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GM-0140-2022

Dear Janice

Departmental response on Support for Mortgage Interest (Security for Loans) Bill – Default Event

Thank you for your letter dated 28 January requesting further clarification on queries raised by the Committee Members during the public session with Departmental Officials. The Committee requests that the Department responds to the queries, a number of which arose from the earlier session with the Law Society.

Unfortunately due to staff Covid absences it has only been possible at this stage to provide a part reply however we will endeavour to provide a full response in time for the meeting of the Committee on Thursday 3 February 2022.

Queries

Processes for adding and removing charges

The Committee requests that you confirm in your response the process for repaying the SMI loan and also describe the process for the removal of the charge on a property and the timelines involved.

Operational - process

The Committee queries whether set times for adding a charge to the register or removal of a charge would be useful and potentially be included in the regulations?

The Department will fully consider the subordinate legislation and the operational processes required for the registration and removal of the statutory charge once Royal Assent of the Bill has been received. Initial findings have indicated that the process should not cause delay however it should be noted that the placing and removal of a charge also involves third parties for whom the Department has no control over, such as Solicitors and Land Registry. Any regulations falling from the Bill will be forwarded to the Committee by SL1 for normal scrutiny.

Joint ownership

A Member queried with the Law Society if this Bill had the potential to cause any issues for couples who were separating on death of one of the joint owners. The response from the Law Society was that the regulations would need to address any impacts on joint owners.

The Committee requires clarification on the situation regarding joint owners

SMI Loans pay interest on existing Mortgages. Any event such as transfer of legal ownership or death will have an impact on the Mortgage as well as acting as a trigger point for consideration to be given to repayment of the SMI Loan. For example, on separation it is common for either the house to be sold or re-mortgaged. Death of an owner is provided for in the current process and further consideration will have to be given by the Department on whether the debt can be transferred.

Regulation 16 of the Loans for Mortgage Interest Regulations (Northern Ireland) 2017 (S.R. 2017 No. 176) currently provides for when repayment of the loan is due where the property is sold, legal or beneficial title in the property is transferred, assigned or otherwise disposed of, or the death of the person claiming benefit. Where a couple are legal owners of the accommodation and where the debt can be transferred then repayment of the loan is not due until the death of the last member of the couple.

Scenarios

An SMI loan is with the owner of a property (person A), person B marries person A or moves into the home with person A and then person A dies leaving the property to person B or person A moves into a care home and the home needs to be sold.

The Committee requests confirmation in the response of:

- what would happen in each of these events – is the Committee's understanding correct that the property would have to be sold and if there was sufficient equity then the SMI loan would be repaid?;
- what 'sufficient equity' means in practice or is this calculated on a case by case basis?; and
- is there the potential for the Bill to leave someone who lives in the property homeless if a trigger event occurs?

Default event for purposes of Loan – sale, transfer of property and death of benefit claimant. In example used of Person B moving in, the primary Mortgage provider will need to be made aware - Primary Mortgage may change and legal ownership therefore changes - transfer is a trigger point for possible SMI Loan repayment. Example of Person A dies – death is a trigger point for possible repayment of an SMI loan. Example of Person A going into a care home and house sold – sale a trigger point for repayment of SMI Loan. It should be noted in all these scenarios that the circumstances of the Primary Mortgage for which the Department is paying the interest is likely to change having an effect on the interest repayments and the SMI Loan. In each case the Department considers whether to seek repayment based on the evidence provided and has the discretion to write off.

In relation to establishing “sufficient equity” or write-off, each case is considered separately, extensive evidence is required which includes the market value valuation, the mortgage redemption statement and evidence of any other priority loans to ascertain if any equity available to repay.

By way of clarification perhaps you would note that the Bill does not affect the events or circumstances under which a Default Event is triggered.

The Department considers each case based on the evidence provided. It should be noted that the primary Mortgage for whom the Department is paying the interest will be repayable if mortgage payments stop, the primary mortgage debt will be much greater than the SMI loan debt. The Department would need to confirm if primary mortgage company will ever seek repossession.

Transfer of SMI loan

These scenario discussions led to a Member querying whether the Bill could be amended or the regulations provide for the SMI loan to be transferred to person B as it would be better if they could take on the existing loan rather than have to sell the property or try to take out a new SMI loan.

The Officials agreed to take this matter away for consideration – please advise the Committee of the outcome of those considerations regarding the transfer of an SMI loan.

This will require further consideration within the Department and discussion with DSO who can advise accordingly once policy in relation to porting of loans is finalised.

Timescale for Regulations

The Committee requests confirmation of the timescale for the Regulations, if they will apply to new loans only and timescale for the transfer of existing loans.

Once the Bill receives Royal Assent it is intended that subordinate legislation will be made within 6 months. Statutory Charges will be placed on new loans from the operational date of the

Regulations and a timeframe for Statutory Charges to be placed on unsecured loans will be established.

Debt decisions and appeals

The Committee requests further explanation in regard to this debt management decision-making in the Department regarding SMI loans and also regarding any appeals process.

In relation to write-off, extensive evidence is required for write-off to include the market value valuation, the mortgage redemption statement and evidence of any other priority loans. Authority to write-off is carried out within the Department's Debt Management's write-off policy and is dependent on amounts to be written off. This process is checked in line with the Department's Security and Validation process.

No appeal process in place at present

39-week wait

The Committee requests confirmation in the response of the rationale for the 39-week wait and if it is something that could be considered in a review of the SMI policy.

People of working age have to serve a waiting period of 39 weeks/9 months before they can be eligible to receive SMI Loan. There is no waiting period for people who are in receipt of state pension credit.

The qualifying period is in place because it is reasonable for homeowners to make arrangements with their lenders to manage any loss of income for a short period without the need for the Department to intervene.

People who are having difficulty meeting their mortgage commitments should speak to their lender because they will have set processes in place to assist.

The Department is constantly reviewing social security policy to ensure that it is flexible and supports the most vulnerable in our society. As part of this constant policy review, SMI loan policy is reviewed to ensure it meets the needs of recipients, for example the proposed introduction to transfer the loan to another property. The Department will continue to review SMI loans and look for improvements.

Universal Credit and Future Pensioners

A Member raised concerns regarding NI moving to the UC system in due course. It was understood that those who work 16 hours and receive UC cannot avail of an SMI loan?

The Committee requests confirmation that this is the case and if the Department will consider reviewing the SMI loan policy in that regard in preparation for the move to UC in Northern Ireland.

Owner occupiers in UC who are not receiving support for mortgage interest because of the zero earnings rule will be compensated, in part, by the operation of the appropriate earnings disregards. The intention is that a zero earnings rule for SMI, coupled with the generous UC disregards, will ensure that owner occupier claimants have the right incentives to move into work and increase their hours of work over time.

As stated above the Department will continue to review SMI loans and look for improvements.

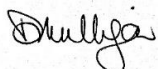
With regard to fewer pensioners being in receipt of pensions credit in the future (due to increase in workplace pensions), a Member queried the ability of such individuals to get an SMI loan.

The Committee requests confirmation that is the case and if the Department will consider reviewing the SMI loan policy in that regard for future proofing.

As stated above the Department will continue to review SMI loans and look for improvements.

I hope this is helpful to the members.

Yours sincerely



Diane Mulligan

Departmental Assembly Liaison Officer

Private Office