



DEBT MANAGEMENT ASSOCIATION OF IRELAND

Code of Conduct on Mortgage Arrears

The main purpose of DMAI is to set standards of behavior for debt managers who are working with those in financial difficulties. The memorandum of the association covers some of the following objectives;

- To carry on the monitoring, regulation and good practice of businesses in the debt management industry through a code of conduct for its members.
- To represent, promote and protect the interests of its members and their clients.
- To liaise with Government and/or any association or body on matters affecting the debt management industry.
- To provide a forum for the exchange of ideas and information between members.
- To promote goodwill in the Irish business community and an understanding of the role of the debt management industry.
- To provide a unified approach to problems and opportunities that may be of concern to members.
- To develop, encourage and promote any endeavors that will be of benefit to the debt management business.
- To encourage professionalism of members in the carrying out of their businesses.
- To provide for the delivery and holding of classes, courses, conferences, lectures and public meetings calculated to advance the objects of the Company and to provide educational opportunities for members or their employees.



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Our mission statement is, “To provide Debt Management services to people who are experiencing problems in managing their financial affairs, and financing their debt repayments”.

Our official website is www.dmai.ie and was created for both consumers and stakeholders as an educational site explaining what debt managers do. Included in the website is our Code of Conduct.

The DMAI will be the voice for all debt managers and will lobby Government for future regulation and legislation.

Below is the submission for the Code of conduct on Mortgage Arrears:

LEVEL OF COMMUNICATION

The phrase “he who shouts loudest gets paid first” is widely used in the collection of debt in Ireland. Reports show that the level of contact by some, if not all lenders, with borrowers is excessive would be a true statement in an environment where collections of money are the targets for the banking and lending system.

It is unfair to communicate with consumers in an unclear, inaccurate or misleading manner.

Some examples of unfair business practices include:

- Contacting debtors at unreasonable times.
- Disrespecting debtors’ contact wishes, e.g. contacting debtors at work.



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- Using technical and legal language.

Examples of psychological harassment include:

- Contacting debtors at regular intervals.
- Pressurising debtors to sell property to raise funds.
- Making threatening statements or gestures.
- Using tactics to belittle the debtor to gain advantage.

Other unfair business practices include:

- Contacting debtors directly and bypassing their appointed representatives.
- Operating a policy of refusing to deal or negotiate with appointed representatives, such as money advisors or debt management companies.
- Failing to accept reasonable offers of repayment.

In dealing with the issue of unsolicited communication it is important, in our opinion, that communication levels with debtors would be separated into the “can’t pay, won’t pay” structure.

Those who “can’t pay” would be subject to one unsolicited communication each month.

Those who “won’t pay” would be subject to a greater level of communication, say three per month, unless there is some level of dispute.

We are not suggesting a protection of the “won’t pay” and this would only apply if a dispute had occurred, for example, in the event of marital separation or divorce and one of the debtors could not contribute to the payment. Once an agreement is reached, all communication should be limited to one unsolicited communication per month.



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ARREARS

The preferred definition of the DMAI is:

“The date the second and final direct debit on the account was missed”.

This definition is to include full mortgage payments, partial payments and restructured mortgage cases.

This definition would give a more accurate reflection of the level of mortgage arrears as it allows debtors time to re-instate direct debits, and creditor’s time to re-negotiate lower amounts. If these are subsequently missed, it provides a clearer picture of the level of mortgage arrears for the quarterly report.

PRIMARY RESIDENCE

The term “principal private residence” (PPR) is the term that is widely understood by the banking industry and consumer groups for family homes, where the primary purchase was for the family home.

The DMAI would agree that, where circumstances change, a debtor may need CCMA protection, depending on the individual financial circumstances. An example of this may occur in a separation or divorce, and the CCMA should apply to both individual circumstances for their principal private residence at the time of assessment.

The scope of the CCMA should be fair and transparent and apply to borrowers who have mortgage arrears on their main residence, regardless of whether they are currently living there or not, and regardless of the type of mortgage on that property.

However, it should not apply if the borrower is not living there, unless there are exceptional circumstances for the arrears, e.g. borrower moves out to generate income from lettings.

In the case of investment property or commercial loans, if the borrower is subsequently using the property as a PPR the CCMA should apply.



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The DMAI recommends that the CCMA gives guidance on the definition and use of the term for “principal private residence” for lenders and borrowers alike, and equally recommends flexibility in the definition for borrowers in arrears, and the classification of the mortgage on the property when extenuating circumstances apply due to financial difficulty.

APPEALS

The DMAI suggests that any appeals system should involve three distinct processes for both debtor and creditor in a debt settlement arrangement: mediation, administration and enforcement of the arrangement.

Formal mediation processes are similar to voluntary debt management process, as both involve the establishment of debtors’ financial circumstances and intermediation of affordable debt payment schedules with the creditors.

In addition, the debt management process prioritises mortgage debt and arrears as essential expenditure for the debtor.

DMAI members are currently experiencing that the breakdown of debtor arrangements with creditors for mortgage payments are as a direct result of non-priority creditors, such as credit card or credit union companies, “shouting loudest” and getting paid first.

Any agreement is only as good as its subsequent administration process that ensures that parties adhere to agreements. DMAI members have considerable experience and consider mediation and administration of agreements to be the two components of an end to end process, beginning with initial client advisory meetings and ending with agreements successfully concluding.

In the absence of legislation the DMAI has developed a detailed code of conduct (attached) which clearly demonstrates the benefits of using the debt management process in any appeals for arrears resolution.

An alternative was recommended as part of the recent Law Reform Commission interim report on Personal Debt Management and Debt Enforcement, one of the building blocks suggested by the European commission, was responsible arrears management, and the



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LRC suggested participation of money advisers in court and that creditors would recommend in their letter to debtors that they should take advice from money advisers.

In this regard, the DMAI would welcome an invitation to demonstrate its operation and process systems, and show where mediation and administration are currently provided. In particular, DMAI can demonstrate how mediation and administration can effectively and efficiently be accommodated for, within processes and systems designed to deliver the highest standards of business conduct. The DMAI suggest that the processes delivered by members of the DMAI would be recommended as an alternative arrangement to debtors and creditors in any appeals process.

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Chairman



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Code of Conduct

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1. Introduction

DMAI was founded in 2010 in order to promote best practice amongst Debt Management Companies, and to safeguard the interests of customers and creditors.

Our Mission Statement is “to provide Debt Management services to people who are experiencing problems, in managing their financial affairs, and financing their Debt repayments”.

DMC's do this by undertaking a full customer financial assessment , carrying out a fact find of Income and expenditure , preparing a statement of affairs , contacting creditors and providing them with a copy of the statement of affairs and offers of Repayment.

Debt Management Companies (DMC's) may be paid a fee by the customer in return for

acting on their behalf to help the customer clear their debts. They do this by entering into mediation, negotiation and facilitation of the repayment of debts between customers and creditors.

The Rules have been developed, and revised, in consultation with lenders and DMC's and will be reviewed on a regular basis with input from appropriate consumer organisations and regulatory bodies.

The purpose of the Rules, and that of DMAI, is to encourage DMC's to abide by the spirit as well as the letter of the rules with the rules forming the minimum standards the DMC's achieve to provide a high level of service in which the customer and the creditors can have confidence, and to provide security to the customer.

2. Publication of the Rules

Members of DMAI must provide customers with full details of the Rules, on request free of charge. This information must also be available on their website. The Rules are also available directly from DMAI both by post or by downloading from the DMAI website, without any charge.

3. Membership of DMAI

DMC's wishing to join DMAI or those who are members must be able to demonstrate that they are fully compliant with the Rules. The DMAI monitors and audits compliance with the Rules on application and throughout the lifetime of membership and has the power to refuse or revoke membership of any offending members **The Rules should be read in conjunction with the Appendices, which are binding of all DMAI members.**

Members must be licensed appropriately and carry out their business in accordance with the requirements of the Current Irish Regulation for Debt Managers.

4. Training

Members must be able to demonstrate to DMAI that they provide their staff with appropriate training to enable them to carry out their work with due care, skill and fairness.

All staff employed by members must be aware of the DMAI Rules of conduct, and be made aware of their specific responsibilities in ensuring that the Rules are adhered to. Members must provide relevant training to make sure their staff comprehend their own legal obligations to customers and responsibilities under the Rules.

Members must ensure that all staff are fully trained and adept to deal with the needs of particularly vulnerable customers. (see point 7)

5. Marketing, Advertising and Publicity

Members must ensure that their advertising and/or promotional material by any form is:

- Clear and accurate, and does not in any way mislead either expressly, or by implication or omission.
- Easily legible and all warnings or caveats must be given similar prominence as the rest of the content.
- Compliant with all regulations and guidance in force at the time of production and is monitored/amended in line with the introduction of legislation.
- Containing a reference to their membership of DMAI and their adherence to the DMAI

- Rules of Conduct, by use of the DMAI logo.
- Clear on how customers may obtain a copy of the DMAI Rules.

Members must ensure that their advertising or promotional material by any form does not:

- State or imply that the service will free customers of the need to repay debts.
- Emphasise the 'savings' to be made by rescheduling debts without making it equally clear that this will usually lead to an increase in the size of the sum to be repaid and that rescheduling the debt may affect the customers' credit record.
- Claim or imply that the DMC can guarantee an outcome favourable to the customer in negotiations with creditors.
- Where appropriate DMAI will consult the Advertising Standards Authority and other consumer bodies for assistance in advertising best practice.

6. Information to be provided to customers

Members must provide customers with sufficient, clearly written information to enable them to make an informed decision about whether or not they would benefit from the services the DMC's offer.

In particular the following must be covered:

- It must be made clear that administration and/or management fees will be payable, and details of such costs must be provided.
- If a first payment goes to the DMC rather than to the creditors, customers must be warned that they will go further into arrears with their creditors.
- The customer must be advised that they will be given the opportunity to withdraw from the contract, the procedures for withdrawal the circumstances in which costs will and will not be incurred and, if they are, what they are likely to be.
- The nature of the service to be provided by the Member: the total cost to the customer of the service including any fee or deposit, the management fee to be paid to the member .
- Creditors are not obliged to accept reduced payments or to freeze interest or charges and fees and unless they do so, repaying the same debt over a longer period of time will increase the total amount to be repaid. Collection actions, including any litigation, can ensue or continue.
- The likely impact of the debt management programme on the customer's credit rating, that they might not be able to obtain credit in the short, medium or long term.
- The importance of priority debts and any arrears, and ensuring that an allowance is made for these payments within the programme.
- The types of commitments that will, and those that will not be included within the repayment plan must be made clear to potential customers.
- The likelihood that existing bankers may not wish to continue banking facilities and information and advice on basic bank accounts.
- The terms and conditions of any managed or other bank account or other service offered.
- Where a member of staff from a Debt Management Company recommends that, one of their options is a remortgage, or further advance, or consolidation loan, the DMC must disclose to the customer in writing the level of remuneration they will receive from the third party who arranges this service, if not already disclosed by the third party.

Full & Final Settlements

- DMC's may negotiate full and final settlements with your Creditors on your behalf. There is a separate fee for this service.

7. Vulnerable Customers

DMAI members must offer equality of service to any person, regardless of their race, creed, sex, disability or nationality.

Members must have in place satisfactory provisions for dealing with vulnerable consumers who may include those who are disabled and/or disadvantaged in some way.

Where it appears that applicants are not suitable for a fee charging debt management plan due to the severity of their financial position, members should, where appropriate recommend such clients to fee free companies and advice centers.

8. Contract Terms

Contract terms and conditions should be fair, written in plain, intelligible language and easily legible, and must be as follows:-

- Set out the nature of services being provided, the types of debts which are included, and not included in the programme.
- All fees and Charges must be clearly explained.
- Contract terms must specify a period within which payments received from customers will normally be disbursed to creditors.
- Circumstances for withdrawal from a programme.
- Compliance with the regulations regarding the cancellation rights of customers.
- Not include any term which says or implies that there are no circumstances in which a customer is entitled to a refund.
- Must not be prohibit customers from corresponding with, creditors or their agents.
- Members must deal with all correspondence promptly, and must keep the customer informed of relevant communications.

9. Customer Accounts

Members must maintain accurate, up to date customer records that detail all payments and contact with customers and their creditors.

- Customers' monies must not be accepted, before customers have received and acknowledged in writing the Terms and Conditions of the DMC.

- Members must demonstrate, by annual audit certificates from an independent external auditor, that customer monies are held in a separate bank account that would not be at risk in the event of a member ceasing to trade, and is not usable by the member for the purposes of its own business. Any interest earned on the account should accrue to the benefit of the customer, not the member.
- Members must pay customers' monies to creditors within five working days of receipt of cleared funds.
- If customers withdraw from debt management programmes, members must refund any monies held, excluding any reasonable administration fees due.

10. Debt Management Services

Members must advise customers of the outcome of negotiations with creditors. This is not limited to the situation where the outcome is not initially good news.

- Members must keep customers informed of any developments in the relationship with creditors, in particular the threat of issue of legal proceedings.
- Where by the member provides debt repayment the member must :
 - Take full account of priority debts such as including any arrears already incurred on those debts, in setting monthly repayments,
 - Reassess the payment plan and consider any necessary changes to ensure it remains in the customers best interests, as soon as it becomes aware of change in the customers financial position. The customer should be advised of any recommended changes without delay. Repayment plans must be re-assessed on at least an annual basis and the customer informed of the outcome of the reassessment.
 - Customers should at the outset be given a statement of how their money is being Disbursed, the balance owed (or if an accurate figure is not known, the best estimate), the period of payment needed to clear the debts and the fee charged by the member must be included in the statement. Customers must be kept informed of any material changes to these arrangements. Members should meet any request by a customers for a statement of their position.
 - Members should respond to complaints promptly and fairly.

11. Customers Interest

- Members must ensure all advice given is in the best interest of the customer.
- Members must exercise all due discretion, in the best interests of the customer, in deciding whether or not to accept a customer on to a debt management programme, and must bear in mind that debt management programmes are not suitable for all customers
- A realistic assessment of the financial circumstances of the customer must be made before advice is given. Verification of information given should be obtained from the customer.
- Members must keep in strict confidence information given to them by their customers, excepting the disclosure of relevant information with consent of the customer, to the relevant creditors as per Data Protection Act.
- Members must advise customers on the importance of prioritising debts.
- Any advice given to the customer to cancel payments to a creditor prior to a

repayment plan being agreed with creditors must be in the best interests of the customer. Members must clearly warn customers of the risks and consequences of this course of action.

- Customers should not be advised to make payments lower than the amount at which interest or charges accrue, unless this is in their best interests.
- Members may accept referrals from lenders or credit brokers, provided these are done within the rules of the current Data Protection act.
- Members must ensure that upon completion or termination of a programme, members will return any original documentation. All documentation, should be retained for an appropriate period in accordance with Data Protection Guidelines.

12. Creditors

- Members must provide creditors with clear information about their terms and conditions and processes, as requested.
- Members must take all steps appropriate in order to provide creditors with accurate details about their customers' income and expenditure to allow the creditor to make an informed judgement about offers of repayment.
- Members must provide creditors with clear payment proposals.
- If a client withdraws, from the repayment programme in writing, members must inform the relevant creditors, in writing within seven working days of receipt of the withdrawal.

13. Internal complaints procedures by Debt Management Companies (DMC's)

If members have been unable to address any concerns customers have informally then they must have a formal complaint process in place to deal with them promptly, effectively and in a positive manner, as outlined below:

- Acknowledge the complaint in writing within 5 working days of receipt.
- Investigate the complaint fully and send a response to you within 10 working days of receipt of your complaint. (If the member is unable to provide the customer with a response within this time they must send the customer an update, including a time by which response will be sent)
- If a customer is unhappy with the response the member must have a complaint appeals person in place who will review your case and send a further response to you within 10 working days of receipt of the escalated complaint. (If the member is unable to provide the customer with a response within this time they must send the customer an update, including a time by which response will be sent)
- If more than 8 weeks have passed from the date of the initial complaint and the customer hasn't received the final response, or the are still dissatisfied with the final response the customer has the right to refer this to DMAI (within 6 months of the final response being issued):

14. Independent handling of complaints by DMAI

The aim of this procedure is to ensure that any complaint about a breach of the DMAI Rules of Conduct by a member is investigated fairly, promptly and efficiently. DMAI is committed to reaching an equitable solution and prompt resolution to any complaint.

If a customer or creditor wishes to make a complaint about a member, they should in the first instance address their complaint directly to the member concerned. All members of DMAI must have a written procedure that is readily available to all their customers and to anyone wishing to make a complaint.

In the event that the complainant is not satisfied with the member's response they should then inform DMAI.

DMAI is only able to rule on complaints about breaches of the Rules of Conduct by members.

Complaints Process

- On receipt of a complaint the Rules Administrator will consider whether it relates to a breach of the Rules. (If a complaint is considered not to relate to a breach of the Rules the complainant will be notified in writing. The Rules Administrator may recommend that the complainant take up the matter with another appropriate body.)
- At this stage the member will be contacted and asked to provide a report to DMAI, giving full details of the alleged breach and how it has been or will be investigated by the member.
- On receipt of the completed report from the member the Rule Administrator will review the response thoroughly. A decision on the matter will be reached and communicated to all parties. In the event of any material breach of the Rules the Administrator will, take any necessary action and state their recommendations to the DMAI board regarding the members suitability of membership.
- The decision of the DMAI board is final.
- The decision of the Rules Administrator, when communicated to the complainant will make it clear on what grounds the decision has been reached, what further action may be taken, and will set out the procedure to be taken, and the timescale, should the complainant not accept the decision.
- If the complainant, is not prepared to accept the decision, they may refer the matter to the Financial Ombudsman Service.
- All costs relating to the Complaints Handling fee charged by the Financial Ombudsman Service, will be the responsibility of the member.

For the timescale for the DMAI to respond to complaints refer to the timescale for the DMC to respond to complaints point 13.

15. Failure of a Debt Management Company

Members will, if asked by creditors, clients or DMAI, assist the customers of a failed debt management company by arranging a replacement programme, and will administer future disbursements without any up front fee being charged.

Appendix 1

Rules Administration

The DMAI Rules of Conduct is supervised and administered by the Rules Administrator, appointed by the Board of DMAI.

The Rules Administrator shall:

- Be satisfied that members' trading practices and documentation comply with the Rules.
- Handle any complaints in accordance with the Procedures set out.
- Report any breach of the Rules to the member, recommend any remedial action and Investigate any failure by a member to act upon any recommendation.
- Report any failure by a member to act upon any recommendation to the DMAI Board with the recommended action the board should take.
- Review the content of the Rules on an annual basis in the light of reaction to the Rules and changing circumstances due to statutory and practical considerations.
- Provide an Annual Report on the operation of the Rules and Procedures and ensure that this is circulated to interested parties.

Appendix 1

DMAI Mandates

Action may be taken by the DMAI board in the event of the following:

- Material and/or persistent breach of the Code
- Failure by a member to respond to complaints and investigations within the time scale as set by DMAI
- A complaint against a member which is justified under the Complaints Handling Procedures
- Bringing DMAI's reputation into disrepute, or conduct which is prejudicial to the principles of DMAI

On recommendation from the Rules Administrator the DMAI board can:

- Issue written warnings as to the members future conduct
- Requirements placed on members to improve/change procedures, documentation or behaviour
- Follow up audits of offending members
- Fines levied for repeated serious breaches
- Suspension of DMAI membership until the rules administrator is satisfied that the Rules are being properly adhered too.
- Exclusion from DMAI. In this serious event notification may be made to other members, creditors, the media and any other parties who may have an interest.

