

MABS Submission to Central Bank's Review of the Consumer Protection Code (June 2024)

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Document Information

Short description

This document was prepared in response to a call for submissions issued by the Central Bank of Ireland on its review of the Consumer Protection Code (CPC). For more details on this submission, see: [Consumer Protection Code Review | Central Bank of Ireland](#)

Developed by

This submission was prepared by MABS Support CLG in consultation with representatives from the MABS Regional Companies.

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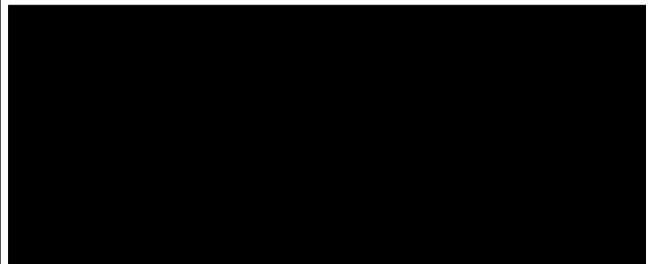
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Table of Contents

Document Information	2
Introduction	4
Section 1: General Comments on the Revised Code	6
Comment 1: Continued MABS Signposting	6
Comment 2: Including Credit Unions under the provision of the Code	6
Comment 3: Consumers' Guide to the Consumer Protection Code	7
Comment 4: The importance of strengthening the CCMA	9
Comment 5: Enforcement of the Revised Code	10
Section 2: Response to Questions in the Consultation document	11
Digitalisation	11
Mortgage Credit and Switching	14
Customers with Vulnerabilities	19
Consumer Credit	21
Handling of Errors and Complaints	22

Introduction

The Money Advice and Budgeting Service (MABS) very much welcomes the Central Bank of Ireland (CBI)'s continued review of the Consumer Protection Code (CPC). Since its first iteration in 2006, the CPC (also referred to throughout this submission as 'the Code') has played a pivotal role within financial regulation and consumer protection frameworks in Ireland. Our contribution to this consultation process follows a series of submissions to the Central Bank on this and related topics over the last number of years, including to last year's 'Review of the Consumer Protection Code' (March 2023),¹ as well as the 'Review of the Mortgage Measures Framework' (March 2022),² and the 'Review of the Standard Financial Statement, Code of Conduct on Mortgage Arrears 2013 and Consumer Protection Code 2012' (April 2021).³

As the only nationally funded, borrower-centred advocacy organisation of its kind in Ireland, MABS has a unique perspective into the issues facing 'consumers'. We have seen first-hand the challenges that have emerged in light of the continuously evolving and increasingly technical and digital financial space. The money advice and advocacy process that MABS provides has been made increasingly more complicated by the diversity of actors in the sphere of consumer lending – including credit unions and the pillar banks, digital-only banking providers, credit servicers, payment service providers, loan holders/ investment funds, debt collection agencies, 'high cost credit' providers (formerly moneylenders), An Post, Buy Now Pay Later (BNPL) platforms and apps, and so on. The need, in our view, for more streamlined regulatory protections for consumers, in particular those facing situations of over-indebtedness, has never been more pressing.

As such, we welcome the Central Bank's proposed provisions to be set forth in the up-to-date Consumer Protection Code. We particularly embrace the following sentiments and revisions as set forth in the CBI's March 2024 Consultation Paper:⁴

- The revised Code will contribute to the development of a 'more coherent' structure for consumer protection, in particular by consolidating the regulations for High Cost Credit Providers, Buy Now Pay Later services, PCP (personal contract plans), HP (hire purchase) and consumer hire providers.

¹ For a copy of MABS submission to the 2023 Consumer Protection Code Review, please see:
https://mabs.ie/wp-content/uploads/2023/04/CPC-Review_-MABS-Responses-to-Survey-Questions.pdf

² [MABS Submission to the Central Bank: Review of the mortgage measures](#)

³ For a copy of this submission, see:
[CIBMABS Response to CP139 Review of the Standard Financial Statement 20210421-1.pdf](#)

⁴ [Code Review Consultation Paper March 2024 \(centralbank.ie\)](#)

- The issuing of further Code conduct standards and requirements for financial firms to ‘secure customers’ interests, act honestly, fairly and professionally, act with due skill care and diligence and inform customers effectively’.
- The issuing of specific Guidance documents to firms for Securing Customers’ Interest and Protecting Consumers in Vulnerable Circumstances.
- The potential strengthening of the provisions set forth in the Code of Conduct of Mortgage Arrears (CCMA), through the incorporation of the CCMA under the new revised Code.

At MABS,⁵ we work with clients who are experiencing difficulty meeting their financial arrangements and servicing debt repayments on a consistent basis as they fall due. These individuals come from all backgrounds and cohorts of society. It is important to note that many MABS clients express feelings of distrust of banks and financial institutions, and fear that these entities are ultimately acting in their own interests at the expense of consumer well-being. At MABS, our philosophy is to provide a non-judgemental money advice service to support every client, regardless of their circumstances, and regardless of the financial services they use and the way they bank or manage their money.

This submission is further divided into two main sections:

- Section 1: General MABS comments on the proposed revised Code and the provisions set forth in the Consultation Paper. For a copy of the paper, see: [*Code Review Consultation Paper March 2024 \(centralbank.ie\)](#)
- Section 2: Responses to a selection of the Questions set forth in the Code Review Consultation paper, in relation to following thematic areas: ‘Digitalisation’, ‘Mortgage Credit and Switching’, ‘Customers with vulnerabilities’, ‘Consumer credit’ and ‘Handling of Errors and Complaints’. To provide context to our responses, we include short excerpts from the Consultation paper.

⁵ Established in 1992, the Money Advice and Budgeting Service (MABS) helps persons to cope with personal debt and take control of their own financial wellbeing. It is a free, confidential and independent service that operates from over 60 offices nationwide. MABS is funded and supported by the Citizens Information Board. There are currently 10 Companies in the MABS network – 8 Regional Companies (North Dublin MABS, Dublin South MABS, North Connacht & Ulster MABS, North Leinster MABS, North Munster MABS, South Connacht MABS, South Leinster MABS and South Munster MABS), National Traveller MABS and MABS Support CLG.

MABS Support CLG is dedicated to the provision of supports to the regional staff in the MABS network and providing specialist expertise on a range of areas including: learning and professional development, training, case management and technical support, social policy and research, community education and financial inclusion.

Section 1: General Comments on the Revised Code

MABS approaches this submission, as it does its casework, from a holistic perspective that aims to reflect on the full picture and the full range of factors that impact on the clients we support. Usually MABS clients have many debts, attributable often to loss of employment, bereavement, illness, or relationship breakdown. Even with MABS assistance it is often immensely emotionally and administratively difficult for such borrowers to navigate a system which imposes different rules under different legislation, regulations and Codes.

We therefore emphasise that it is of central importance, in our view, that the Revised Code ensures as much clarity, transparency, simplicity and accessibility as possible in its new iteration.

Comment 1: Continued MABS Signposting

We understand from our engagements with the Central Bank that nearly 70% of the existing Consumer Protection Code will be transferred into the revised Code. MABS greatly appreciates the signposting throughout the existing Code to MABS at key points in the customer journey (in particular in the area of 'Arrears Handling'), and we feel it is of continued importance that the consumer is made aware of the free services MABS provides. We see this sign-posting as being particularly significant for consumers of HP (hire purchase)/PCP (personal contract plan) finance who may be at risk of arrears, or in arrears, as they consider their options for amelioration or exit from an agreement.

However, it is important to note that this is an oftentimes immensely challenging space to support borrowers, as certain firms/lending entities can be very reluctant to engage with the MABS process. Firms (in particular new firms to the Irish lending space) should be made aware of MABS, the work we do and the support we provide to consumers, and the important role we play in the arrears handling process.

Overall, we fully support the continued sign-posting to MABS in the Revised Consumer Protection Code – and the particular extension of this signposting to all service providers active in this space – including, for example, 'newer' entities such as BNPL services. We are also available to engage further on this point if it is useful to the Central Bank.

Comment 2: Including Credit Unions under the provision of the Code

According to the Consultation document, 'at a domestic level, there will also be a consideration in due course of the full application of the Code to credit unions, in order to ensure their members are afforded the same protections as other consumers' (page 24). MABS would support a rapid and timely

incorporation of credit unions into the revised Code. At the moment, the Code only applies to credit unions when acting as insurance intermediaries. There is no centralised terms of practice or controls for credit unions in terms of arrears handling and consumer debt – and this has presented on-going challenges for MABS clients who are over-indebted and struggling to service credit union loans. We therefore advocate for more streamlined regulation in this space and the incorporation of all credit union activities under the revised Code.

Credit unions have also recently become very active in the area of mortgage lending in the Irish market. According to the Irish League of Credit Unions,⁶ from March 2023 – March 2024, the value of credit union mortgages issued in Ireland increased by 71%. The credit union mortgage loan book has also surpassed €500 million and is on track to reach €1 billion by 2026. This is, in our view, a welcome development in terms of increasing competition and consumer choice of available mortgage products. However, there is arguably an urgent need for these activities to be centrally regulated under the new Consumer Protection Code – in particular as it is proposed that this Code will incorporate the protections for borrowers outlined under the CCMA.

Comment 3: Consumers' Guide to the Consumer Protection Code

In its current guise, the Consumer Protection Code and the obligations placed on firms can be rather difficult to navigate and understand – for consumers as well as professional money advisers. We completely endorse the Central Bank's commitment to issuing a 'range of supports' and guidance documents (page 89) for consumers and firms to better comprehend the provisions of the Code – including the 'Guidance on Securing Consumers' Interests' and 'Guidance on Protection Consumers in Vulnerable Circumstances'. We also support the issuance of a specific 'Consumers' Guide to the Consumer Protection Code' (as cited in the Consultation document).

In our view, this Guide should go beyond simply explaining the protections, rights and entitlements of consumers under the revised Code, and should be structured in such a way that consumers (and, to that extent, advocates who support consumers, including MABS Money Advisers and Dedicated Mortgage Advisers (DMAs)) can access the information they need without hassle. We would recommend that this guideline be organised not by 'thematic area' – but should rather incorporate a consolidated guide of types of credit and type of lender, for example, personal loans, mortgage/secured lending, PCPs (personal contract plans), HPs (hire purchase), high cost credit providers, and so on. Each of these credit types should include:

⁶ [Credit unions grew mortgage lending by 71% in the year to end of March – The Irish Times](#)

- Up to date terminology and definitions (for instance, difference between ‘moneylender’ and ‘high cost credit provider’).
- Direct links to all relevant domestic legislation⁷ (and perhaps EU frameworks⁸ as needed), including reference to the specific applicable sections for each creditor type.
- Direct links to titles of currently regulated firms by the Central Bank (in order to ensure that unregulated firms are more easily identifiable).
- A full explainer and guidance on the type of credit – what it is, how it operates, what rights consumers have and the options for redress/ complaints, etc.
- Links to relevant external complaints procedures for each lending/ credit type.
- Related links and explainers to other important bodies – for example the Central Credit Registrar as well as registers of other intermediaries authorised by the Competition and Consumer Protection Commission (CCPC).
- Links to websites and contact information for dedicated consumer support services, including MABS.

As mentioned in the Consultation document, the development of consumer protection at both an EU and domestic level has resulted in ‘structural fragmentation across the regulatory framework’ (page 7). The proposed Consolidated Consumers’ Guide would seek to address this level of fragmentation, and help consumers understand how a firm/ financial service is regulated and by which entity. For example, for hire purchase agreements, it is common that there are different regulatory bodies and frameworks for the institution providing the credit as opposed to the credit intermediary. While the specific garage/ dealership/ business/ acting as ‘credit intermediary’ is regulated by the CCPC, the credit institution is regulated by the Central Bank. This is extremely confusing for consumers (and it can be for us at MABS as well, even though we have supported clients in this space for a number of years), and we would argue that there needs to be clear and regularly updated centralised resources to helping everyday consumers understand these issues.

⁷ As listed in page 14 of the Consultation document: these include: the Consumer Credit Act, Consumer Protection (Credit Servicing Firms) Acts, Consumer Insurance Contracts Act, Investment Intermediaries Act, Consumer Protection Act.

⁸ As listed in page 14 of the Consultation document: Consumer credit, payment accounts, payment services, mortgage credit, insurance distribution, retail investors, and so on.

Comment 4: The importance of strengthening the CCMA

According to the Consultation document, the Central Bank is ‘proposing the consolidation of the CCMA into the Code along with a number of enhancements to existing CCMA requirements’ (page 44).⁹ We enthusiastically support ‘enhancements’ to the existing CCMA, and we have advocated for improvements/ and the strengthening of provisions outlined under the CCMA for a number of years. In Section 2, in our response to the Questions posed in the ‘Mortgage credit and switching’ thematic area of the Consultation document, we make direct comments in relation to the provisional enhancements to the CCMA. Overall, we would seek further clarity on why the Central Bank has proposed specific legal changes to the CCMA, and we would like clear assurance that the provisions of the CCMA will be **protected as statutory** in the new legislation – as this is uncertain from the Consultation document and Annex 4, the ‘General Requirements – Central Bank (Supervision and Enforcement Act) 2013 (Section 48) (Consumer Protection) Regulations’.¹⁰

We also identify that the Consultation document does not outline clear enforcement mechanisms or sanctions for firms who violate the revised Code or breach the provisions of the CCMA. We discuss this further in Comment 5.

At the moment, MABS Advisers are reporting that some creditors are becoming more ‘adversarial’ in the mortgage arrears space – and there can at times be a ‘disconnect’ between a credit servicer and the actual loan holder. In a recent case, a MABS Dedicated Mortgage Adviser (DMA) was working with a client who, due to unexpected job loss, had recently fallen behind on their mortgage repayments and was in early stage mortgage arrears. The contractual amount owed on the mortgage was approximately €1,000 per month – and after the completion of a Standard Financial Statement (SFS) the client’s affordable repayment level was deemed €750 per month. This was set out in a proposed ARA to the credit servicing firm, and the firm came back with a counter offer of a temporary ARA of €800. The client agreed to the terms, and MABS issued a formal letter to put in place an ARA of €800 per month. At this point, the ARA is then rejected by a ‘committee’ within the loan holder/ mortgage fund – who also take steps to pursue legal proceedings against the client. This, in our view, is adversarial and slightly aggressive behaviour on the part of the loan holder (and an example of a ‘disconnect’ that can occur between credit servicing firms and mortgage funds, and further complicates the avenues of redress).

⁹ We also note that the Central Bank decided against a ‘full review’ of the CCMA as part of the Consumer Protection Code Review (page 49).

¹⁰ [Central Bank \(Supervision and Enforcement\) Act 2013](#)

We have a concern that, due to the current climate of rising property costs,¹¹ certain lenders are becoming more active in the pursuit of repossession of family homes. MABS is aware, for instance, of certain credit firms directly calling persons in arrears with positive equity in their homes, and encouraging them to sell in order to clear the arrears. The problem is, Ireland is also facing an unprecedented and well-documented housing crisis,¹² and these borrowers would have nowhere to go/ struggle to find alternative accommodation in the case of a sale. We posit the need for further regulation and support for borrowers in this space, and the importance of strengthening the provisions of the CCMA under the revised Code. We discuss this point further in Section 2.

Comment 5: Enforcement of the Revised Code

MABS has a unique perspective into widespread trends in creditor behaviour when it comes to outlining clear avenues for redress and/or ‘treating fairly’ consumers facing financial difficulty and/or situations of over-indebtedness. We recognise at MABS that over-indebtedness is fundamentally the result of circumstances/events that happen to people, rather than the choices made by individuals. We therefore appreciate that the revised Code should support the rights and entitlements of all consumers, including those in arrears for unsecured and secured debts. We support the efforts of the Central Bank to impress upon firms the importance of including ‘consumers’ best interest’ into their culture and business models. However, in circumstances where firms are not adhering to the obligations set forth under the Code, or behaving in a manner that is particularly aggressive, unfair, and/or overly punitive, we feel as though there should be a transparent and clear mechanism for holding firms’ accountable.

At the moment, complaints periods for the FSPO (Financial Services and Pensions Ombudsman) are two – three years in many cases.¹³ MABS Advisers regularly support a number of individual complaints to the FSPO. For instance, a MABS client in mortgage arrears recently received a positive result of a case – where the credit service provider was deemed to have been in breach of the CCMA and was required to accept the terms of a previously denied alternative repayment arrangement (ARA). However, it took three years for the FSPO to make this decision, and during that time the mortgage arrears on the property increased by over €3,000. The client is in a significantly less advantageous situation than three years prior, during a period when there should have been an ARA in place (had it

¹¹ [Property prices continue to grow and the rate of increase is getting faster \(thejournal.ie\)](https://www.thejournal.ie/property-prices-continue-to-grow-and-the-rate-of-increase-is-getting-faster-4111111/)

¹² [Ireland's housing crisis: Tens of thousands of new builds needed | Euronews](https://www.euronews.com/en/ireland/2023/12/14/ireland-housing-crisis-tens-of-thousands-of-new-builds-needed)

¹³ [Financial Services and Pensions Ombudsman \(Amendment\) Bill 2023: Second Stage – Dáil Éireann \(33rd Dáil\) – Thursday, 8 Feb 2024 – Houses of the Oireachtas](https://www.oireachtas.ie/en/debates/debate/other/2024/02/08/financial-services-and-pensions-ombudsman-amendment-bill-2023-second-stage-dail-eireann-33rd-dail/)

not been for the creditor's behaviour) and the client would have been actively moving towards a solution. This is, unfortunately, a common and reoccurring incidence that we see at MABS.

As such, we would support further clarity on how the Central Bank intends on enforcing the revised Code – and further understanding of the complaints procedures within the Central Bank (and would support, for example, the availability in the public domain of 'lender-specific' inspections versus 'thematic' inspections of the sector). MABS also looks forward to continuing to engage with the Central Bank and other relevant national bodies in terms of highlighting trends in creditor behaviour in this space as appropriate.

In the following Section, we provide responses to questions posed in the Consultation document deemed most suitable to MABS and our work with clients. We address five thematic areas: 'Digitalisation', 'Mortgage Credit and Switching', 'Customers with vulnerabilities', 'Consumer credit' and 'Handling of Errors and Complaints'.

Section 2: Response to Questions in the Consultation document

Digitalisation

- (1) Question: Do you have any comments on the proposed Code enhancements with regard to digitalisation?

The revised Code (according to the Consultation document) will introduce requirements for firms using digital platforms to sell financial products and services, such as the following:

- *Firms must slow the digital transaction process to ensure review of key information by customers before decisions are executed;*
- *Firms must avoid the use of certain pre-ticked boxes; and*
- *Firms must provide customers with reminders of 'cooling-off' options.*

There are also additional requirements under 'targeted advertising' – in particular for minors, under the EU's Digital Services Act.

In terms of 'material changes to services', the Consultation document outlines the following:

"Digitalisation can result in significant changes in products and services and how they are delivered for existing customers. Securing customers' interests would require that a decision to materially change a firm's product or service offering, or the mode of delivery of products and services, would include a consideration and assessment of the impact and outcomes for

customers. Firms should proactively assess the risks and customer impact that material changes to products and services, and their delivery, pose to customers.” (page 37).

MABS Response:

We recognise that the Central Bank truly has an increasingly difficult task of dealing with the challenges inherent in the increased digitalisation of financial services. For instance, how can a regulator monitor whether or not firms are confirming ‘suitability’ of products when loan offerings/ credit servicing can be automatically applied for and immediately accepted through a mobile device or app? As we highlighted in previous submissions, our biggest concern at MABS is how digital exclusion intersects with financial exclusion, as we would have a number of clients accessing our services who have unmet digital literacy skills. With fewer high street banks present in towns and cities, and the increased digitalisation of banking, many in society are facing increased financial exclusion. For example, access to hardware and appropriate devices can be an issue. Some MABS clients would not have access to personal computers or laptops at home, and mobile banking apps do not always offer the full suite of digital banking services (for instances, many do not issue bank statements).

In addition, we have seen a number of issues concerning ‘Strong Factor Authentication’ when clients make online payments. While this feature in online and mobile banking helps customers’ combat security and fraud, it can be a barrier for a sector of the population who struggle with technology and especially changes in technology. Whereas before a person may have mastered the task of making an online payment, now they have to fulfil an extra layer of security with Strong Factor Authentication.

This is just an example of how changes in digital banking can affect a customer. We see a strong role for the Central Bank in regulation, education and monitoring of digital banking, and bridging the gap between those who can afford, and have the skills to properly use, FinTech products, versus those who do not.

In addition, the link between digitalisation and fraud cannot be understated. The recent increase in the number of scams and fraudulent behaviour in the financial services sector can act as a deterrent for persons in seeking out digital services. For instance, according to the OECD’s most recent Consumer Finance Risk Monitor¹⁴ (published in January 2024):

¹⁴ [Consumer Finance Risk Monitor | OECD iLibrary \(oecd-ilibrary.org\)](https://oecd-ilibrary.org/consumer-finance-risk-monitor)

‘Even though financial scams have always loomed as a threat to consumers ... jurisdictions agree that the increased use of mobile and digital services was accompanied by an attendant rise in scams and frauds. The greater use of digital tools has also affected the types of scams.

This trend threatens to undermine recent gains made in expanding access to financial services, **as consumers may understandably withdraw from digital services that expose them to harm.** It also damages the financial well-being of consumers and households, at a time when they are buffeted by various crises and threats, adding to overall vulnerability (own emphasis).’

As such, it is important that those consumers who chose to opt-out/ not to access digital products or services, for whatever reason, should not face additional barriers and should still be fully supported by financial firms.

(2) Question: What are your views on the proposed requirements on banks where they are changing or ceasing branch services?

In the Consultation document, the following changes are set to come into effect for the revised Code:

- *increasing the minimum notice period for banks to six months where they intend to close, merge or move a branch; and to four months where they intend to significantly change services in a branch;*
- *requiring banks to publish board-approved assessments of the impact of the changes on customers; and*
- *requiring banks to conduct an ex-post assessment to include a survey of impacted customers nine months after the change, which must be completed before 15 months has elapsed since the change. (page 38).*

MABS Response:

We very much welcome these proposed revisions to the Code. The MABS experience, in particular when supporting customers change banks after Ulster Bank announced it was leaving the Irish market, is that banking services can be very personal to certain consumers, and it can be immensely stressful to alter banking behaviour/ change firms. Allowing as much time as possible for individuals and communities to adjust to the idea of not having a local bank branch or a particular banking service in their area is, in our view, ideal. Accordingly, we have a concern that the minimum stipulated periods (of 6 months for branch closures and 4 months for service alterations) will become the standard for the industry. However, we are aware of/ and fully support the new Central Bank powers that are

coming into effect (hopefully later this year) under the new Access to Cash legislation, that will more or less guarantee that 99% of the population will be within 10 km of an ATM and 99.7% within 10 km of a cash service point.¹⁵

Mortgage Credit and Switching

(3) Question: Do you have any comments on the proposed enhanced disclosure requirements for mortgages?

According to the Consultation document, mortgage providers are already required to issue an annual notification to variable rate mortgage holders and a fixed rate maturity for fixed rate holders, which among other items shows a summary of alternative mortgage products available from that provider. Informed by the Central Bank's research, CBI are now proposing that lenders include within these notifications a personalised euro savings estimate alongside each alternative mortgage refinancing option presented. Additionally, lenders will be required to provide a specific reminder to customers concerning mortgage refinancing options, issued between four and eight weeks from the first notification.

MABS Response:

We support the Central Bank's proposal that additional information be provided by mortgage lenders that gives clarity to borrowers concerning what is on offer for refinancing (through an initial contact as well as a follow-on 'reminder').

According to the BPFi's website, 'Switching from a credit servicing firm':¹⁶

*"In order to be eligible to switch under these guidelines, customers need to be making full capital and interest repayments on their mortgage. **In addition, customers must have no arrears on their home mortgage or any other lending in the past two years** [own emphasis]. Once customers meet these and other initial criteria*, applications will be assessed on a case-by-case basis in line with individual lender credit policy.*

The initial criteria agreed by the main lenders are as follows:

- *Customers must be repaying capital and interest on the full outstanding mortgage i.e. there is no split/warehoused element of the mortgage, and the mortgage is fully up to date*

¹⁵ [Access to Cash: Supplementary information document](#)

¹⁶ <https://bpfi.ie/dealing-with-debt/dealing-with-mortgage-debt/>

- *The customers' credit history, i.e. their Central Credit Register (CCR) record, must show a **clean repayment track record without arrears for at least the past two years.***
- *Customers must be able to demonstrate that they have sustainable income which is adequate to repay the mortgage in full over the lifetime of the loan.*
- *Customers must have a satisfactory bank account performance i.e. no unpaid items such as a direct debit or standing order and all the customers' other loans/debts must be up to date.*
- *The current Loan-to-value (LTV) of the mortgage must be less than 90%.*
- *The circumstances that gave rise to any previous financial difficulty must have been resolved.*

Once customers meet these initial criteria, applications will be assessed on a case-by-case basis in line with individual lender credit policy."

In light of the, in our view, stringent initial requirements for switching from a credit servicing firm to the pillar banks (and others, as specified by the BPF), we welcome the proposed potential 'industry protocol or charter' (as outlined in the Consultation document). In MABS experience, the recent era of exponential interest rate increases has made adhering to the above criteria immensely challenging for borrowers. Borrowers in these circumstances are facing a double barrier – on the one hand, they are struggling to service monthly mortgage payments that have dramatically increased over a very short period of time. On the other hand, they are expected to be accountable in terms of continuously maintaining full secondary debt repayments within an extraordinary cost of living crisis. Further standardisation and the 'enhancement of consumer experience' (p. 46 – 47) in this guise would therefore be very useful.

At MABS, we do see incidences where the above terms and conditions are met, and the borrower is still denied switching their mortgage by the new lender. As such, we would advocate in such circumstances, that the lender should set out in writing on what they are basing their decision, which of these terms and conditions they are saying that the borrower did not meet, and allowing for appeals and complaint processes if needed.

- (4) Question: Do you have any comments on the proposed enhancements, or any further suggestions on the CCMA?

*The Central Bank's proposals include a requirement in the revised Code to ensure firms consider an **appropriate** and **sustainable** range of ARAs, which are broad enough to meet the needs of impacted borrowers. The Central Bank also intend to issue updated guidance on what we mean by appropriate and sustainable within the revised Code, reflecting its engagement with firms in relation to the*

application of sustainable resolutions for mortgage arrears in practice. In addition, the following specific changes are also being proposed for the CCMA:

- *A requirement for the provision of additional information by firms to borrowers in relation to the offering (or not) of ARAs as set out in the Central Bank's letter to firms of 22 March 2019;*
- *A requirement for the provision of information on the sale of property post-repossession;*
- *The introduction of a 12-month validity period for a completed Standard Financial Statement;*
- *The introduction of limited unsolicited visits outside the MARP, so that only one unsolicited visit request can be issued every six months;*
- *The inclusion of the borrower's future repayment capacity as well as their current repayment capacity, when assessing potential ARAs; and*
- *A requirement to provide additional information on the implications of a personal insolvency arrangement for a borrower and his/her mortgage loan account in a number of borrower communications.*

MABS Response:

This question is difficult to adequately address in our view without the definitions/ updated guidance on what is meant by 'appropriate and sustainable' range of ARAs. However, as a general comment, there are 12 ARA options listed under Provision 39 of the current CCMA (2013)¹⁷ – but the actual options available to borrowers are confined to those that are offered by their lender. As such, the lender is not obligated to offer or accept an ARA that is, from a MABS perspective, in the best interest of and most suitable option for a client given their particular circumstance. Oftentimes, when working with clients and trying to arrange an ARA with a lender, a MABS adviser will be told that the CCMA is 'only a guideline' and 'they [the lender] are not under any obligation to accept the ARA' as suggested/ requested.

Furthermore, in Annex 4¹⁸ in the Consultation Paper, it reads:

*In order to determine which options for alternative repayment arrangements are viable for a mortgage borrower's case, a regulated financial service provider shall assess all of the options for alternative repayment arrangements **offered by that regulated financial service provider.** [own emphasis]*

¹⁷ [2013-ccma.pdf \(centralbank.ie\)](#)

¹⁸ CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013: [Central Bank \(Supervision and Enforcement\) Act 2013](#)

In our view, this means there appears to be no substantial enhancement to the ARA options available in the revised Code, or available from each lender in terms of an ARA. We would advocate for this to be addressed, in particular to meet the criteria of being an ‘appropriate and sustainable’ range of ARAs offered by any and all regulated financial service providers. Limiting ARA options for a borrower to only those offered by a firm substantially reduces the scope for borrowers to address their arrears.

We welcome the commitment regarding the revised Code consisting of a ‘requirement for the provision of additional information by firms to borrowers in relation to the offering (or not) of ARAs as set out in the Central Bank’s letter to firms of 22 March 2019.’ And we acknowledge that this commitment is reflected in Annex 4 (Section 254 (5) (6) (7)) which reads as follows (page 142):

(5) A regulated financial service provider shall document its consideration of each option assessed in accordance with paragraph (1).

(6) Paragraph (5) includes documenting the reasons why –

- a) any option offered to the mortgage borrower is appropriate and sustainable for his or her individual circumstances, and*
- b) any option assessed and not offered to the mortgage borrower is not appropriate and not sustainable for his or her individual circumstances.*

(7) A regulated financial service provider shall provide the mortgage borrower with a copy of the information documented by the regulated financial service provider in accordance with paragraphs (5) and (6).

We welcome this new obligation in the revised Code, as financial service providers are not currently obligated to provide the borrower a copy of this information.

In terms of ‘the introduction of a 12-month validity period for a Standard Financial Statement’ (Consultation document), we endorse the introduction of this obligation into the revised Code. We see this as an important step by the Central Bank in relation to (1) ensuring firms ‘take action’ upon receipt of a borrower’s SFS (such as entering into an ARA) in a timely manner, and (2) allowing for standardisation in this respect across the industry. For instance, some lending institutions currently only permit a SFS to remain valid for a three-month or six-month period, which can create additional administrative burdens on a borrower. From a MABS perspective, the 12-month validity period also can be advantageous to our work, as it prevents a lender from repeatedly coming to MABS every few months looking for a new SFS for a client. At the same time, if a client’s circumstances change, MABS

Advisers still have the option to submit a new SFS on behalf of their client as often as required or needed.

On a related point, we would like to draw attention to Provision 43 of the CCMA where the lender ‘must’ review an ARA at ‘intervals that are appropriate to the type and duration of the arrangement’ (page 19). At MABS, we see that this provision is occasionally ‘abused’ by some lenders, who insist on 12-monthly reviews of all ARAs. Clients in these circumstances feel high levels of stress and are constantly unsure if an ARA review could cause a breakdown in the arrangement/ withdrawal by the lender.

MABS would therefore be of the view that there **should be no review at all** (initiated by the lender) if a permanent ARA is put in place for a borrower. For those arrangements where the ARA involves a portion of the mortgage remaining outstanding at the end of term (such as, for example in the case of split mortgages or full interest and part capital ARAs) – lenders may request a review but not more frequently than every three years. Again, we emphasise that permanent ARAs should not be susceptible for review, unless it is at the borrower’s request. This would enable stability and further piece of mind for borrowers in restructuring arrangements.

In circumstances of post-repossession, if the regulated financial service provider has elected that there is further liability for a residual debt on the part of the borrower, the financial service provider should conduct an assessment of the borrower’s ability to service this debt to determine whether the borrower has the capacity to repay some/all of the debt within a reasonable and fair period of repayment (our initial suggestion is that this would be a period of 1-year to maintain consistency within the terms of bankruptcy). We would further suggest that after this 1-year period there would be no further liability on the part of the borrower for the remaining residual debt.

It is our understanding that the requirements for making unsolicited personal visits as outlined in Annex 4 (in particular in Provision 279, page 158) of the Revised Code are *less prescriptive* than those outlined in Provision 26 of the CCMA 2013. We would seek further clarity on why the Central Bank opted to alter these provisions in this manner, as the new provisions appear to be less descriptive and therefore open to interpretation by firms – concerning what actually takes place/ concerning the business that may be conducted during an unsolicited visit.

We welcome the Revised Code’s inclusion of a borrower’s future repayment capacity as well as their current repayment capacity when firms are assessing potential ARAs. We acknowledge that this has

been addressed previously in the Central Bank's document: 'Internal Guideline - Sustainable Mortgage Arrears Solutions'¹⁹ of June 2014. This document states:

"The affordability assessment of the borrower (see section 2.2) needs to be based on both their current and prospective future servicing capacity for all borrowings; assumed prospective future increases in the debt servicing ability of the borrower must be credible and conservative." (page 7)

We welcome this wording, and would advocate that similar if not identical phrasing be included in the 'enhanced' CCMA under the revised Code.

A further concern would be that when firms are assessing the future repayment capacity, they could propose a series of short-term ARAs (versus offering a sustainable and affordable long-term solution). This also relates to the importance of 12-month validity period for a SFS as mentioned previously. According to Provision 38 of the CCMA, a lender 'may' agree a temporary ARA while assessing the SFS. In MABS perspective, a lender should be obliged to agree a 'temporary ARA' only for a minimum period (for instance, no more than three months) before moving on to a longer-term arrangement. The lender should also put record in the Central Credit Registrar incidences where it has taken more than three months to assess an ARA.

As a concluding note, we also welcome the revised Code featuring the requirement to provide additional information on the implications of a personal insolvency arrangement for a borrower and his/her mortgage loan account in a number of borrower communications. We note that, as stipulated by Provision 29 of the CCMA, this communication should clearly outline the implications of non-cooperation in terms of eligibility for a personal insolvency arrangement. This communication should also include the implications of a future sale of a principle private residence that was the subject of a personal insolvency arrangement.

Customers with Vulnerabilities

- (5) Question: What are your views on the proposed amendments to the Consumer Protection Code in relation to consumers in vulnerable circumstances? Do you have any comments on the draft Guidance on Protecting Consumers in Vulnerable Circumstances?

¹⁹ [internal-guideline---sustainable-mortgage-arrears-solutions.pdf \(centralbank.ie\)](#)

Advisers are not in a position to provide this type of support, and we stress the importance of the continued funding of in-person public services.

Consumer Credit

(6) Question: Are there specific elements of the revised Code that should be tailored to BNPL, PCP, HP and consumer hire providers?

In 2022, the provision of indirect credit such as Buy Now Pay Later agreements (BNPL), along with Hire Purchase agreements (HP), Personal Contract Plans (PCP), and consumer hire agreements, became regulated business. The Central Bank subsequently applied the following chapters of the Code to providers of these products:

- *Chapter 2 – General Principles*
- *Chapter 5 – Knowing the Consumer and Suitability*
- *Chapter 9 – Advertising*

It is now proposed that the revised Code will apply in full to these lending activities, to ensure that customers of these credit providers are afforded the same protections as customers of other credit providers. These additional protections will include the general requirements of the existing Code as well as existing Code requirements relating to provision of information, arrears handling, errors and complaints resolution, and records and compliance procedures.

MABS Response:

We very much welcome the proposal that the revised Code will apply in full to these lending activities. ‘Provision of information’ is very important, and it is our experience that many lenders of these products do not present their processes in a clear and easy to follow manner. For example, in an in-depth search of the terms and conditions of a major BNPL service provider in Ireland, MABS has found it impossible to uncover how exactly they charge fees/ and the amount charged in cases where a monthly re-payment is missed. Also, it appears that many of these lenders outsource their debt collection to external agencies. It is also only possible to communicate with these firms through online apps and portals, and it can be extremely difficult to find someone to speak with in the case the issues arise.

Also, we would support further evidence and data gathering in relation to these products, and the collation of these at national level to better understand consumer behaviour and personal debt in

Ireland. We know, thanks to recent Central Bank research,²² that BNPL users are more likely to take out other forms of credit as compared to the rest of the population. We support further national research activities in this space.

(7) Question: Are there other protections within the General Requirements under the revised Code that we should apply to High Cost Credit Providers?

High Cost Credit Providers (formerly known as Moneylenders) are currently subject to the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Licensed Moneylenders) Regulations 2020 (High Cost Credit Providers Regulations) amongst other regulatory requirements. As part of the Code Review, we will consolidate the High Cost Credit Providers Regulations within the revised Code to bring domestic protections together in one place. Where existing requirements for High Cost Credit Providers reflect the requirements within the existing Code, the corresponding requirements of the revised Code will apply to High Cost Credit Providers. Where there are specific requirements within the High Cost Credit Providers Regulations that currently apply only to High Cost Credit Providers, these requirements will be brought into the revised Code (for High Cost Credit Providers).

MABS Response:

We endorse the proposed actions of the Central Bank, and in particular the ‘consolidation’ of the Regulations in relation to high cost credit providers within the revised Code in order ‘to bring domestic protections together in one place’. This is particularly important for consumers, and also would, in our view, provide clarity and help MABS staff in their work with clients who are experiencing difficulty servicing existing debts with these providers. As mentioned throughout this submission, we further stress the importance of these firms engaging with the MABS process and working with MABS to find sustainable solutions for clients.

Handling of Errors and Complaints

(8) Question: Do you have any comments on the proposed revised requirements for handling of errors or complaints?

Amendments are proposed in the revised Code to enhance governance obligations on firms over the handling of errors and complaints. A new requirement is proposed whereby firms must have a system to track and manage complaints. Firms will be obliged to analyse errors and complaints on a regular

²² [Consumer Research Bulletin Buy Now Pay Later \(centralbank.ie\)](https://www.centralbank.ie/consumer-research/bulletin-buy-now-pay-later)

basis and at least once every six months, in order to identify and address trends or other potential issues in a timely manner. Firms will also be required to display their complaints procedure on any digital platform that they operate.

MABS Response:

As we mentioned previously, MABS has a unique perspective into trends in consumer and creditor behaviour. We support the efforts of the Central Bank to impress upon firms the importance of including consumers' best interest into their culture and business model. This should include, in our view, transparent and accessible complaints procedures internally within firms. We have found, for instance, with certain digital only banking services, it can be nearly impossible to directly contact a staff member for support (in particular arrears handling units) or understand what their complaints procedure entails. We therefore support the revised Code requiring firms to display their complaints procedure on any digital platform they operate.

We also support the new system of obligating firms to internally track and manage complaints. We would also endorse the tracking of outcomes of individual consumer complaints and what the firm decided in terms of an internal complaints proceedings. We wonder whether or not firms can be obligated to share this information (at least in part) with the Central Bank so it can collated centrally, to enable a specific mechanism to track consumer issues taking place throughout the sector.

To conclude, MABS Support CLG would like to thank our colleagues across the MABS Regional Companies and National Traveller MABS for their collaboration in the formulation of this submission. We hope for continual engagement with the Central Bank on this and related consumer protection issues in the future.



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