

FAQ – Credit servicing¹

1. Why has the law changed?

When a consumer takes out a loan from a regulated lender (“the original lender”) it is subject to all the relevant consumer protections. Most loan agreements include a clause that allows the original lender to sell the loan on to another firm. The loan agreement is the document that describes the terms and conditions of a person’s loan.

In the past, if the original lender sold a loan to another person who was not regulated by the Central Bank (“an unregulated firm”), the consumer could lose the protections they previously had under the various Central Bank statutory Codes of Conduct.

In July 2015, the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015 (“the 2015 Act”) was introduced to fill the consumer protection gap where loans were sold by the original lender to an unregulated firm. The 2015 Act introduced a regulatory regime for a new type of entity called a ‘credit servicing firm’. Under the 2015 Act, if a loan was transferred to an unregulated entity, the unregulated entity was required to appoint a ‘credit servicing firm’, authorised by the Central Bank, to service the loan.

The Consumer Protection (Regulation of Credit Servicing Firms) Act 2018 (“the 2018 Act”) has further expanded the activity of credit servicing to include ownership of legal title to credit granted under a credit agreement, and associated ownership activities. Therefore, if a loan is now transferred, the holder of the legal title to the credit must be authorised by the Central Bank as a credit servicing firm.

A holder of legal title to credit, who is now required to seek authorisation as a credit servicing firm, is required to ensure that an authorised credit servicing firm undertakes the credit servicing activities that fell within the scope of the 2015 Act on its behalf, until such time as it has been granted an authorisation by the Central Bank.

2. What is a credit servicing firm?

‘Credit servicing’, as defined in the 2015 Act, includes all interactions with the consumer² in respect of the loan, including:

- Notification of changes in interest rates or payments due;

¹ The answers provided in this document are for guidance purposes only and should not be used as a substitute for legal advice.

² The 2015 Act covers cash loans by relevant borrowers, who are either:

- A natural person (unless they are a professional client under MiFID or a regulated financial service provider); or
- A micro, small or medium-sized enterprise (SME) (within the meaning of Commission Recommendation 2003/361/ EC of 6 May 2003) but only to the extent that the credit was advanced to the SME by a regulated financial service provider.

Some loans are not covered by the 2015 Act – these include hire purchase agreements and consumer hire/leasing agreements. The servicing of loans which have been granted to consumers who are not ‘relevant borrowers’, is also outside the scope of the 2015 Act.

- Collecting repayments on the loan;
- Managing complaints; and
- Assessing the consumer's financial circumstances in cases of financial difficulties.

The 2018 Act further expands the definition of 'credit servicing' to include ownership of legal title to credit and associated ownership activities.

Credit servicing firms must act in accordance with Irish financial services law that applies to 'regulated financial service providers'. This ensures that consumers, whose loans are sold to another firm, maintain the same regulatory protections they had prior to the sale, including under the various statutory Codes of Conduct issued by the Central Bank.

If a firm is servicing the portfolio of loans on behalf of a regulated entity then they do not need to be separately authorised by the Central Bank as a credit servicing firm, as this arrangement is covered under existing rules covering outsourcing that apply to all regulated financial services firms.

3. What additional consumer protections does the new law introduce?

The 2015 law, now amended, continues to make sure that all relevant consumer protections will continue to apply to the loan when it is sold on to another firm.

Credit servicing firms must act in accordance with financial services legislation including;

- the Consumer Protection Code 2012 ('the Code');
- the Code of Conduct on Mortgage Arrears 2013 ('the CCMA');
- the Central Bank (Supervision and Enforcement) Act 2013 (Section 14) (Lending to Small and Medium-Sized Enterprises) Regulations 2015 ('the SME Regulations'); and
- the Minimum Competency Code 2017 ('the MCC') and the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Minimum Competency Regulations 2017 ('the MCR').

The full versions of the Codes can be downloaded from our website www.centralbank.ie. Our Consumer Protection Code 2012 Guidance is available at <https://centralbank.ie/docs/default-source/regulation/industry-market-sectors/brokers-retail-intermediaries/guidance/updated-2012-code-guidance-document.pdf?sfvrsn=4>. Our consumer explainer on the CCMA is available at <https://www.centralbank.ie/consumer-hub/explainers/explainer-how-does-the-central-bank-protect-people-in-mortgage-arrears>.

4. How can I check if my loan can be sold on?

If you are unsure whether your loan can be sold on by your original lender to another firm, you should check the terms and conditions of your loan agreement or contact your original lender.

5. What should the original lender do to inform consumers if it wants to sell a loan?

Provision 3.11 of the Central Bank's Consumer Protection Code 2012 requires that, where a regulated lender intends to transfer all or part of its 'regulated activities' to another regulated entity, it must provide advance notification to both the Central Bank and affected consumers.

From the date of enactment of the 2015 Act, the original lender must now, under Provision 3.11 of the Code, provide a consumer with at least 2 months' notice before transferring all or part of its loan book covered by the Code to another entity.

The full versions of the Codes can be downloaded from our website www.centralbank.ie. Our Consumer Protection Code 2012 Guidance is available at <https://centralbank.ie/docs/default-source/regulation/industry-market-sectors/brokers-retail-intermediaries/guidance/updated-2012-code-guidance-document.pdf?sfvrsn=4>. Our consumer explainer on the CCMA is available at <https://www.centralbank.ie/consumer-hub/explainers/explainer-how-does-the-central-bank-protect-people-in-mortgage-arrears>.

6. How can I check if a credit servicing firm is regulated by the Central Bank?

To check if a credit servicing firm is regulated by the Central Bank, visit the register at <http://registers.centralbank.ie/>.

7. How can I make a complaint against the original lender or a credit servicing firm?

If you are not satisfied with how the sale of your loan is being dealt with by the original lender, you should make a complaint to the original lender. If you are not happy with the service you receive from a credit servicing firm, you have the right to complain to that firm.

In either case, the firm will handle the complaint in accordance with its complaints handling process. The Central Bank's Consumer Protection Code 2012 also includes rules that firms must follow when they handle the complaint.

If the complaint is not resolved to the consumer's satisfaction, they can refer the complaint to the Financial Services and Pensions Ombudsman, where they are an 'eligible consumer' covered by that Scheme. Further details on the Financial Services and Pensions Ombudsman can be found on www.fspo.ie.

Further information

If you have questions that are not addressed in this Q&A document, please contact us at the relevant email/number below:

Consumers - enquiries@centralbank.ie (1890 777 777)

Stakeholders - code@centralbank.ie.

Authorisation related queries - creditservicingfirms@centralbank.ie.