

LITIGATION, DISPUTE RESOLUTION AND INVESTIGATIONS

COVID-19: Practical Considerations: Court Proceedings to be Deferred for Borrowers

25 March 2020

One of the measures to be implemented by Ireland's five retail banks and other non-bank lenders and credit servicers to assist borrowers who may be affected as a result of the COVID-19 pandemic is a deferral of court proceedings for three months.

SUPPORT MEASURES

On 18 March 2020, the Banking & Payments Federation Ireland (BPI) released a [statement](#) on behalf of Ireland's five retail banks summarising the joint plan presented to the Minister for Finance by those banks to support customers impacted by the COVID-19 pandemic which included the deferral of court proceedings for three months (see our briefing [here](#)). The BPI subsequently confirmed that Ireland's main credit servicing firms and non-bank lenders also support these measures.

On 19 March 2020, the Central Bank of Ireland (CBI) published a [press release](#) in which it emphasised that the existing consumer protection framework continues to apply and is designed to ensure that consumers' best interests are protected, particularly in times of financial difficulties. The CBI stated that it expects all regulated firms, including banks, retail credit and credit servicing firms, to take a "consumer-focused approach and to act in their customers' best interests".

PRACTICAL CONSIDERATIONS FOR LENDERS

The deferral of court proceedings raises a number of challenges for lenders. The BPI statement makes reference to businesses, employees and personal customers who are "impacted" by the COVID-19 pandemic, but does not specify if and how any impact will be measured

or whether the deferral will apply in a blanket way to all proceedings. The statement also does not specify what is meant by "business", so the scope of the deferral for non-personal customers is unclear.

While the statement dealt with deferral of court proceedings, it is not clear how receiver appointments will be managed where a loan default is triggered during the three-month period. In addition, Lenders will also have to consider how interest on the loans of affected customers who are in arrears will be treated, and should ensure that necessary related procedures are put in place.

There are also a number of practical issues to consider, which vary depending on the nature and status of the court proceedings at issue:

1. Court proceedings that have not yet issued

- It is not clear whether the commitment to defer applies to the issuance of new proceedings.
- The main issue for lenders in this regard is, of course, the possibility that a delay in instituting proceedings would result in a claim becoming statute-barred. Lenders will need to carefully consider and manage all cases that could potentially become statute-barred. Although work in the Courts Service has necessarily been scaled back, urgent filings, such as where a claim

is at risk of becoming statute-barred, are, at present, being accepted.

2. Court proceedings that have issued

- Where proceedings are ongoing, all further steps will be suspended for a three-month period. This means that lenders will have to refrain from taking any steps to progress the proceedings, such as issuing warning letters or motions. Clearly, this will impact the overall length of the litigation. Lenders will also have to consider how to mitigate the usual risks around prejudice and delay, for example, by clear written communications with the parties and the Court in relation to the basis for not progressing the proceedings.

3. Court proceedings which have an upcoming return date

- As matters stand, all upcoming civil matters in the Circuit Court and High Court are adjourned generally with liberty to re-enter. Parties will be advised of the adjourned dates by the Courts Service. Practitioners or parties do not need to attend court unless notified by the Court to do so.
- However, the Circuit Court and High Court will hear certain urgent matters including injunctions and their enforcement and urgent judicial review applications. A case which does not come into one of the urgent categories, as specified by the Courts Service, can be treated as

urgent if a good case can be made by either of the parties.

- The vast majority of proceedings issued by lenders with upcoming return dates should be adjourned by the Courts Service without lenders having to take any further steps for the moment. Lenders will undoubtedly have cases that fall within the urgent categories which may otherwise be capable of being progressed. However, the BPGI statement appears to envisage that steps will not be taken by lenders to progress these cases for a three-month period. It is possible that there may be exceptions which require some protective step to be taken in an urgent case and any such cases should be handled carefully on a case by case basis.

4. Court proceedings currently at hearing

- The Courts Service has advised that ongoing trials will continue but, for the remainder of this term (i.e. up to 3 April), no new cases or trials will

begin, even if they do not involve oral testimony from witnesses.

- Notwithstanding this direction by the Courts Service, it appears that the lenders’ commitment to defer will result in ongoing trials against borrowers being adjourned.

COMMENT

Given the current state of flux, lenders need to carefully consider what policies and procedures may need to be implemented to give effect to their commitment to defer court proceedings for three months and should also continue to monitor closely updates from the Courts Service as to how proceedings are being managed.

At the time of writing, the full impact of the commitment by lenders to defer court proceedings for three months cannot be known but, in the first instance, lenders should consider the following:

- how potentially impacted customers should be assessed and deemed

impacted;

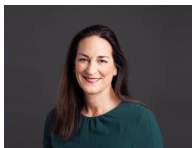
- what policies and procedures may need to be drafted and implemented to give effect to the statement; and
- what internal systems will be required to ensure that court proceedings are deferred and related communications are managed appropriately.

Any action taken by the lenders also needs to be in compliance with their regulatory obligations, including their obligation to act in customers’ best interests.

It is also possible that, subject to achieving the administration of justice in public, existing technologies could be re-purposed to facilitate continuity of the Courts Service.

The implementation of the measures set out in the BPGI statement and, in particular, the deferral of court proceedings, may pose operational challenges to lenders. We will continue to monitor the situation and update you on further developments.

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