



**MABS Helpline**  
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Monday to Friday: 9am - 8pm

**Central Bank of Ireland's  
Second Consultation  
On the  
Review of the Consumer Protection Code  
CP54  
July 2011**

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## 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](http://www.mabs.ie) and for providing the MABS national helpline service.

## 2. MABS Submission to the Second Consultation – CP54

### Section 2 – MABS Submission

#### Basic Payment Account

We welcome the provision, in Chapter 3.53 to 3.57 of guidance in respect of a Basic Payment Account and submit that all banks should be mandated to offer such a facility to its customers, or an equivalent basic operational facility. If all banks are not mandated to do so, consumers outside urban areas, with limited choice of local bank branches, may effectively be precluded from basic banking facilities.

We further submit that regulated entities should assess their current customer database to ensure that those customers who would most benefit from such an account are offered it as a matter of priority.

We note the deletion, in Chapter 8, of reference to the prohibition on the closure of operational bank accounts connected with loan accounts on which arrears have accrued. We assume that this is on the basis that Chapter 3.57 provides that a regulated entity “*must not refuse to provide a basic payment account to a personal consumer solely on the basis of that personal consumer’s poor credit history or that he/she is, or was previously, bankrupt.*”, thereby permitting a personal consumer, whose current account has been closed by their lender, to open a basic payment account within the same financial institution.

We would further welcome clarity that the term “*poor credit history*” includes existing arrears on an account with the regulated entity.

#### Errors and Complaints Resolution

We note that the original proposal requiring the Regulator to be informed about all errors that are not resolved within one month has been extended to 8 weeks. While we feel that this will still incentivise regulated entities to be more proactive in rectifying errors, and will reduce errors occurring in the first place, it is a substantial amount of time for an error, which may have a detrimental effect on the consumer, to go without resolution. We further

suggest, as we did in our first submission, that a list of all non-compliant lenders should be published.

We note that the provision (Chapter 10.2) continues to provide for resolution within six months and again submit that where such errors have a serious impact on the consumer, regulated entities should be obliged to rectify same 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.

We further submit 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.

We note the complaints handling provisions, in particular those set out in Chapter 10.10 which mirror the provisions set out in the Code of Conduct on Mortgage Arrears under Appeals in the MARP Process, and submit that such complaints log should be subject to spot checks by the Regulator in order to ensure that they are kept accurate, up-to-date and focused on resolution.

#### **Unsolicited Contact**

We welcome the proposed provisions in relation to unsolicited contact as these will greatly enhance protection of the most vulnerable consumers. We submit that "contacts" also explicitly include SMS, emails and personal mails.

#### **Provision of Credit to SMEs**

We were grateful for the opportunity to make a submission on the Central Bank's Review of Handling SME Arrears by Lenders – Review of the Code of Conduct for Business Lending to Small and Medium Enterprises, and wish to re-iterate the points made within that submission as relevant to this consultation and look forward to contributing to the further consultation on the SME Code.

#### **General Principle 2.4**

We welcome the introduction of the obligation at Chapter 2.4 to ensure that regulated entities *"has and employs effectively the resources and procedures, systems and control checks, and staff training that are necessary for compliance with this Code."* It has been MABS' experience that the provision of training to front-line bank staff in relation to new processes has been slow and results in miscommunication to consumers and inappropriate and inadequate supports.

Anecdotal evidence suggests that some regulated entities have allocated very little time to training to its front line staff on the Code of Conduct on Mortgage Arrears, which was clearly insufficient.

Comprehensive and continuous training on compliance issues, regulatory Codes and consumer protection mechanisms should be mandatory for all regulated entities and subject to a compliance review by the Regulator.

### **Advertising**

We welcome the provisions in respect of warning notices on products available to consumers and submit that all such warning notices should be written in plain English and avoid legal and financial jargon.

Further to our previous submission, we are of the view that the inclusion of statements to the effect that consumers should seek independent legal advice and a warning that monies received may affect a consumer's eligibility for means tested welfare payments should be included in the warning section on Home Reversion Agreements and Lifetime Mortgages in order to ensure that the consumer is making a fully informed decision.

### **Rebates and Claims Processing**

We would appreciate if further clarity was provided, in Chapter 7.7, to "*steps to verify the validity of a claim...*" to ensure consistency throughout the industry, and also the addition of a time restriction for doing so in order to prevent regulated entities unreasonably delaying determining claims to the detriment of the consumer.

We suggest, in Chapter 7.10, and express prohibition on regulated entities passing the loss adjuster's fee to the consumer.

Consumers must be protected against any undue pressure being applied to force them to accept an offer, and we submit that the 10 days provided for in Chapter 7.18 be incapable of waiver.

Where the policyholder is not the beneficiary of the claim, he / she should have prior approval of any settlement offer made by a regulated entity, such approval not to be unreasonably withheld, and the impact such settlement will have on his / her future capacity to get that type of insurance in future. This suggested mechanism aims to avoid settlements of spurious claims.

### **Conflicts of Interest**

We welcome the provisions in respect of Conflicts of Interest, in particular Chapter 3.26 placing an onus on regulated entities to have written acknowledgement of the consumer of his / her knowledge of the conflict and willingness to proceed.

## Section 1 – MABS Views

We note that submissions in respect of Section 1 were not invited, however given the importance of the issues contained in this section to consumer protection, we feel obliged to comment on these provisions in the current draft Code.

### Scope

As per our previous submission on this point, 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. Similarly, the omission of Moneylenders under the Consumer Credit Act, 1995.

We would like to gain a fuller understanding of the rationale for this change.

### Vulnerable Consumer (Chapter 13 Definitions)

We welcome the inclusion of a definition of vulnerability. However we are of the view that it may not adequately reflect the inequality in bargaining power between consumers and regulated entities and the factors that should be considered when providing for adequate protection of those consumers. It is MABS experience that, while clients may have the mental capacity to enter into a transaction, the other factors set out in the previous definition of “Vulnerable Consumer” had a profound effect on their dealings with their financial institution.

As per our previous submission, 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. Incentive schemes should be based not only on profit margins / debts collected, but on compliance with relevant Codes of Conduct and consumer protection.

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 5)

### Product Producer Responsibility

We note that Chapter 3 of the Code does not seek to impose guidelines for regulated entities in identifying target markets. This was an important proposal in the First Consultation and again, we submit that there should be an onus on regulated entities and intermediaries in particular, to apply criteria relating to affordability, life stage suitability, level of appropriate risk, long term suitability when assessing their target market.

We note that the requirements of the proposed Chapter 3.45 in the First Consultation have been significantly diluted in the current Second Consultation, Chapter 3.50 and would welcome the re-insertion of the obligation to re-assess the product to identify the consumer type for which it is suitable, once it has been identified that the target market has changed. Furthermore, we retain our concerns for the consumers who have, during this period, purchased a product that subsequently proved not to meet their needs. Again we submit

that 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.

It is imperative that these market 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.

Finally on this point, we again submit that 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.

### **Provision of Information**

As previously submitted, we are of the view that information provided to consumers 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). A notice to this effect should be contained in Chapter 4.1 – General Requirements.

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. Accordingly, and in line with the provisions of the Consumer Credit Directive, we are of the view that the one month period set out in Chapter 4.37 should be incapable of being waived.

### **Statement of Suitability**

While we welcome the proposed introduction of a comprehensive Statement of Suitability, as set out in Chapter 5.21 to 5.26, the consumer must have a right to dispute anything contained in the Statement of Suitability and have same amended after the explanation detailed in Chapter 5.24 has been given.

Again, welcome the obligation on the regulated entity to communicate effectively with their customers in arrears however, we have concerns about 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.

MABS provides a service for low income families experiencing, or at risk of experiencing, over-indebtedness. The level of engagement with the client is dependent on an assessment

of the client by the MABS Service and ranges from our self-help model to full advocacy. It must 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.

Accordingly, we should be obliged if Chapter 8.2, 8.6 and 8.9 reflected this position, in particular that referrals should only be made to MABS where the customer's circumstances are such that they require our assistance. References to MABS in the publications / websites of regulated entities should be to the National Helpline and website ([www.mabs.ie](http://www.mabs.ie)).

As MABS provides a full advocacy service on behalf of those assessed as being most in need of it / most vulnerable / lacking in capacity, we would be obliged if Chapter 8.5 reflected the position outlined in the Code of Conduct on Mortgage Arrears by prohibiting regulated entities from contact customers on whose behalf MABS was engaged in respect of their arrears.