

## **Appendix 1**

Extract from Second Stage Debate in Parliament on 17 May 2016:-

“Under the terms of the legislation, the Central Bank would be required to carry out an assessment of the state of the mortgage market, taking into account factors such as the banks' cost of funds, reasonable profit expectations, concentration within the market, the ease with which borrowers can switch mortgages between lenders and the extent to which they are switching. Should the Central Bank conclude that there is a market failure, the legislation would empower it with a range of tools to influence the standard variable rates charged in the market” – *Deputy Michael McGrath, proposer of the Bill.*

### **Main Provisions of the Central Bank (Variable Rate Mortgages) Bill 2016**

The Central Bank (Variable Rate Mortgages) Bill 2016 will, with immediate effect from enactment, provide for:

#### **Measures to address market failures in the Mortgage Market**

The Bill provides for measures to address market failures in the market for principal dwelling house mortgage loans, and to provide for related matters.

#### **Assessments**

The Bill (in Section 2) provides for the Central Bank to carry out assessments on the state of competition in the market for principal dwelling house mortgage loans on at least a quarterly basis. In carrying out such the assessments, the Bill (in Section 3) provides that the Central Bank shall have regard to certain factors, as follows:-

- (a) the variable interest rates being charged by lenders;
- (b) the ease with which borrowers can switch their principal dwelling house mortgage loans between lenders or between products offered by the same lender;
- (c) the extent to which borrowers are switching their principal dwelling house mortgage loans between lenders or between products offered by the same lender;
- (d) the relationship and proportionality between the variable interest rates being charged by each lender and the cost of funds of that lender;
- (e) the trend in variable interest rates being charged in the principal dwelling house mortgage loan market over time;
- (f) lenders' cost of funds and the trend in lenders' cost of funds over time;
- (g) lenders' weighted average cost of capital and the trend in lenders' weighted average costs of capital over time;
- (h) the risk profiles of individual lenders in respect of variable interest rate principal dwelling house mortgage loans;
- (i) lenders' reasonable profit expectations in the prevailing market conditions;
- (j) the proportion of the principal dwelling house mortgage loan market accounted for by each lender; and
- (k) such other matters as the Governor of the Central Bank may certify as being of relevance.

The Bill further provides (in Section 4) that upon completion of the assessment (under Section 2), that the Central Bank shall form a conclusion as to whether the state of competition in the market constitutes a market failure. "Market failure" is defined in Section 4.

### **Power to issue Direction to Lender**

The Bill provides (in Section 5) that the Central Bank may issue a direction to a specific lender(s) not to charge a variable interest rate(s) which exceeds-

- (a) a rate or rates specified by the Central Bank,
- (b) a margin or margins specified by the Central Bank above that lender's cost of funds (as determined by the Central Bank),
- (c) a margin or margins specified by the Central Bank above a rate set by the European Central Bank nominated by the Central Bank, and/or
- (d) a proportion, being not more than one-third, specified by the Central Bank above the average variable interest rate charged in the market for comparable principal dwelling house mortgage loans as determined by the Central Bank.

### **Enforcement Orders and Fines**

The Bill provides (in Section 6) for the Central Bank to apply to the High Court for an Enforcement Order where the Central Bank believes lenders are in breach of a direction issued by it under Section 5. Where an Enforcement Order is made on application, the Bill provides for the imposition of a fine on the lender.

### **Prohibition on Discrimination against existing customers**

The Bill provides (in Section 7) an anti-discrimination provision in the treatment of existing borrowers and new borrowers in setting a variable interest rate for a group, class or category of principal dwelling house mortgage loans.

### **Rectification Orders , Compensation Orders and Fines**

The Bill provides (in Section 8) for Rectification Orders where the Central Bank believes a lender is in breach of its obligations in Section 7. This section provides that where the High Court makes a Rectification Order in accordance with Section 8, that the High Court shall make a Compensation Order in such terms as the court considers appropriate. The Bill further provides (in Section 8) for the imposition of fines against the lender where a Rectification Order has been made.

### **Defrayal of legal costs or stamp duty not to constitute discrimination**

The Bill provides (in Section 9) for exceptions where the lender can treat existing and new customers differently which will not constitute discrimination under Section 7.

### **Publication of *Section 2* Assessments**

The Bill provides (in Section 10) that the Central Bank shall publish each *Section 2* Assessment publicly in such a manner as it considers appropriate.

### **No appeal from decision of Central Bank**

The Bill provides (in Section 11) that no appeal shall lie to the Irish Financial Services Appeals Tribunal or the High Court in respect of a *Section 2* Assessment, a direction pursuant to *section 5* or a decision by the Central Bank to seek an Enforcement Order or a Rectification Order, Notwithstanding the provisions of the Central Bank Act 1942 or any other enactment.