

Review of the Mortgage to Rent (MTR) Scheme A Submission by the Citizens Information Board and MABS (November 2016)

Introduction

The Citizens Information Board (CIB) welcomes the opportunity to make a submission to the Review of the Mortgage to Rent (MTR) Scheme. CIB is the national agency responsible for supporting the provision of information, advice and advocacy on social services and for the provision and funding of the Money Advice and Budgeting Service (MABS). The Board has been given responsibility for the administrative and financial arrangements and governance of Abhaile, part of the new Mortgage Arrears Resolution Service launched by the Department of Justice and Equality and the Department of Social Protection in October 2016.

We attach in the Appendix the observations received from MABS which we fully support, reflecting their practical experience and technical expertise at an operational level in relation to the MTR Scheme.

MABS provides a dedicated independent mortgage arrears advice service. The Mortgage to Rent Scheme is one of a number of options for clients explored by MABS. Citizens Information Services (CISs) and the Citizens Information Phone Service (CIPS) also deal with queries from the public relating to housing difficulties, including those from people unable to pay their mortgages and those at risk of homelessness. In previous submissions in response to the mortgage arrears crises, CIB and MABS have welcomed the MTR but, expressed concerns that the process may be unduly onerous and confusing for the borrower and cost ineffective for the other stakeholders involved. These concerns remain.

Despite the fact that only a limited number of unsustainable loans would ever fit the MTR criteria, the number of MTRs is low at 187 completions in the context of the obvious merits of people being able to remain in their own homes and, also, being able to avoid bankruptcy and personal insolvency.

An underlying feature of the low take-up of the MTR scheme is that the process is a complicated one in which there are multiple stakeholders and many disparate transactions and negotiations. This means that the process is very protracted. It is also the case that lenders, borrowers, and housing bodies will have different perspectives and interests in the scheme.

Typically, people will have to engage with their Local Authority, with their Bank, with the Housing Association, with a valuer and with a solicitor to obtain legal advice. Some of the exchanges are between the Bank and the Housing Association involved and people may have difficulty in keeping abreast of how the process is evolving. Having to engage with numerous agencies may be off-putting for house owners who are already struggling with debt, will already have been through the MARP process and are facing the prospect of losing their home. It may also be the case that, given the cultural and historical attachment to home ownership in Ireland, some people have great difficulty in moving from ownership to

tenancy. The length of time it takes from beginning to end of the process presents an additional difficulty.

The Review needs to explore the extent to which there is cultural resistance to the scheme on the part of local authorities and lenders. For example, is there a perception among Local Authority personnel that people who avail of the scheme become social housing tenants and unfairly move up the social housing list. Also, is there a sense in which lenders oppose the scheme as it is a form of debt forgiveness and because any residual debt becomes unsecured debt once the property is sold to the Housing Association.

A number of amendments to the Mortgage to Rent scheme in July 2015 were aimed at enabling more properties to qualify, and make it more flexible and accessible to borrowers. These included raising the valuation thresholds for properties, flexibility in relation to the size of properties, more efficient assessment of a borrower's eligibility for social housing support and flexibility to allow cases of marginal positive equity to avail of the scheme. These amendments do not appear to have had any significant impact on take-up of the scheme.

Issues relating to the MTR

An analysis of mortgage arrears among clients of South Mayo MABS¹ has raised a number of concerns about access to the MTR scheme, which the study considered as 'a viable solution to many cases in the county'. This was seen as resulting from a number of factors, principally its voluntary nature, limiting qualifying criteria and apparent lack of interest from housing associations relating to issues around location, condition and management of potential properties. A number of additional issues are identified below.

- The MTR Scheme is initiated by the lender upon determination that the borrower's current mortgage is unsustainable into the long term and the borrower must apply separately to both their Local Authority and the Approved Housing Body to determine if their property is suitable for inclusion in the MTR Scheme.
- A significant period of time elapses from the time the borrower receives the first letter of offer until the process has completed, affording the stakeholders ample time to withdraw.
- It should be clarified to the borrower that their lender does not make the ultimate decision on their participation in the MTR Scheme. Where this is presented as the borrower's only option, it may still be unavailable to them, thereby creating a false hope for those who wish to engage with the MTR Scheme;
- Because of the low level of involvement of Housing Associations in rural areas, many rural homeowners, unable to maintain their mortgage payments, may have no option but to try to sell at a reduced price, thereby being left with residual debt.
- What happens to the difference or 'shortfall' between the total mortgage debt and the current market value of the property remains to be negotiated on a case-by-case

¹ http://www.ispa.ie/images/seminars/conference_2016/conf2016_slides/Stuart_Stamp.pdf

basis – this is a fundamental design flaw in the Scheme.

- Where the MTR Scheme is a suitable long-term solution for the borrower, they will still be precluded from entry if there is a judgment mortgage registered on the property as a voluntary surrender will not result in the judgment mortgage being cleared from the title, as is the case with repossessions by the lender.
- There are a number of administrative issues relating to the scheme that impact on its functioning and operation , e.g.,
 - Delays at Local Authority level
 - People not given the option to carry out relatively minor repairs and the sale not proceeding

There are concerns about the funding model for the scheme, which relies on a healthy rental market to ensure that it is viable for housing associations interested in buying properties. Clearly, various considerations come into play for housing associations considering purchasing houses, including, in particular, location for letting or selling if tenants move on, condition of the property (if not in good repair, it may prove too costly to invest in such properties), and management of these properties (if an Association doesn't have any other properties in a given area, they may have no one to manage these properties).

Also, there is the question of the limited resources available to local authorities and to housing associations. Funding needs to be kept under continuous review, particularly in the context of the need to provide additional impetus to the scheme.

Measures for consideration in the Review²

- There is a need for more streamlining and some simplification of the MTR process in order to make it more effective;
- Consideration should be given to re-framing the MTR as an obligatory rather than a voluntary option in specific sets of circumstances;
- Lenders should be obliged within the terms of the Code of Conduct on Mortgage Arrears (CCMA) to consider Mortgage to Rent (MTR) as an option in all cases where a mortgage is properly deemed unsustainable;
- The criteria of the Mortgage to Rent Scheme should be reviewed from a rural perspective, and consideration should be given to increased flexibility around currently strict criteria, for example on 'under' and 'over accommodation';
- The option of Local Authorities³ replacing Housing Associations for the purposes of MTR where the latter are unable or unwilling to purchase the relevant homes should be explored;

² Some of these measures were included in the South Mayo MABS Study referenced above

³ Borrowers already have to qualify for social housing in order to be eligible for MTR; if homes are repossessed, many would eventually end up on the housing list and/or add to the numbers looking for often scarce -and relatively expensive - privately rented accommodation

- A transparent, accountable and Independent Body to establish the Current Market Value of properties should be established;
- An external, independent body (e.g. the Circuit Court) should be assigned the power to make legally binding decisions where a borrower feels MTR has been refused unreasonably;
- The application process within local authorities should be aligned more closely with the lenders' MARP process, thereby creating a distinction between those families availing of the MTR Scheme and those on the Local Authority housing list;
- Provision should be made for an MTR Designated Officer in Local Authorities – this would make it easier for both lenders and financial institutions.

Appendix -CIB and MABS Submission MTR Scheme

We thank the Department of Housing, Planning, Community and Local Government for the opportunity to make this submission.

MABS has dealt with thousands of mortgage arrears cases since the crisis emerged, and has focused on some of the hardest and most long-lived cases since the establishment of its Dedicated Mortgage Arrears Service in 2015. MABS is now the designated 'Gateway to Debt Advice' through the initiation of the Abhaile scheme. Based on this experience, our view is that Mortgage to Rent (MTR) needs to be much more ambitious and creative and less bureaucratic if it is to meaningfully contribute to the resolution of the mortgage arrears crisis. That crisis cannot be resolved if families on a low income facing repossession have nowhere to go.

MABS input into MTR and our support for clients during this process is acknowledged as being important by banks, the Department and voluntary housing bodies and we have worked closely with the Housing Agency in this regard since the pilot phase. In particular, MABS' support is both important and necessary for clients given the complexity of the scheme and the time that can be involved (most cases in which MABS were involved took 2 years or more to conclude).

Regrettably and too often, MABS plays a further role in supporting clients who ultimately face disappointment when they find that MTR is not in fact the much needed and hoped for solution to the pending loss of the family home.

In MABS experience, prior to the initiation of MTR, a similar process was implemented on a pragmatic basis by local authorities, enabling the local authorities to purchase a property and lease it back to the borrower at an affordable rent. The simplicity of that previous approach has to be modelled into the MTR if it is to be successful.

Where MTR works it is an excellent solution for MABS clients/borrowers and, in addition to the obvious benefits relating to their immediate housing need, it affords such borrowers/clients dignity, avoids the psychological impact of losing the family home and averts the socio-economic costs associated with moving away from a community where they are embedded. MTR in combination with a Debt Settlement Arrangement (DSA) for residual debt is a solution which works very well for low income borrowers with no prospect of financial recovery. However, too few low income borrowers have, so far, been able to avail of either solution.

It is acknowledged, with rising house prices, costs of financing MTR can be high. While appreciating the need for the State to achieve best value in the use of its resources and to address concerns about moral hazard, there are several ways in which the Scheme and related protocol could be enhanced:

- 1) The Scheme involves the Housing Finance Agency lending money to the Approved Housing Body who then repay based on the differential rent received from the Local Authority who in turn recoup that cost from the Department. While there may be some impediment to State borrowing or the need for such

transactions to be conducted 'off-balance sheet' this seemingly circular transaction adds bureaucracy and creates inefficiency. Accordingly, MABS welcomes the commitment in the Department's Action Plan for Housing and Homelessness to establish a special purpose vehicle (SPV) to source social housing⁴ and suggest that the remit of this SPV include MTR, thereby streamlining the funding process and reducing processing time.

- 2) There is an undue administrative burden placed on local authorities in processing the rents due to AHBs under the Scheme.
- 3) Local authorities, by virtue of being at the 'coal face' of social housing provision, have a unique insight into and alignment with the needs of borrowers attempting to access the scheme, which AHBs, by virtue of their business model, may not. This may go some way to explaining the low throughput into the scheme. While acknowledging the fiscal restrictions on increasing local authority housing stock, there is merit in utilising the experience of local authorities by involving them as part of a joint venture in off-balance sheet funded projects. Alternatively, the introduction of a local authority levy on private financing of social housing projects, whereby a percentage of the profit of any private joint venture partner would be paid to the local authority, could provide local authorities with funding which could be ring-fenced to expand local authority participation in the MTR Scheme.
- 4) The role of the lender in determining what is ultimately social housing stock is too great and, in our view, far in excess of its remit. This decision should be the sole responsibility of the purchaser, i.e. the local authority / AHB.
- 5) House prices have risen nationally by almost 35% from their lowest point in 2013⁵, with prices in Dublin rising 46.5% since its lowest point in 2012. Without a subsequent change in the thresholds for MTR, borrowers in urban areas and commuter belt will be excluded from the Scheme.

South Mayo MABS recently published research on mortgage arrears in Mayo which questioned the adequacy of MTR as a response to chronic mortgage arrears in rural areas⁶. The difficulties experienced by the sample in Mayo, a county with **no** successful applications for MTR, include

- the variance in lenders' attitudes to the Scheme, including the treatment of any mortgage shortfall;
- the shortage of available finance from the State;
- the suitability of properties in the county by virtue of remoteness of their location, their current condition and difficulties in managing single properties where there is no one available in the area to do so given the dearth of other AHB managed properties.

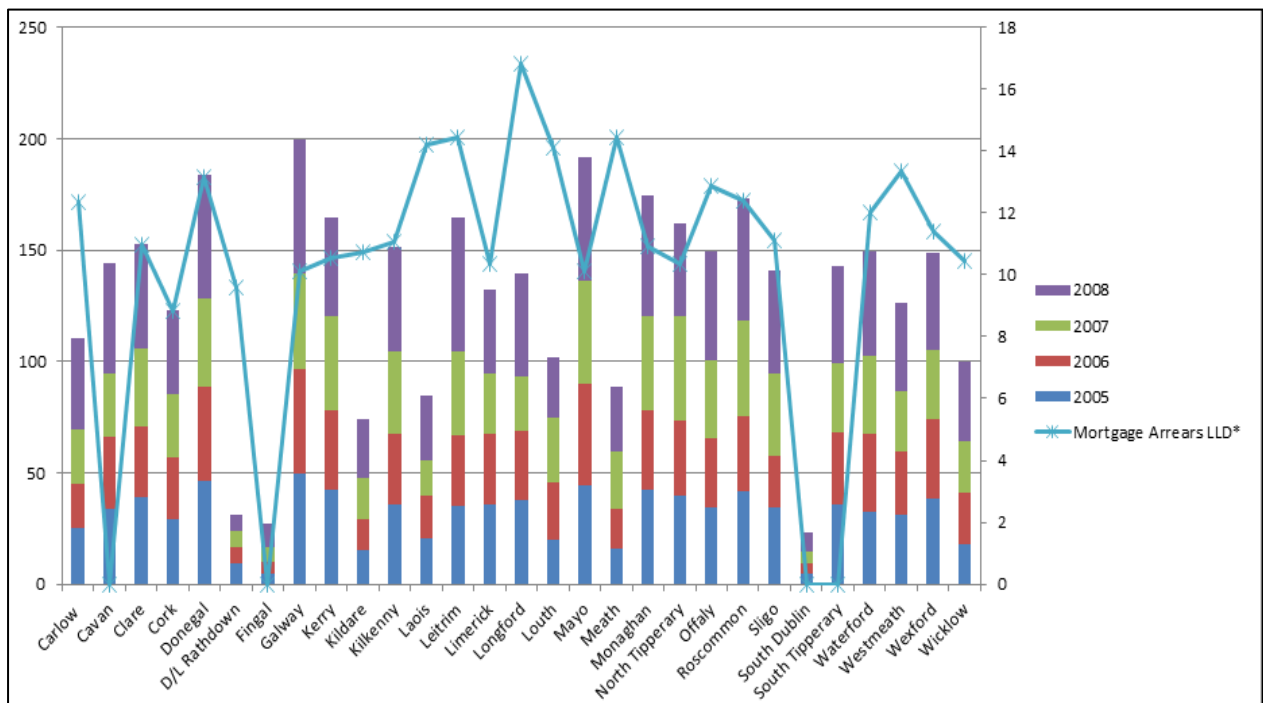
⁴ p.49

⁵ DAFT Report, October 2016.

⁶ A Spatial Dimension to a National Problem? An Analysis of Mortgage Arrears among South Mayo MABS' Clients, South Mayo Money Advice and Budgeting Service with the assistance of Dr. Stuart Stamp, Independent Social Researcher and Research Associate, Maynooth University, August 2016, p.80-1

The majority of the Mayo sample drew down their mortgages between 2004-08, the ‘boom’ years when construction costs were at their highest. Data extrapolated from the Department’s Housing Statistics on the number and type of construction activity by area⁷ for the same period⁸ together with mortgage arrears data by county published by the Central Bank⁹ indicates that the Mayo experience is likely to be repeated elsewhere. It is acknowledged that the remote location of some properties may be attractive to a smaller pool of households in need of accommodation once the current occupiers are no longer in place. However, this should not serve to preclude such properties, as new technologies enabling social access and facilitating remote working mean settlement patterns are subject to ongoing change, even in more remote areas.

Chart 1: Individual Houses as % of Total Completions 2005-2008* comparison with Mortgage Arrears Loan Level Data December 2014**



Source: Department of Housing, Planning, Community and Local Government Housing Statistics, Construction Activity Completions by Type by Area, 2005-2014 / Central Bank Household Credit Report Loan Level Data

*Excluding City Councils

**Mortgage Arrears Loan Level Data from a limited number of lenders, data for Dublin and Tipperary given by full County

⁷ <http://www.housing.gov.ie/housing/statistics/house-building-and-private-rented/construction-activity-completions> - Completions by type by area 2005-2014

⁸ Data for 2004 was collated differently where individual builds are not so easily identified

⁹ Household Credit Report, December 2014, loan level data is not gathered from all lenders and there is therefore indicative only

Any consideration of amendments to MTR would not be complete without a review of the qualifying conditions, particularly the eligibility criteria for social housing generally.

- The income criterion for a household is prohibitively low with many over-indebted households earning in excess of the maximum amounts while remaining insolvent due to debt commitments.
- The process for identifying, itemising and costing repairs is unduly burdensome on all parties involved and could be streamlined and simplified.

We would suggest, given the unique position of MTR borrowers vis a vis those households on the social housing waiting list, that specific qualifying criteria be determined on the basis of a review of the circumstances of the 2,642 ineligible households who applied to the Scheme up to September 2016. In MABS' experience, additional criteria requiring consideration include:

- Treatment of separated borrowers where one party was willing to engage with the Scheme.
- Consistency of treatment of any shortfall between the MTR purchase price of the property and the existing mortgage.
- In light of the psycho-social advantages of allowing a borrower household to remain in their home, the insertion of a right of residence clause (with carve-outs for anti-social behaviour / gross misconduct etc.) permitting the borrower to remain in the property should their family circumstances change.
- The introduction of a time-limited appeals mechanism at each stage of the process.

It is understood that the potential for a 'mortgage to lease' scheme backed by private funds has been mooted. Before such a scheme is considered MABS believe it is necessary to re-examine the existing MTR in its entirety – to identify and remove blockages and inefficiencies and to determine the capacity to retain the experience of local authorities within the Scheme. If a private-backed mortgage to lease scheme is being considered, there is an imperative on Government to ensure that robust legislation is in place to ensure consumer protection into the future. This must be by way of statutory imperative rather than voluntary code with sanctions for any breach of the fund's duty of care to tenants.

CIB and MABS request to meet officials within the Department to discuss our experience of the Scheme and any points raised in the within submission should it be considered helpful in developing this critical policy instrument for those in long term mortgage arrears / at risk of homelessness.