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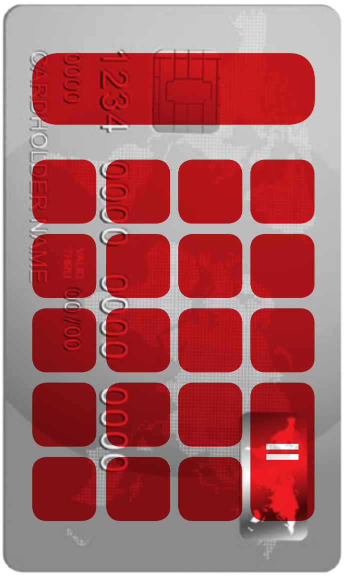

Not adding up?

Mortgage arrears calculations

Recent media attention has highlighted US fund, Tanager, being forced to withdraw possession proceedings at court due to incorrect calculation of arrears on mortgage accounts. This is the second financial institution facing media attention within a number of months in the Irish market and for the lender involved it will involve absorbing the costs of both aborted legal action and the delay in remedying non-performing accounts.

Whilst this is a relatively new headline in Ireland, this issue has been a key feature of the UK mortgage arrears market since 2014, following the Northern Ireland court judgment in **Bank of Scotland v Rea**, in which the bank's arrears and collection practices were heavily criticised; ultimately with UK-wide ramifications.

The Financial Conduct Authority's (FCA) subsequent involvement resulted in financial institutions commencing a proactive review of their entire mortgage books and, where required, implementing a remediation process for customers who were deemed to have suffered financial detriment as a result of improper calculations or accounting processes. Financial institutions in the UK have invested significant resources to ensure potential issues are identified, addressed and communicated to customers transparently along with appropriate redress.

One of the key issues identified was that some financial institutions were collecting arrears over the remaining mortgage term through a higher monthly payment following automatic capitalisation and also continuing to pursue the arrears through their collections process as being immediately payable. Whilst capitalisation is permitted by the FCA in appropriate customer circumstances, automatic capitalisation of arrears is not permitted.

Wider issues such as the addition of certain fees to the mortgage balance have also been the subject of review and remediation. Most often this situation has arisen as a result of the financial institution's systems being designed to conduct recalculations upon certain triggers.

To date the FCA's focus has been on the lack of transparency and potential detriment to customers resulting from certain arrears management practices. The FCA has identified 750,000 affected customers in the UK.

To minimise risk, financial institutions must be therefore pro-active in reviewing their systems, account calculations, and arrears management within their books. A proactive approach will avoid headlines, regulatory issues and poor customer outcomes.

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Whilst the Central Bank has yet to make any public statement on this issue, it has been actively monitoring the treatment of borrowers by institutions, and where lenders' actions have given rise to detriment or loss to customers (and particularly consumers) the Central Bank has shown a willingness to take action to ensure that customers are appropriately remediated. In parallel it has also been actively pursuing enforcement action against lenders under its administrative sanctions procedure for the associated breaches of financial services legislation.

This approach can be seen from the Central Bank's recent actions in relation to tracker mortgages. Irish lenders would therefore be well-advised to take a pro-active approach to ensure that the issues identified in relation to the calculation of mortgage arrears in the UK have not similarly affected their customers.

Eversheds Sutherland advises all types of financial institutions, taking a multi-disciplinary approach in assisting on regulatory, litigation and enforcement issues across Irish and UK jurisdictions. Our work includes assistance with monitoring and remediation programmes, including review of client files and preparation of reports for submission to regulators, preparation of cases for presentation at court during and following remediation with expertise in each jurisdiction co-ordinated centrally.

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