Introduction

The Irish mortgage market is not working for standard variable rate customers. Over 300,000 households are paying rates that are double the European average for equivalent mortgages. This is costing families hundreds of euro a month. The margin earned by banks on variable rate loans has grown dramatically as their cost of funds has fallen. Variable rates in Ireland are now so high that a customer with a €200,000 mortgage and 20 years left to run is paying €4,000 a year in additional interest when compared to a similar customer in other European countries.

It is now increasingly clear that the softly softly approach adopted by Minister Noonan is simply not going to work and that a robust legislative framework is needed in relation to variable mortgage rates. In response, Fianna Fáil has published the attached comprehensive legislation to deal with this issue

The legislation we are proposing is balanced between the obvious need for banks to be profitable and the rights of consumers to be treated fairly. The Central Bank would be given responsibility for monitoring the level of competition in the mortgage market and the fairness of rates charged. This would act as a strong deterrent to banks from charging excessive rates and would only necessitate Central Bank action where the evidence points to a clear market failure. It would empower the Central Bank with a range of tools to influence the standard variable rates charged including directing a lender not to charge a rate, which exceeds:

- A specified maximum rate
- A margin above that lender's cost of funds (as determined by the Central Bank);
- A margin above the ECB rate
- A proportion, more than one-third, above the average variable interest rate charged in the market.

This process would also have the distinct advantage of protecting customers of smaller lenders and those families whose loans are sold to vulture funds. Currently there is nothing to stop the buyers of these mortgages from increasing rates to 6% or 7% or even higher. The process would be supported by a system of sanctions for banks which failed to comply with a direction order from the Central Bank.

Now is the time for mortgage fairness. Our legislation will help bring this about.

Michael McGrath T.D.
Fianna Fáil Spokesperson on Finance

CONTENTS

Section

ACTS REFERRED TO

Central Bank Act 1942

CENTRAL BANK (VARIABLE RATE MORTGAGES) BILL 2015

An Act to provide for measures to address market failures in the market for Principal Dwelling House mortgage loans, and to provide for related matters.

Be it enacted by the Oireachtas as follows:

Short Title and Commencement

1.

(a) This Act shall be cited as the Central Bank (Variable Rate Mortgages) Act 2015.

(b) This Act shall come into effect immediately.

Definitions

2. In this Act:

(a) "the Central Bank" means "the Central Bank of Ireland".

(b) "Compensation Order" shall have the meaning ascribed to it by section 9(c).

(c) "Enforcement Order" shall be interpreted with regard to section 7.

(d) The term "lender" shall include any regulated financial service provider within the meaning of the Central Bank Act 1942 or any company, partnership, business or other entity engaged in the provision, management or administration of Principal Dwelling House mortgage loans.

(e) "Principal Dwelling House mortgage loan" shall mean a loan for the primary purpose of purchasing a principal dwelling home for the borrower (and if relevant the family of the borrower) on an owner-occupier business.

(f) "Rectification Order" shall have the meaning ascribed to it by section 9(a).

(g) "Section 3 Assessment" shall mean an assessment carried out pursuant to Section 3.

(h) The term “variable interest rate” shall include any interest rate which is transient or otherwise not fixed and which is not set or calculated by reference to an interest rate set or otherwise determined by the European Central Bank.

(i) A reference to a “variable interest rate” in relation to a lender shall include a reference to different variable interest rates being charged by a lender in respect of different Principal Dwelling House mortgage loans or categories of Principal Dwelling House mortgage loans.

Section 3 Assessments

3. The Central Bank shall carry out assessments on the state of competition in the market for Principal Dwelling House mortgage loans on at least a quarterly basis.

Factors to which Central Bank shall have regard

4. In carrying out a Section 3 Assessment, the Central Bank shall have regard to the following factors:

(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.

Formation of conclusion

5.

(a) Upon completion of a Section 3 Assessment, the Central Bank shall form a conclusion as to whether the state of competition in the market for Principal Dwelling House mortgage loans is such that a market failure exists.

(b) For the purposes of this Act, "market failure" shall mean a situation in which market conditions are such that a lender is, or lenders are, charging a variable interest rate or variable interest rates for Principal Dwelling House mortgage loans which are higher than the Central Bank considers can be reasonably and objectively justified by reference to the factors set out in Section 4.

Power to issue direction to lender

6. Where the Central Bank forms a conclusion pursuant to section 5 that a market failure exists, the Central Bank may issue a direction to a specific lender or lenders (or lenders in general) not to charge a variable interest rate or variable interest rates in respect of Principal Dwelling House mortgage loans generally, or specific Principal Dwelling House mortgage loans or categories of Principal Dwelling House mortgage loans, 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

7.

(a) A direction pursuant to Section 6 shall state the duration for which the direction shall remain in force, which may be an indefinite period, but such a direction may subsequently be extended, varied or brought to an end by the Central Bank at any time.

(b) A lender shall comply with a direction pursuant to Section 6 (or any variation of such a direction) within 56 days from of date of the direction (or variation as the case may be) and shall thereafter continue to comply with the direction until such time, if any, that it is varied or brought to an end by the Central Bank.

(c) Where the Central Bank believes that a lender is in breach of subsection (b), it may apply to the High Court on notice to the lender in question for an Enforcement Order requiring the lender in question to comply with the direction in question.

(d) Upon hearing an application pursuant to subsection (c), the High Court shall grant an Enforcement Order if it determines that the lender in question is in breach of the relevant direction.

(e) Where the High Court makes an Enforcement Order in accordance with this section, it shall impose a fine on the lender in question in the sum of twice the amount that the court determines the lender derived in profits in breach of the relevant direction, unless the court determines that it would be unjust to impose such a fine, in which case it may impose a lesser fine or dispense with the requirement to impose a fine.

Prohibition on discrimination against existing customers

8. In setting a variable interest rate for a group, class or category of Principal Dwelling House mortgage loans, a lender may not discriminate between existing borrowers and new borrowers.

Rectification Orders and Compensation Orders

9.

(a) Where the Central Bank believes that a lender is in breach of its obligations pursuant to section 8, the Central Bank may apply to the High Court on notice to the lender in question for a Rectification Order requiring the lender in question to cease the relevant discriminatory practice prohibited by section 8.

(b) Upon hearing an application pursuant to subsection (a), the High Court shall grant a Rectification Order in such terms as the court deems appropriate if it determines that the lender in question has acted in breach of section 8.

(c) Where the High Court makes a Rectification Order in accordance with this section, it shall make a Compensation Order in such terms as the court considers appropriate requiring the lender to compensate any borrower or former borrower (or class of borrowers or former borrowers) of the lender affected by the discriminatory practice in question unless the court believes it would be unjust to do so.

(d) Where the High Court makes a Rectification Order in accordance with this section, it shall impose a fine on the lender in question in the sum of twice the amount that the court determines the lender derived in profits on foot of the discriminatory practice in question, unless the court determines that it would be unjust to impose such a fine, in which case it may impose a lesser fine or dispense with the requirement to impose a fine.

Defrayal of legal costs or stamp duty not to constitute discrimination

10. A lender shall not be regarded as discriminating between existing borrowers and new borrowers for the purposes of Section 8 as a consequence of providing new borrowers with a once-off payment or discount for the purpose of defraying on a *bona fide* and vouched basis:

(a) the borrowers' legal costs in taking out the loans in question or switching between loan products; and/or

(b) the borrowers' liability for stamp duty in the purchase of the Principal Dwelling House in question.

Publication of Section 3 Assessments

11. The Central Bank shall publish each Section 3 Assessment publicly in such a manner as it considers appropriate.

No appeal from decision of Central Bank

12. Notwithstanding the provisions of the Central Bank Act 1942 or any other enactment, no appeal shall lie to the Irish Financial Services Appeals Tribunal or the High Court in respect of a Section 3 Assessment, a direction pursuant to section 6 or a decision by the Central Bank to seek an Enforcement Order or a Rectification Order.

Michael McGrath T.D.
SPOKESPERSON ON FINANCE

Dáil Éireann, Leinster House, Kildare Street, Dublin 2.
Constituency Office, Main Street, Carrigaline, Co. Cork.
✆ 021-4376699 🖷 021-4834252
✉ michael.mcgrath@oireachtas.ie
/michael.mcgrath.1614 @DeputyMcGrathTD

FIANNA FÁIL
THE REPUBLICAN PARTY