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Chairman,

I wish to thank you and the Committee Members for allowing us to present to the Finance Committee here today on the matter of Credit Firms and the purchasing of distressed debt/ mortgages.

As I said in my original letter on the matter, I believe it is important to represent the position of customers when it comes to the area of Credit firms' and the purchasing of debts from mainstream Banks. These can be known as 'Vulture funds'.

It is important to note the role of these firms in the wider context of mortgage lending and the key role these play especially in the area of Non-Performing Loans.

Defining a Non-performing loan (NPL's) is a debatable issue as many accounts that had working arrangements with their original bank had to be moved on to a vulture fund because the ECB decided that these were also to be classified as NPL's.

As a brief background all Irish Banks held sizable percentages of NPL's following the financial crisis and over time there was a drive from the ECB to have the numbers decreased for Irish banks, which in the main led to the rise in terms of the involvement of these credit firms.

Who are these firms, well there are many like some household names in the industry, to mention some Lone Star, Mars Capital, Start Mortgages and others like Promotoria, Oaktree, Havbell.

But most customers will only know of what are called Credit Servicing Firms like Cabot, Pepper, Certus who in the main service these loans for the owners of the loans, namely the credit firms who purchased these loans.

Some points to be considered.

- It was the Central Bank of Ireland who initiated, by discourse to the relevant banks, the sale of many of these books of business because the European Central Bank wanted Irish mainstream Banks to reduce their Non-Performing Loans (NPL's)
- The classification of such loans was challenged by some of the lenders because many had arrangements that were working perfectly only for these loans to be sold also as the ECB classed them as non-performing
- The purchasing fund (Vulture) got a discount on the loans, that is not generally known what the discount was, but given the nature of the loans it must have been enough to create the attraction to purchase.

- All active entities in the area came in for these books so the price must have been attractive, as it was a frenzy to be blunt.
- Most of these firms now only charge variable rates and do not give a fix rate option and this causes a problem in terms of certainty and security for the loanee especially as Variable Rates are going up and up with no real explanation or logic to the increases seen by these funds. I also believe it is wrong not to offer fixed rates
- Rates now in many cases are in excess of 6.5% and this is before the next planned/expected increase in March
- The Consumer Protection Code is required to apply here, and it states among other matters ***that Firms must act honestly fairly and in the best interests of its customers and the integrity of the market,*** so I pose the thought how has it been applied here
- Many of the customers are in repayment arrangements, and increasing rates by the levels seen will pile the pressure on these arrangements requiring many to be revisited and reassessed to establish the correct levels of affordability

There are other issues emanating that need to be highlighted in conjunction with the high interest rates being charged which to mention some are;

- Residual balances – what happens at the end especially for the warehoused elements of loans especially now with the added pressure of higher interest rates.
- Interest only full-term loans, which in my view is an enormous problem especially the full term interest only loans (Bank Of Scotland Ireland in particular) – what happens at the end, as sale of house appears the only option so what happens then to the individual or family who will then likely be in their elder years at the expiration of the loan term.
- Portions of loan on interest only when that period expires.
- Those on expensive tracker rates of ECB plus 3.25% (PTSB) now face a rate by March likely to put their interest rate at 6.75% (Base ECB 3.5 plus margin of 3.25%). Those who can have moved to other providers, and I would today encourage all on these rates to move lender if it is possible
- Action needs to occur in these areas now as a wait and see approach does not serve anyone given the aging profile of many of these cases.

Further Concerns

- The lack of regulation powers over these investment funds when it comes to the setting their interest rates.
- Where are these firms sourcing their money from and are the funds actually open to the same market fluctuations as regular mortgage providers like Finance Ireland, and this is a question that I believe is both fair and requiring answers given the rate increases involved.

The problem here is this is occurring against people who literally have no option but to suck it up or go further into arrears with the ever-growing question of

"*What will happen to us now and at the end of our loans".*

Nobody has addressed this question and no answers are available for these customers.

ORIGINAL LOAN CONDITIONS

Regarding the original loan offer conditions, I hold concerns when the terms and conditions are reviewed as following some research, much like what I did in regards Tracker Loans and those terms and conditions, I believe there is an issue here also and it is important for the committee to understand what it is the original contract states in regards to the sale of a loan or mortgage. So, what do the conditions state?

The attached conditions (Appendix 1) are taken directly from the loan conditions of each bank listed to assist the Committee in understanding where I believe there are concerns in the Credit Firms ("Vultures") not offering fixed rates of interest. While I am aware these conditions are only for the 3 remaining banks the same would apply to others especially in terms of the large books recently sold by both KBC and Ulster and previously the loan books of Danske Bank and Bank Of Scotland Ireland (BOSI) as part of their exit from the Irish market.

Conditions from loan offers in relation to the securitisation of the loan; See appendix

What is clear from the attached conditions, I believe, is that in addition to the express terms of a mortgage contract - certain implied terms may be deemed to be part of the contract by operation of law (business efficacy test and/or curious bystander test).

Arguably, when a customer decides to take out a mortgage with a bank (such as PTSB as an example) it is an implied term of the contract that if the bank decided to exercise its right to sell/transfer the mortgage then the customer will not be deprived of mortgage options that would have been available had the loan remained with the originating bank. I see this as an entirely reasonable position.

The customer entered the contract with a clear expectation that both fixed and variable rate options would be available through the life of the loan **and both types of interest rates were available up to and including until the loan was sold. Indeed, the originating bank still offers both fixed and variable rates as options of interest rates.**

I believe, if, post transfer/sale of a loan to a Credit Firm ("Vulture Fund") a customer, in not being able to select a fixed rate of interest then that customer is being deprived of interest rate options currently available with the originating Bank. If so, then there is a good case that the successor in title is in breach of the terms of the mortgage loan contract as outlined in the attached Appendix 1 and certainly in regards the Implied terms of that contract.

I look forward to the questions you may have and thank you again for your time on this important matter as many families simply don't know what to do and are essentially bank locked at present and stuck on rates that are variable only as well as being very high. I hope I have shown that these Credit Firms may indeed have questions to answer in regards the rate options being offered and it is simply not good enough to simply offer “fixed Payments” when this is not remotely the same thing as fixed rates of interest. Clarity and certainty moving forward is what customers require and indeed I believe are entitle to expect, irrespective of who owns the Loan or Mortgage.

I will now hand to David and then Brendan to outline further and in more detail some issues of concern in regards the area and what it is we believe this committee and the wider political house may need to do to assist these customers unless these firms’ correct matters.

Thank You

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Financial Advisor

APPENDIX 1

AIB states within the Loan Conditions;

In the event of any such transfer and/or disposal, the relevant Lender shall continue to be responsible, as agent for any such transferee or assignee, for all matters relating to the administration of the loan including, but not limited to the setting of the interest rates and the handling of any arrears in respect of the loan, subject to the powers and discretions of the transferee. In regard to the setting of interest rates and the handling of arrears, <u>the policy of any transferee shall be the same as that of the relevant Lender.</u> (Emphasis added)

BOI states within the Loan Conditions;

Securitisation and Collateralisation

(a) The Borrower's attention is drawn to the fact the loan and the Lender's Security and any associated rights and interests (including the debt secured and rights and interests under related insurances and assurances) will be freely transferable by the Lender (1) whether by transfer, conveyance, assignment, mortgage or charge, whether a fixed of floating mortgage or charge and whether by sub-mortgage or sub-charge or otherwise; or (2) whether as part of a loan transfer and securitisation scheme or otherwise, on such terms as the lender may think fit.

(b) The lender confirms that in the event of the Loan and the Lender's Security being transferred (as described in the immediately preceding paragraph), and where there is to be or where there may

(c) be an arrangement under which the Lender (or other body corporate in the Bank of Ireland Group) will service the Loan as agent of any transferee, any such transferee's policy of arrears and in the handling on the handling of arrears and in <u>the setting of mortgage interest rates following such transfer will be the same as the Lender's general policy,</u> and that the Lender (or another corporate in the Bank of Ireland Group) will handle arrears as its agent. In all cases this is subject to the terms of the particular transfer and may not apply if the borrower is in default or if the Lender (or another body corporate in the Bank of Ireland Group) is in breach of its obligations as agent of the transferee. (*Emphasis added)*

(d) The Loan and the Lender's Security and all and any associated rights and interests (including the debt secured and rights and interests under related insurances and assurances) will be capable of being the subject matter of a security interest by way of a mortgage or charge (whether fixed or floating) or other encumbrance whatsoever or howsoever arising in favour of a third party whether arising under a collateralisation scheme or otherwise

PTSB states within the Loan Conditions;

> **Permanent tsb may at any time transfer the benefit of the Mortgage to any person or company <u>in accordance with the Mortgage Conditions.</u>** (emphasis added)