



MABS Helpline
1890 283 438
Monday to Friday: 9am - 8pm

**Central Bank of Ireland's
Consultation
On the
Review of the Consumer Protection Code
CP47
January 2011**

1. Introduction

The Money Advice and Budgeting Service (MABS) was established in 1992 to help people on a low income to cope with debts and take control of their own finances. It is a free, confidential and independent service. It currently comprises 53 MABS Services, located in over 60 offices nationwide. MABS is funded and supported by the Citizens Information Board.

MABS National Development Limited (MABSndl) was established in 2004 to further develop the MABS Service in Ireland. It provides training and technical support to MABS staff nationally. MABSndl also assists the MABS service in providing educational and informational supports as well as assisting in highlighting policy issues that arise in the course of the money advice work on behalf of clients. MABSndl has responsibility for the ongoing development of the MABS website www.mabs.ie and for providing the MABS national helpline service.

2. MABS Submission

Scope

We are concerned that unlike the original Code, Chapter 1 of the revised Code states that, it does not apply to the Hire Purchase or Consumer Hire agreements. We would like to gain a fuller understanding of the rationale for this change.

Vulnerable Consumer (Chapter 13 Definitions)

Q1. The balance of power between service providers and consumers is an important factor in considering the issue of vulnerability. The non-exhaustive definition contained in the consultation document and the indicative list of circumstances outlined properly illustrates this and is a welcome addition to the Code. While we welcome the requirement that lenders obtain a certified copy power of attorney for any person acting on behalf of a vulnerable person, we are surprised that this was not a requirement heretofore.

Q2. While we welcome the proposal to include a definition of vulnerable consumer in the revised Code its effectiveness in improving the level of care afforded to vulnerable consumers during the sales process depends on how effectively each regulated entity will put in place internal structures, protocols and staff training programmes to comply with its duty of care under the Code. This is particularly the case as the definition allows for subjective assessment by the lender as to the appropriateness of its application to a particular consumer.

In our view each regulated entity should be mandated to provide to the Regulator for audit, on an annual basis, its internal modalities, and protocols and staff training plans. There is a

need for clearly laid out procedures to help lenders identify vulnerable consumers, possibly based on a description of key risk factors and case studies, however these procedures must be properly balanced to ensure that they are applied fairly and avoid 'labelling' consumers based on assumptions made by staff of the lender.

While very much welcoming new proposals to protect vulnerable consumers, it is very important to strike a balance between protecting vulnerable consumers while also affording vulnerable consumers an opportunity to avail of products which are suitable to their needs. We would not wish that such protections would serve to financially exclude vulnerable consumers on a prima facie basis.

We are concerned that the Code, in its application to guarantors, does not protect the vulnerable consumer sufficiently. We are of the view that regulated entities should be mandated to have the same responsibility for knowing the guarantor and the appropriateness of the guarantee, (given their circumstances), as applies to the customer, particularly where such guarantees are provided by parents / guardians of the borrower. (Chapter 4.40)

Suitability of Mortgages

Q3. The inclusion of the provisions outlined should improve the level of responsible lending, however, the criteria provided in Chapter 5.1 (b) should be provided on an "as appropriate" basis, e.g. enquiries as to the customer's health may, for some products, amount to the collection of excessive and disproportionate data. Furthermore, a more robust supervisory regime than heretofore is also required to oversee compliance.

Q4. In our view and in addition to setting out how lenders should proactively assess the current repayment capacity of those in arrears or at risk of going into arrears, the Standard Financial Statement (SFS) is an essential element in prescribing the manner in which lenders should communicate and engage with prospective mortgage customers. However, the SFS only provides details of the consumer's financial circumstances at a particular point in time. The ongoing use of a SFS, e.g. when arranging restructures when the account is in arrears, will also enable lenders to consistently assess customers' situations in order to determine the most appropriate resolution to any situation that may arise.

Information about products

Q5. We concur with the view that a short 'Key Facts' document should be required to accompany all but the simplest of products, however this information must be provided in a format which is appropriate to the consumer's competency level and, if applicable, that of their guarantor. There must be an onus on lenders to ensure that the information given to a consumer is understood by that consumer, and checks should be implemented to ensure that this is the case (e.g. a written declaration from a staff member that the information was explained to, and understood by, the consumer/the guarantor).

We would be concerned that Chapter 4.44 appears to be in conflict with the provisions contained in the revised Code of Conduct on Mortgage Arrears which prohibits lenders from requesting borrowers to change from tracker mortgages.

In our view in Chapter 4.63, with respect to Lifetime Mortgages and Home Reversion Agreements, in addition to the requirement that consumers are made aware of the importance of seeking independent legal advice, that a statement to this effect should be inserted, in large bold font, on any information document. In addition, a warning should also be inserted that monies received may affect a consumer's eligibility for means tested welfare payments. Consumers should also be alerted that exiting a Lifetime Mortgage or Home Reversion Agreement early may incur large interest charges.

It is part of the MABS process to request that the client consider all options available - based on which they can then decide which is the best option for their particular set of circumstances. We would generally consider the consolidation of unsecured debts into a mortgage account an option of last resort and would be concerned that, while Chapter 4.46 provides that the borrower be provided with comparison of the total cost of continuing with existing facilities and consolidating them, this 'total cost' should consider the entirety of the term of the mortgage.

Q6. In the provision of information to the consumer we are of the view that the introduction of a 'Key Facts' document, in plain English, would be of considerable assistance and requirements for such a document should be introduced.

Q7. As per Q5 above, all basic salient information, enabling the consumer to make a fully informed decision, in plain English, should be made available to the consumer.

Q8. The 'traffic light' system, already in use with some products, is a simple and illustrative method of alerting the consumer to the degree of risk involved in any decision they may intend to make.

Q9. The determination of the different categories should be at a product by product level and the consumer category, including their particular circumstances, at which it is focused.

Q10. We agree that these requirements continue to be appropriate

Product Producer Responsibility

Q11. Affordability, life stage suitability, level of appropriate risk, long term suitability.

Q12. This list would be useful for investment products. A similar, non-exhaustive, list, tailored to be product-specific, would be welcome for all products. We are of the view that, for the average consumer, this information will always be relevant and necessary. Therefore having the words 'where relevant' weakens this obligation on the regulated entity.

Q13. We agree with the requirements outlined in Chapter 3, Provision 45. We do have concerns for the consumers who have, during this period, purchased a product that subsequently proved not to meet their needs. An appropriate recompense mechanism should be made available in such instances, which seeks to reimburse all payments made by the consumer, in full, within one month of the lender becoming aware that the product was

unsuitable. The frequency of reviews would depend on the length of term of the product. Where the product is intended to be long term, we would suggest a review after the first year and every five years thereafter.

Q14. It is imperative that these reviews be undertaken, particularly in relation to products sold by intermediaries providing products on a commission basis (there is a risk that intermediaries may not always have the best interest of the consumer in mind when selling financial products). Frequent periodic reviews should be required early in the product history and annually thereafter to ensure that the product is being properly sold to the chosen target market.

Termination of Appointments

Q15. We agree with this proposal in relation to all product types as it will assist in avoiding irresponsible lending and product promotion.

Remuneration disclosure

Q16. We agree with the proposal that requires the disclosure of remuneration for all products.

Error handling (Chapter 11, provisions 1 to 7)

Q17. We are of the view that the proposal that requires the Regulator to be informed about all errors that are not resolved within one month will incentivise regulated entities to be more proactive in rectifying errors and will reduce errors occurring in the first place. We would go a step further with this recommendation, however, to suggest that the Regulator publish a list of all non-compliant lenders.

Q18. Subject to our response to Q17 above, we are of the view that the proposals outlined are adequate and should prevent repeat errors from occurring.

Q19. Some errors can have a serious impact on the consumer and therefore should be corrected in the shortest timeframe possible. Having a consumer continue to suffer detriment for six months while the error is being rectified could have a knock-on effect on that consumer's overall circumstances.

Q20. While we welcome the proposal that errors that are not resolved within one month must be communicated to the Regulator we are of the view that those errors that **are** resolved should also be reported in order to demonstrate that the systems' changes necessary to avoid recurrence have been put in place.

Unsolicited contact (Chapter 3)

Q21. We have consistently been of the view that unsolicited contact up to 9pm, particularly during winter months, was inappropriate. We therefore welcome the proposal to reduce the time allowed for such calls.

Q22. We are of the view that consumers, more often than not, need time and space to adequately consider the purchase of a product and its implication for them and their families. We welcome the restriction on the sale of products or services by way of unsolicited contact by visit or telephone. We would also be of the view that unsolicited email and personal mail offers should also be included.

We refer to the Code of Conduct on Mortgage Arrears in this regard which provides that “Each calendar month, a lender, and/or any third party acting on its behalf, may not initiate more than three *unsolicited communications*, by whatever means, to a *borrower* in respect of his/her mortgage *arrears* or *pre-arrears* situation. The *unsolicited communications* do not include any communications to the *borrower* regarding his/her *arrears* or *pre-arrears* situation, which are required by this Code or other regulatory requirements” and would welcome a similar pre-arrears provision in Chapter 9.16 of the Consumer Protection Code.

Arrears handling (Chapter 9)

Q23. We welcome the obligation on the regulated entity to communicate effectively with their customers in arrears. We have concerns however, on how contact details for MABS are communicated, as, in our experience, some regulated entities have not communicated information about MABS in a manner that clearly describes the service provided, so leading to consumer confusion. It must also be noted that some regulated entities have insisted that customers who, in MABS view, have the capacity to resolve the issue themselves use the MABS face-to-face service. This is not only an inappropriate use of MABS resources, but also greatly frustrates clients with capacity to self-help.

Q24. In our submission to the Financial Regulator in October 2008¹ we posited the view that for a person’s full participation in society it is generally accepted that access to financial services has become more important, if not essential, over the last decade or so. The European Commission is also of the view that “*Access to financial services has become a necessary condition for participating in economic life*”². In their report on Financial Exclusion in Ireland the Combat Poverty Agency state that the lack of access to financial services has serious socio/economic consequences e.g. lack of a bank account, access to credit, goods and services cost more etc. “*Those who experience financial exclusion can find money management and bill payment more time-consuming and costly and they can face difficulties accessing affordable credit and accumulating assets (e.g. savings, insurance). Financially excluded individuals are also at risk of over indebtedness*”³.

We therefore not only agree with the proposal to prevent the closure of accounts in arrears cases, but also suggest the prevention of withdrawal of account facilities for accounts connected with those in arrears. (In such cases while the account is not closed per se, this practice effectively amounts to depriving the consumer of a basic banking facility.)

¹ MABS Submission to the Financial Regulator on the Closing of Bank Accounts - October 2008

² European Commission – MEMO/08/344

³ Financial Exclusion in Ireland Combat Poverty Agency 2006.(2.8)

We would further recommend that regulated entities be mandated to report to the Regulator on a regular basis the number of accounts closed by them and the reason for same. We also suggest that the consent of a customer to close their account is requested in writing.

Small Print

Q25. While we agree with the definition of 'key information' we are of the view that too much information on an advertisement can lose impact so it needs to be presented in a consumer friendly fashion.

Q26. The small print in advertising, while necessary, is of limited value. Logically it is the headline offer that attracts the customer and mostly motivates a response. We would be much more concerned about the size of the print in the contract where important terms and conditions are outlined, and the explanations referred to in Q5 being provided

Review of Transparency of Credit Card Statements

Q27. We welcome the clear warning notices providing clear and useful information to the consumer.