written off immediately by the regulated entity as a gesture of goodwill.
   B. he can declare himself bankrupt and ensure he receives some money from the sale of the property
   C. the interest will stop accruing on his loan immediately.
   D. the regulated entity can exercise the power of sale thus avoiding the additional expenses which would be charged to Bernard to obtain a repossession order.

4. Which of the following is NOT one of the non-judicial debt resolutions processes under the Personal Insolvency Act, 2012.

   A. Debt relief notice.
   B. Debt write-down arrangement.
   C. Personal insolvency arrangement.
   D. Debt settlement arrangement.

09

Consumer Credit

Chapter 9 briefly describes other types of personal consumer credit and the legislation that lenders must comply with when advertising and advising on these credit types.

Different pieces of legislation apply to different types of credit products and it is important to gain an understanding of these when discussing them with a consumer.

The form and repayment options of hire purchase agreements are also described.

Learning Outcomes - after studying this chapter, you should be able to:
describe consumer credit and outline the different forms of credit agreements available to consumers, including credit sale and hire purchase agreements;
outline the regulations that providers of consumer credit must comply with in their dealings with consumers;
discuss the role of credit intermediaries when providing consumer credit and the obligations that are imposed on them when fulfilling this role; and,
calculate the different repayment options under a hire purchase agreement.

Chapter weightings	**Number of questions which may appear**		
In the exam, questions are taken from each chapter based on the following approximate chart:	Chapter	Minimum	Maximum
	9	4	6

9.1 Consumer Credit Agreements

The term *consumer credit* refers to a range of different forms of *credit agreement* provided by credit institutions, credit unions, and retail credit firms to *consumers.*

You will remember back to Chapter 1 where we discussed the various loan needs of a consumer. The following chapters then focused on housing loans, a specific form of consumer credit, and the consumer need.

Now we will look at other forms of *consumer credit* outside of housing loans.

These include:

Credit Sale Agreements

Where the consumer purchases goods from a retailer with the aid of a loan provided by a finance company. The loan is arranged for the consumer by the retailer, acting as a credit intermediary. The goods cannot be repossessed if the consumer defaults on the loan repayments.

The consumer owns the goods from day one.

Hire Purchase Agreements

Where the consumer agrees to hire goods from a finance company for a period. At the end of this period, the consumer will have an option to purchase the goods in question from the finance company, provided the consumer has made all payments required under the agreement. However, the consumer is not obliged to purchase the goods.

An example of such an arrangement is car finance, where the garage acts as a credit intermediary between a consumer who wants to buy a car but needs finance to do so, and a finance company. The garage sells the car to the finance company for cash. The finance company then enters into a hire purchase agreement with the consumer under which it hires the car to the consumer for an agreed period in return for payments by the consumer to the finance company.

During the hire purchase agreement period, the finance company owns the car, not the consumer. Ownership of the car *may* pass to the consumer at the end of the agreement, provided all repayments have been made by him or her and the consumer opts to take ownership of the car.

Some hire purchase agreements provide for a *balloon* or large lump sum payment to be made at the end, for ownership of the car to pass to the consumer. Other agreements may have higher level repayments and a nominal € 1 payment at the end to obtain ownership of the car.

The garage typically receives a commission from the finance house for acting as a credit intermediary in arranging car finance for the consumer.

Personal Contract Plan (PCP)

This is a type of hire-purchase agreement being offered by many car sales companies arranging finance agreements for their customers. Like a hire-purchase agreement the individual does not own the car until the final payment has been made.

With a PCP, repayment is broken down into three parts:

The deposit – the deposit is typically between 10% and 30% of the value of the car, depending on the finance provider. This can be paid either as an upfront payment, or a trade in can be used to offset this.

Monthly repayments – PCP agreements are usually made for terms between three and five years. PCPs generally have low monthly repayments, which can make them seem more affordable when compared to other forms of finance.

Guaranteed Minimum Future Value (GMFV) – The GMFV is the amount the consumer will have to pay to own the car at the end of the agreement. It is calculated by the finance company and is based on its estimate of the future value of the car at the end of the agreement, *e.g.* three or five years. It considers such things as, the type of car, length of agreement, the condition of the car at the end of the agreement and the annual mileage.

At the end of the PCP agreement, there are several options available to the consumer;

- Make the final payment, the GMFV, also known as a 'balloon payment', and keep the car.
- Hand the car back.
- Put the car down as the deposit on another car and enter into another PCP agreement.

There are many conditions attached to each of the above options and the guaranteed value agreed at the beginning of the contract will only hold if several terms and conditions have been complied with, such as not exceeding a certain mileage etc.

A PCP agreement is not a very flexible form of credit as the payments are fixed for the term and it is unlikely that the amount can be changed throughout the term.

In addition, as it is a type of hire-purchase agreement, the same rules regarding returning the asset during the term or having it repossessed apply. (See Chapter ref 9.11)

Conditional Sale Agreements

These are like hire purchase, but with one important difference. Under hire purchase agreements, the consumer has an option, but is not under any obligation, to take ownership of the goods in question at the end of the agreement. Under a conditional sale agreement on the other hand, transfer of ownership of the goods from the finance company to the consumer is obligatory when certain conditions of the agreement have been fulfilled, for example, all repayments under the agreement have been made by the consumer.

Personal Loans

A personal loan, sometimes called a term loan, is a loan of a specific amount over an agreed period of time. Repayments are set at regular intervals, usually monthly. The interest rate is either variable or fixed for the period of the loan. Security may be required. Personal loans are usually a type of unsecured borrowing.

Overdrafts

An **overdraft** is a borrowing *"limit"* on a current account. The credit institution agrees to lend a specified amount of money for a specified period of time. The amount owed goes up and down within the agreed limit as lodgements and withdrawals are made to and from the account.

Credit Cards

A credit card is a credit facility that allows an individual to borrow month by month. The credit institution agrees to lend up to a maximum amount, called the credit limit. Unlike an overdraft, the credit limit remains available to the borrower provided he or she makes a minimum payment every month.

9.1.1 The European Communities (Consumer Credit Agreements) Regulations, 2010

As we have discussed in previous chapters, there are various regulations and codes which govern how credit institutions[29] and credit intermediaries deal with consumers, namely the Consumer Credit Act, 1995 and the Consumer Protection Code, 2012.

However, The European Communities (Consumer Credit Agreements) Regulations, 2010 apply to credit institutions and other providers of credit, as well as credit intermediaries, in relation to the provision of **credit** to consumers of an amount between €200 and €75,000.

Like the Consumer Credit Act, 1995, for the purposes of the European Communities (Consumer Credit Agreements) Regulations, 2010 a *consumer* is defined as:

> *"…a natural person who is acting" for the purposes of obtaining the loan, "outside his or her trade, business or profession", that is, for his or her own personal use.*

The ***European Communities (Consumer Credit Agreements) Regulations*** include provisions in relation to:

- Standard information to be included in certain loan advertising;
- Provision of pre-contractual information to potential borrowers in the form of the Standard European Consumer Credit Information (SECCI) document, before they enter the loan;
- Refusal of loan applications based on consulting a database;
- Certain information to be included in written loan agreements;
- Method of calculation of the annual percentage rate charge (APRC) of a loan;
- Provision of information to borrowers on a proposed change in loan rates;
- Early repayment of loans.

The *Consumer Credit Act, 1995* and the *European Communities (Consumer Credit Agreements) Regulations, 2010* regulate aspects of the provision of certain forms of consumer credit to consumers by credit institutions and credit intermediaries, broadly as follows:

	Regulated by Consumer Credit Act, 1995	Regulated by the Consumer Credit Regulations	Subject to some provisions of the Consumer Protection Code
Personal loans	✗	✓	✓
Credit sale	✗	✓	✓
Conditional sale	✗	✓	✓
Hire purchase	✓	✗	✗
Housing loans	✓	✗	✓

[29]*For example, a bank would be a credit institution.*

Key Learning Point

The **Consumer Credit Regulations** apply to credit institutions and other providers of credit where the loan to consumers is between € 200 and € 75,000.

The regulations do NOT apply to housing loans or hire purchase agreements.

Such credit agreements are regulated by the Consumer Credit Act, 1995 and/or the Consumer Protection Code.

Certain advertising and other provisions of the Consumer Credit Act 1995 also apply to consumer credit agreements, which are subject to the Consumer Credit Regulations.

9.1.2 The European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995

The *European Communities (Unfair Terms in Consumer Contracts) Regulations 1995*, applied to all contracts between a *consumer* (*i.e.*, an individual acting outside his or her business) and a seller of goods or supplier of services, including financial services contracts and insurance policies.

The Regulations did *not* apply to contracts taken out by:

- A company, no matter what the level of their turnover or balance sheet value.
- An individual acting in the course of his or her business.

The Regulations implemented an EU Directive on Unfair Terms in Consumer Contracts, whose objective was to protect consumers against the abuse of power by a seller or supplier of goods and services, and in particular to protect the consumer against one-sided standard contracts and the unfair exclusion of essential rights in contracts.

The European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 have been revoked and replaced by the provisions of Part 6 of the Consumer Rights Act 2022.

9.2 Consumer Protection (Regulation of Credit Servicing Firms) Act, 2015

If an individual took out a loan from a regulated lender, they knew they would be protected in terms of the provisions the regulated entities must adhere to under the Consumer Protection Code and the Code of Conduct on Mortgage Arrears (housing loans on their private dwelling home).

However, most loan agreements did contain a clause which allowed the original lender, a regulated entity, to sell the loan on to another firm. Historically, if this happened and the person/entity to which the loan was sold was unregulated, then the consumer (the borrower) would lose the protections they previously had under the various Central Bank statutory codes of conduct.

As mentioned in Chapter 1, the Consumer Protection (Regulation of Credit Servicing Firms) Act, 2015 enacted in July 2015 provides for a regulatory regime for a) an entity known as a credit servicing firm and b) the activity of credit servicing, which is now a regulated activity in Ireland.

Credit servicing firms are typically firms that manage or administer credit agreements such as mortgages or other loans on behalf of unregulated entities. An entity that only provides credit servicing to regulated financial service providers will not be required to be authorised as a credit servicing firm: that is, an entity that only provides servicing to banks will not need to become licensed as a credit servicing firm. Such providers are obliged to adhere to the provisions of the Code of Conduct on Mortgage Arrears and the Consumer Protection Code.

Credit servicing firms must act in accordance with financial services legislation including the:

- Consumer Protection Code 2012;
- Code of Conduct on Mortgage Arrears 2013;
- Code of Conduct for Business Lending to Small and Medium Enterprises; and
- Minimum Competency Code 2011.

Credit agreements under which cash loans are provided to *relevant borrowers* fall within the scope of the Act. A relevant borrower for the Act includes:

- A natural person; or
- A micro, small or medium enterprise (SME, that is, fewer than 250 people and an annual turnover less than € 50 million). An SME includes sole traders, partnerships and unincorporated and incorporated bodies.

Existing credit servicing firms were given a transitional period to comply with new requirements whereas new entrants into the market must now apply to the Central Bank for authorisation.

It is an offence for such persons to commence the provision of credit servicing until authorisation as a credit servicing firm has been obtained.

The Act has also provided for an extension to the powers and jurisdiction of the Financial Services and Pensions Ombudsman to cover complaints by borrowers whose loans are serviced by authorised credit servicing firms.

9.3 Credit Provided to Consumers

The *Consumer Credit Regulations* regulate certain forms of credit agreements provided to a *consumer*, which is defined in the regulations as:

> *"… a natural person who is acting.... for purposes outside his or her trade, business or profession".*

So, the term *consumer* here is quite narrow compared to other regulations and *excludes* business borrowers such as:

- Companies;
- Individuals acting as partners of a business;
- Individuals acting in connection with their business.

Example #1

Mary obtains a car loan to buy a car for her personal use.

For the purposes of the Consumer Credit Regulations and Consumer Credit Act, Mary, in relation to this loan, is a *consumer* as she is a *natural person* and is not acting in the course of a trade, business or profession.

Example #2

ABC Ltd leases several cars for use by their employees in the course of their business.

As ABC Ltd is not a *natural person*, this leasing arrangement is not a form of consumer credit and is not therefore covered by the Consumer Credit Regulations or Consumer Credit Act.

Example #3

John is a dentist. He has obtained a personal loan from his bank in order to purchase dental equipment for this dental practice.

While John is a natural person, in relation to this loan he is acting in the course of his trade, and so this loan would not be subject to the Consumer Credit Regulations or the Consumer Credit Act.

9.4 Credit Intermediaries

The provisions of the Consumer Credit Regulations generally apply to an entity offering the relevant credit agreement to consumers, for example:

- A credit provider such as a bank, finance house, credit union, retail credit firm; or
- A licensed moneylender.

However, provisions of the regulations also apply to *credit intermediaries* involved in arranging the relevant credit agreement between the consumer and the credit provider.

A *credit intermediary* is defined in the European Communities (Consumer Credit Agreements) Regulations, 2010 as:

> *"... a person, (including a firm, within the meaning of the Partnership Act 1890 (53 & 54 Vict. c. 39) who is not acting as a creditor and who, in the course of trade, business or profession, for a fee (whether in pecuniary form or any other form of financial consideration) - (a) presents or offers credit agreements to consumers, (b) assists consumers by undertaking, in respect of credit agreements, preparatory work other than that referred to in subparagraph (a), or (c) concludes credit agreements with consumers on behalf of creditors."*

The above definition is closely aligned to that in the Consumer Credit Act, 1995.

The regulations impose several obligations on credit intermediaries:

- A credit intermediary must indicate in advertising and documentation intended for consumers the extent of his or her powers, in particular, whether he or she works exclusively with one or more credit providers or as an independent broker.
- A credit intermediary must ensure that any fee payable by a consumer to the credit intermediary for his or her services is disclosed to the consumer and agreed between the consumer and the credit intermediary on paper or on another durable medium before the relevant credit agreement is concluded.
- A credit intermediary must ensure that any fee payable by a consumer to the credit intermediary for the credit intermediary's services is communicated to the credit provider by the credit intermediary for the purpose of calculation of the APRC.

The Consumer Credit Act 1995 (as amended) provides that credit intermediaries must be authorised by the Competition and Consumer Protection Commission (CCPC). Authorisation is for 12 months at a time[30], following which the credit intermediary must apply for a fresh authorisation.

The CCPC is required to maintain a publicly available register of credit intermediaries. It can refuse an application for authorisation as a credit intermediary on many grounds, including:

- That the applicant is not a fit and proper person to be a credit intermediary;
- That the applicant is a bookmaker, a publican, a pawnbroker or a moneylender;
- That the applicant has failed to produce a current tax clearance certificate.

9.5 Advertising of Consumer Credit

	Regulated by Consumer Credit Act, 1995	Regulated by the Consumer Credit Regulations	Subject to some provisions of the Consumer Protection Code
Personal loans	✘	✓	✓
Credit sale	✘	✓	✓
Conditional	✘	✓	✓
Hire purchase	✓	✘	✘
Housing loans	✓	✘	✓

9.5.1 Consumer Credit Act, 1995 (As Amended)

An advertisement for consumer credit must also:

- Specify if any charges are payable, other than repayments of capital and interest on the sum borrowed;
- State that security is required, if it is a condition of the loan offer;
- Specify any restrictions that apply to the offer of the loan.

[30] *Unlike mortgage intermediaries who may receive authorisation up to 10 years from the Central Bank.*

The Consumer Credit Act 1995 also prohibits any person knowingly, with a view to financial gain, sending to a minor any document inviting the minor to:

- Borrow credit;
- Obtain goods on credit or hire;
- Obtain services on credit; or
- Apply for information or advice on borrowing or otherwise obtaining credit or hiring goods.

9.5.2 Consumer Credit Regulations

The Consumer Credit Regulations provide that any *advertising* of credit agreements covered by the regulations, which indicates an interest rate or any figures relating to the cost of the credit to the consumer, *must* include the following information about the credit offered:

- The borrowing rate[31], fixed or variable or both, together with details of any charges included in the total cost of the credit to the consumer.
- The total amount of credit.
- The annual percentage rate of charge (APRC). However, the APRC is not required to be shown for advertising of overdraft facilities.
- If applicable, the duration of the credit agreement.
- In the case of credit sale agreements, the alternative cash price and the amount of any advance payment (for example, deposit) required.
- If applicable, the total amount payable by the consumer and the amount of the instalments.
- Where associated insurance (for example, payment protection insurance) is compulsory in order to obtain the credit on the terms marketed, that fact must be stated in a clear, concise and prominent way.

Key Learning Point

Legislation governing the advertisement of Consumer Credit is determined by the type of loan involved. We can see that the Consumer Credit Regulations are more prescriptive than the Consumer Credit Act.

However, what is evident from the table above is that **hire purchase** agreements are only subject to the Consumer Credit Act, 1995 regulations.

[31] *That is, the annual interest rate charged on the amount of credit drawn down. As this rate excludes charges, etc, which are included in the APRC calculation, the borrowing rate might be referred to as the* ***nominal*** *rate of interest charged on the credit advanced.*

9.6 Consumer Credit Regulations

9.6.1 SECCI Form

Before a consumer becomes legally bound by a credit agreement subject to the Consumer Credit Regulations, the credit provider AND any credit intermediary involved must *in good time* provide the consumer with a document called a *Standard European Consumer Credit Information (SECCI) form*, to allow the consumer to *“compare different offers in order to take an informed decision on whether to conclude a credit agreement”*.

The SECCI form must be provided to the consumer in paper or other durable medium form, and must be personalised to reflect any preferences expressed by the consumer, such as:

- The amount of credit sought; and
- The preferred term of the credit agreement.

The SECCI form includes the following details:

- Identity and contact details of the creditor/credit intermediary (that is, name and address);
- Description of the main features of the product (that is, type of credit, total amount of credit, cost of credit, duration of agreement, payment amount and frequency);
- Legal information (that is, right to withdraw, early repayment and any charges);
- Other information in relation to distance marketing.

Where the credit agreement is concluded at a consumer’s request using a means of distance communication, such as internet or over the phone, that does not enable the SECCI to be provided to the consumer before he or she becomes bound by the credit agreement, the credit provider must provide the consumer with the SECCI form *immediately after* the credit agreement is concluded.

9.6.2 Provision of Adequate Explanations

The credit provider OR any credit intermediary involved must provide an *adequate explanation* to the consumer *before* entering a credit agreement subject to the Consumer Credit Regulations:

> *“To enable the consumer to assess whether a proposed credit agreement is appropriate to his or her needs and financial situation, where appropriate by explaining:*
>
> *a. The Standard European Consumer Credit Information,*
>
> *b. The essential characteristics of the products proposed, and*
>
> *c. The specific effects they may have on the consumer, including the consequences of default on payment by the consumer.”*

The explanation must address whether the credit agreement is *appropriate* to that consumer’s *needs and financial situation* and hence the explanation must be personalised to each consumer, that is, it *cannot* be a standard generic explanation.

The explanation can be provided verbally or in writing and can be provided by either the credit provider or the credit intermediary.

9.6.3 Provision of Information on Request

A consumer considering entering into a credit agreement subject to the Consumer Credit Regulations can request that the credit provider provide them, free of charge, with:

- A copy of the draft credit agreement; and
- A SECCI form.

The credit provider must provide the consumer with the requested information unless the credit provider has decided it is unwilling to offer a credit agreement to that consumer.

9.6.4 Assessing the Creditworthiness of the Consumer

The Consumer Credit Regulations require the credit provider, for example, a bank, to assess the consumer's *creditworthiness* **before** entering into a credit agreement with the consumer and **before** increasing the consumer's credit limit under an existing agreement subject to the regulations.

The assessment of the consumer's creditworthiness must be carried out based on *enough information*:

- Obtained from the consumer, where appropriate; and
- By consulting a relevant database, for example, Irish Credit Bureau or the Central Credit Register etc.

So, credit providers cannot lend blindly; they *must* assess the consumer's ability to repay the credit sought.

Key Learning Point

We can see that the Consumer Credit Regulations provide additional protections for the consumer by providing information in relation to the amount and cost of credit and ensure that the information is personalised to the needs for the consumer.

9.6.5 Refusal of Credit

Under the Consumer Credit Regulations, if a consumer's application for credit is rejected by the credit provider based on a search of a database - for example, Irish Credit Bureau /Central Credit Register - the credit provider must inform the consumer **immediately** of the result of the search and the details of the database consulted.

Under the Consumer Credit Act, 1995, where a credit provider refuses to provide credit to a consumer, the consumer is entitled to ask the credit provider within 28 days of the refusal to disclose to him or her *"...the name and address of any person from whom he sought information concerning the financial standing of the consumer who gave information which influenced the refusal."*

Where a consumer receives such information from a credit provider which the consumer considers to be incorrect, the consumer can within 28 days of getting such information, request the credit provider to remove or amend the incorrect information.

In turn, the credit provider having received such a request from the consumer can within 28 days of receiving the notice from the consumer, decide to remove or amend the information or take no action, as it sees fit.

Key Learning Point

Where credit, governed under the Consumer Credit Regulations, is refused, then the obligation is on the Credit Institution or Credit Intermediary to advise the consumer immediately of the result of the credit search.

Whereas when credit governed by *Consumer Credit Act is refused,* the consumer is entitled to ask for information and to dispute this information if found to be incorrect.

9.6.6 Cooling Off Right

A consumer has the right to withdraw from a credit agreement (not property related) covered by the Consumer Credit Regulations, without giving any reason, **within 14 calendar days** from the *later* of:

- The day the credit agreement was decided; and
- The day on which the consumer receives the contractual terms and conditions of the credit agreement from the credit provider.

To exercise his or her cooling off right to withdraw from the agreement, the consumer must:

- Dispatch a notice in writing to the credit provider in the means specified for cooling off in the credit agreement, within the time limit allowed above; and
- Pay to the credit provider the capital and the interest accrued on it (at the agreed borrowing rate) from the date the credit was drawn down until the date the capital is repaid, without any undue delay and no later than 30 calendar days after the dispatch to the credit provider of the consumer's notice to withdraw from the agreement.

Key Learning Point

Because the interest must be paid, even if a consumer is exercising his or her cooling off right, it prevents the consumer getting interest free credit for the period during which the agreement was in force.

9.6.7 Early Repayment

A consumer is entitled to repay, at any time, fully or partially his or her obligations under a credit agreement covered by the Consumer Credit Regulations. In such cases, he or she is entitled to a **reduction in the total cost of the credit** to the extent of the interest and the costs for the remaining duration of the agreement.

A lender is entitled to charge the consumer *compensation* for early repayment of the credit agreement **only** if:

- Early repayment falls within a period during which the borrowing rate is fixed; **and**

- The amount of early repayment by the consumer exceeds € 10,000 in any period of 12 months.

A lender is *not* entitled to compensation:

- If the repayment has been made under an insurance policy intended to provide a credit repayment guarantee; or

- If the repayment falls within a period for which the borrowing rate is not fixed.

9.6.8 Calculation of APR

The credit provider must calculate the annual percentage rate of charge (APR) of a credit agreement subject to the Consumer Credit Regulations in a manner set out in the regulations.

The following are *excluded* from the calculation of the APR:

- Any charges payable by the consumer for non-compliance with any term of the credit agreement; and

- Charges (other than the purchase price) that, for purchases of goods or services, he or she is obliged to pay whether the transaction is effected in cash or on credit.

9.7 Hire Purchase Agreements

The Consumer Credit Act 1995 mainly applies to credit agreements *not* subject to the Consumer Credit Regulations:

- **Hire purchase agreements,** under which the consumer has an option but is not obliged to purchase the goods under the agreement.

- **Other consumer credit agreements which are not subject to the Consumer Credit Regulations,** that is:

  - Consumer credit agreements for a sum in excess of € 75,000.

  - Consumer credit agreements provided to borrowers who are not consumers, that is, the borrower is not a natural person acting outside their trade, business or profession. For example, a company or an individual borrowing for business purposes.

A *hire purchase agreement* is defined in the Consumer Credit Act, 1995 as:

> *"...an agreement for the bailment of goods under which the hirer may buy the goods or under which the property in the goods will, if the terms of the agreement are complied with, pass to the hirer in return for periodical payments".*

So, the agreement is for leasing or hiring the goods in question, but the consumer will either:

- Have an option (but not an obligation) during or at the end of the agreement to purchase the goods in question; or

- The goods in question will pass to the consumer at the end of the agreement, provided all payments due have been made by the consumer. However, such a hire purchase agreement is subject to the Consumer Credit Regulations, and not the Consumer Credit Act, 1995.

9.7.1.1 Advertising

An advertisement for a hire purchase agreement covered by the Consumer Credit Act 1995 must:

- Specify if any charges are payable, other than repayments;
- State that security is required, if it is a condition of the agreement;
- Specify any restrictions which apply to the offer of the agreement.

9.7.1.2 Agreement

All hire purchase agreements covered by the Consumer Credit Act 1995 must be:

- In writing;
- Signed by the consumer and by someone on behalf of the owner of the goods; and
- Contain in a prominent position the words hire purchase agreement.

The consumer must be given a copy of the agreement either on signing the agreement or delivered or posted to the consumer *within 10 days* of entering into the agreement.

9.7.1.3 Cooling Off Period

All hire purchase agreements covered by the Consumer Credit Act 1995 must state that the consumer has a 10-day cooling off period from the date of receipt of a copy of the agreement, during which he or she can withdraw from the agreement without penalty.

Note how this differs from the cooling off period defined under the Consumer Credit Regulations.

9.7.1.4 The Cash Price

Before any hire purchase agreement covered by the Consumer Credit Act 1995 is entered into in respect of any goods, the seller is required to state in writing the *cash price* of the goods to the consumer, otherwise than in the hire purchase agreement.

This requirement is deemed to have been complied with if the consumer has:

- Inspected the goods, or similar goods, and at the time of inspection tickets or labels were attached to or displayed with the goods clearly stating the cash price; or
- Selected the goods in a catalogue, price list or advertisement which clearly stated the cash price of the goods.

9.7.1.5 Fees and Charges

Some of the fees that may be associated with hire purchase agreements include:

- A *documentation* or arrangement fee may be charged (circa € 50 to € 100) at the outset to set up the agreement;
- A final *completion* fee may be charged at the end of the agreement;
- A fee may be charged to reschedule the term of the agreement;
- If the lending institution must repossess the goods during the term of the agreement, a fee may be charged to the consumer.

9.7.1.6 The Hire Purchase Price

The *hire purchase price* is the total sum payable under the hire purchase agreement in order to complete the purchase of the goods to which the agreement relates, *exclusive* of any sum payable as a penalty or as compensation or damages for breach of the agreement.

Example

Mary buys a car under a hire purchase agreement; the cash price is € 14,400:

- She pays an initial deposit of € 500;
- She must pay an initial *documentation* fee of € 75;
- She will pay 61 monthly instalment repayments of € 298.70, that is, a total of € 18,220.70;
- She will have to pay a final *completion* fee of € 75.

Her total hire purchase price is therefore € 500 + € 75 + € 18,220.70 + € 75 = € 18,870.70, whereas the cash price is € 14,400.

9.7.1.7 Right to Terminate the Hire Purchase Agreement

The consumer is entitled to terminate a hire purchase agreement covered by the Consumer Credit Act 1995 at any time during the term of the agreement, by giving notice in writing to the owner of the goods involved.

The consumer will usually have two options:

- Return the goods and pay a fee; or
- Purchase the goods, by paying a lump sum.

9.7.1.8 Return the Goods

In this case the consumer must pay a fee of:

50% x hire purchase price LESS repayments already made and due before termination of the agreement unless some alternative is specified in the agreement.

Example

In the example above, the hire purchase price is € 18,870.

Let's assume that after 19 repayments have been made, Mary contacts the finance company to terminate the agreement and arranges to return the car to them. She has found that she can no longer afford the repayments.

She will have to pay to the finance company:

50% x € 18,870 (the hire purchase price) LESS (€ 500 + € 75 + 19 x € 298.70) = € 9435 – € 6250.30 = € 3,184.70

Obviously if Mary above had already paid more than 50% of the hire purchase price in payments under the agreement, she would only be liable on termination for any repayment outstanding at the date of termination of the agreement.

The consumer is usually liable for any repair costs, where the consumer has not taken reasonable care of the goods provided under the agreement.

9.7.1.9 Purchase the Goods

The consumer can purchase the goods by paying the difference between the hire purchase price and repayments already made, less an *interest rebate* which finance companies usually allow for early repayment of a hire purchase agreement.

Example

In the example above, the hire purchase price is € 18,870.

Let's assume that after 19 repayments have been made, Mary contacts the finance company and indicates she wishes to purchase the car outright at this stage.

She may have to pay to the finance company:

€ 18,870 (the hire purchase price) LESS (€ 500 + € 75 + 19 x € 298.70) LESS € 1,250 (assumed interest rebate) = € 11,369.70.

9.7.1.10 Repossession

The owner of goods (for example, the finance company) cannot repossess the goods let under the hire purchase agreement without a court order, where the consumer has paid at least 1/3 of the hire purchase price.

Example

In the example above, the hire purchase price is € 18,870.

Until Mary has paid at least 1/3 x € 18,870, that is, € 6,290 in this example, the finance company can repossess the goods without a court order, by giving 21 days' written notice to the consumer. However, the finance company would only be likely to do this if the consumer had fallen behind in repayments and/or it believed the consumer had caused damage to the goods.

After Mary has paid at least 1/3 x € 18,870, that is, € 6,290 in this example, the finance company <u>cannot</u> repossess the goods without a court order.

9.8 Comparing Consumer Credit

Personal loans, consumer hire, credit sale and hire purchase agreements are very different financial products, and hence are not generally directly comparable.

Some are designed to fulfil very short-term financial needs, for example, a credit agreement to pay for furniture over a 12-month period, whereas others are more suitable to longer term financial needs such as a 10-year personal loan.

9.8.1 Personal Loans

9.8.1.1 Key Factors

The key factors in comparing competing personal loans are:

- The maximum loan amount, the lender will offer;
- The loan term or terms, the lender will offer;
- Whether or not some form of security is required for the loan;
- Whether or not payment protection insurance (PPI) is built in or optional;
- The cost, expressed as the APR, without PPI cover where it is optional, for the loan sought (only APRs of similar loan terms and amounts are directly comparable);
- The cost, expressed as the total cost of credit, that is, total of all repayments and charges less the loan amount, for the loan sought (only total cost of credit of similar loan terms and amounts are directly comparable);
- The cost of PPI cover, where it is offered;
- Other fees and charges payable in connection with the loan;
- Flexibility to pay off the loan early, either in whole or part, and whether such early repayment is or is not subject to a penalty

Review

Now consider the main teaching points, which were introduced in this chapter. They are listed below. Tick each one as you go through them.

- [ ] The main provisions of the European Communities (Consumer Credit Regulations) in relation to the provision and promotion of certain forms of consumer credit agreements
- [ ] The main provisions of the Consumer Credit Act, 1995 in relation to the provision and promotion of consumer hire and hire purchase agreements
- [ ] The main Central Bank *Consumer Protection Code* requirements in relation to the provision of consumer credit, other than hire purchase and consumer hire agreements
- [ ] Comparing consumer credit
- [ ] Information required to obtain consumer credit

Sample Questions

The answers to these questions can be found in your Study Hub.

1. A credit sale agreement is where:

   (i) the consumer buys goods now with the aid of a loan from a finance company.
   (ii) the consumer owns the goods from day one.
   (iii) the consumer must make a large lump sum payment at the end of the term.

   A. (i) only.
   B. (ii) only.
   C. (i) and (ii) only.
   D. (i), (ii) and (iii).

2. Which of the following agreements is NOT subject to certain provisions under the Consumer Protection Code, 2012?

   A. A loan from a bank to finance the purchase of a car.
   B. A mortgage agreement.
   C. An interest free credit agreement arranged by a furniture store.
   D. A hire purchase agreement with a garage.

3. A lender is entitled to charge the consumer compensation for early repayment of the credit agreement only if:

   A. the repayment has been made under an insurance policy intended to provide a credit repayment guarantee.
   B. early repayment falls within a period during which the borrowing rate is NOT fixed or the amount of early repayment by the consumer exceeds € 10,000 in any period of 12 months.
   C. early repayment falls within a period during which the borrowing rate is fixed AND the amount of early repayment by the consumer exceeds € 10,000 in any period of 12 months.
   D. early repayment falls within a period during which the borrowing rate is fixed; OR the amount of early repayment by the consumer exceeds € 10,000 in any period of 12 months.

4. Janice has a loan of € 3,000 on a variable interest rate from Sofas-R-Us. Janice decides to repay her outstanding obligations early under this credit agreement. As a result Sofas-R-Us should:

   A. report Janice to the Irish Credit Bureau.
   B. allow Janice a reduction in the total cost of the credit.
   C. refund all initial charges related to granting the credit.
   D. seek reasonable compensation for early repayment.

How well do you know your textbook?

Chapter 1

- What are the five main types of financial need a typical client might have at different times in their life?
- What are the main pieces of legislation which impact on consumer loans?
- Outline the role and scope of the Financial Services and Pensions Ombudsman.
- Outline the essential elements of a valid contract.

Chapter 2

- What are the main costs an individual is likely to incur when buying a residential property with a housing loan?
- What rules must lenders adhere to when assessing a loan application from a first-time buyer?
- What is the main difference between leasehold and freehold property?
- What is meant by the term ‘joint and several’ liability?
- Outline the main terms of a mortgage that will be found in a mortgage deed.

Chapter 3

- In what circumstances is the sale of a residential property free from capital gains tax?
- Kate inherits a house worth € 550,000 from her parents. What capital gains tax must she pay?
- Tom rents his apartment for € 1,800 per month. He pays € 5,700 in interest on the mortgage on the apartment and spends € 1,250 on repairs. What’s his taxable income?

Chapter 4

- What are the limitations of comparing different housing loans based on projected net repayments?
- What is stress testing and how does a lender apply it?
- Explain the net income test.
- What does the term nominal rate of interest refer to?
- Give an example of the primary use of APRC.

Chapter 5

- Does a housing lender require a borrower to have mortgage protection cover?
- What are the borrower’s options regarding the provision of mortgage protection cover?
- In what way can an individual protect their income in the event of an accident or sickness?
- Explain the protections provided to the purchaser of a newly built property covered under the HomeBond insurance scheme.

Chapter 6

- What evidence of earnings do housing loan lenders typically seek from housing loan applicants?
- What is the European Standardised Information Sheet?
- What two processes happen on completion of the purchase of a property with a housing loan?
- Explain the term good marketable title.
- Explain the purpose and scope of the Credit Reporting Act, 2013.

Chapter 7

- What is a re-mortgage?
- What requirement is imposed by the Consumer Protection Code on regulated entities in relation to debt consolidation and advice to the consumer?
- What is equity?
- What are the advantages and disadvantages of a lifetime mortgage?

Chapter 8

- What are the protections offered by the Code of Conduct on Mortgage Arrears and to whom does the code apply?
- What is the main difference between the Consumer Protection Code and the Code of Conduct on Mortgage Arrears?
- What are the steps involved in the Mortgage Arrears Resolution Process?
- Describe the services provided by a debt management firm and how they are regulated.
- What are the three non-judicial options available to individuals who wish to protect themselves from their creditors?
- What are the costs involved in bankruptcy?

Chapter 9

- What forms of credit are subject to the consumer credit regulations?
- What is the most common type of insurance often sold in conjunction with certain forms of consumer credit?

Are you ready for your exam?

01

Do you understand the exam format?

Familiarise yourself with the structure and requirements of the exam. Understand how many questions you'll need to answer, the time limit, and any specific instructions or scoring methods.

02

Have you covered the full course material?

Have you read and understood the full textbook? Have you used the additional supplementary study resources available in your online Study Hub (pre-recorded videos, microlearning webinars, exam preparation masterclass recording)?

03

Have you created a revision plan?

Develop a study plan that outlines your exam preparation strategy. Break down your study sessions into manageable chunks and allocate time for each topic or chapter. Ensure you have sufficient time to review all the relevant material before the exam.

04

Practice sample questions

Use the sample questions related to each chapter. This will help you become familiar with the types of questions typically asked and allow you to practise applying your knowledge. Time yourself during these practice sessions to get used to working within the exam time constraints.

05

Have you used the "Take a Test" facility?

Test yourself by answering practice questions without referring to your study materials under exam conditions. This will help reinforce your knowledge and identify any remaining gaps you need to address.

06

Have you familiarised yourself with the Online User Guide and Exam Regulations, which can be found in your Study Hub?

This will help you become familiar with the online exam environment and the rules that need to be followed.

07

Have you checked your computer set up and broadband speed and stability in preparation for your online exam?

Please consult the Online Exam User Guide for further information regarding system requirements. This will help ensure your exam runs smoothly.

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