mabs Support CLG

MABS Submission to the Retail Banking Review of the Department of Finance

MABS PUBLIC DOCUMENT

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Document Information

Short description	This document was prepared in response to a call for submissions issued by the Department of Finance on its review of the retail banking sector.
Developed by	This submission was prepared by MABS Support CLG in consultation with representatives from the MABS Regional Companies.
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Introduction

The Money Advice and Budgeting Service (MABS) very much welcomes the Department of Finance's Review of retail banking services, defined as the provision of current and saving accounts, consumer and SME credit, and mortgages. Banks play a pivotal role in providing services that are fundamental to supporting the financial wellbeing of persons and families across Irish society. It is essential that all persons living in Ireland have access to suitable and affordable retail banking services as needed; regardless of where they live, their ethnic background, their income level, their household type, their employment status, their age, their health, whether or not they are in receipt of social welfare supports, whether or not they have a disability, their education level and/or their skills using digital technologies.

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.

As outlined in the Retail Banking Review document, recent developments in the Irish retail banking sector, such as the withdrawal of major banks Ulster Bank and KBC and resulting consolidation of the market, the prevalence of FinTech and expansion of non-bank lending, and increasing digitialisation of basic services, have had a massive impact on Irish consumers. MABS and all frontline service providers who work with clients at local level offer a unique perspective into this impact, in particular for those who are traditionally categorised as 'vulnerable' and financially excluded.

In this submission, we have focused on the following nine key themes outlined in the Review document as they relate to consumers specifically (as we do not work with SMEs):

1. Retail Banking Services Sector
2. Branch Services
3. Competition
4. Consumer Credit
5. Mortgages
6. Other Retail Banking Services
7. Capital
8. Cash Services
9. Climate

In the sections below, we provide our responses to the questions set out in the Review document.

1. Retail Banking Services Sector

Question 1

Is the retail banking sector currently meeting the needs of consumers and SMEs? Please explain the reasons for your answer.

MABS Response: No

There are two main areas where we feel the retail banking sector is currently falling short in terms of meeting the needs of consumers.

(1) Supporting persons who are digitally excluded

In recent years, the retail banking sector has been driving their offerings through digital channels and the closure of main street branches during the Covid-19 pandemic serves as a testament to this policy. The sector is consolidating its services into main centres accordingly, with a number of smaller towns around the country now without a branch of any bank. This is of concern to us at MABS as the rapid development of digital-only services further exacerbates the 'digital divide' and creating additional vulnerabilities for consumers.

In relation to this 'digital divide', reports highlight that an estimated 11% of adults were not using the internet in 2020 – of this cohort 25% are aged 60-74, and more than half (56%) are aged 75 plus.[1] It is important that this group is not left behind in the movement to increase online service delivery for retail banking, and that everyone has access to the resources and support they need. Many MABS clients are very wary about moving their banking to a digital platform in the main due to the prevalence of scams which will only become more sophisticated in time. We expand upon matters relating to digital and financial exclusion throughout this Review.

(2) Providing active signposting to MABS

In addition, in terms of a bank's activities and the advertisement of various products and services, we would propose that all retail banks should advise the customer who to contact in the event of a difficulty with repayments including both the bank's credit department and MABS. Such signposting, in our view, should be part of the bank's original sales pitch.

We would also propose that banks should be more proactive identifying problem debt triggers in the first instance, such as a missed direct debit payment and/or a missed standing order. In their correspondence to their customer when this happens, they should also signpost to MABS as the State's only free debt advice service.

What changes do you expect to see in the retail banking sector in the coming 10 years?

[1] For more on this, see: CIB's social policy report on Digital Exclusion in terms of access to public services https://www.citizensinformationboard.ie/downloads/social_policy/social_policy_digital_exclusion_june2022.pdf as well as: International Day of Older Persons - Age is still the biggest indicator of who is digitally excluded | Age Action

We expect to see the following changes to the retail banking sector in the coming 10 years:

1. Further closure of in-person services and local branches of all three remaining "pillar banks" (PTSB, Bank of Ireland and AIB).
2. Increased fees and charges for consumers as retail banks continue their focus on non-interest income streams.
3. Any new entrants to banking will have a very limited, if any, branch network and local banking options.
4. Consumers, particularly those under 30 years of age, will increasingly look to use new digital providers for day-to-day banking, personal loans and ultimately mortgage lending (subject to licensing by Regulators).
5. Consumers in age categories of over 30 years may continue with traditional providers or move towards digital banking options, in particular those that need to switch from Ulster Bank and KBC.
6. Other consumers in age categories of under 30 to increasingly move their business to Credit Unions and An Post banking options.

Please compare the type of sector resulting from the changes you foresee in Question 1(b) to the type of sector you believe needs to exist so that it is fit-for-purpose, treats consumers and SMEs fairly, and that it serves the needs of society and the economy.

In light of these changes listed above, Credit Unions and An Post need to be regulated in order to allow them to compete on a level playing field with retail banks across all areas of the financial sector, from current accounts to mortgages. In addition, not all post offices offer the same banking facilities for AIB and BOI customers. For example, some do not allow cheque lodgements. In the absence of bank branches in many towns and villages, there needs to be a standardisation of banking facilities in post offices.

Digital banking providers also need to be further regulated so that the onus is on them to be fully aware of the capacity and vulnerability of consumers when assessing loan applications.

Further supports are also needed for those customers who now need to switch bank accounts, in particular for those elderly / vulnerable customers. New banks need to take up responsibility for this and providing these additional supports, as opposed to this responsibility falling to Ulster Bank and KBC, or those banks exiting the market.

In addition, MABS would propose that all financial institutions should be required by the Central Bank to provided micro-finance to personal customers under their Corporate Social Responsibility and as a response to the dangers presented by illegal moneylenders (particularly following the withdrawal last year of Provident from the market, for example). We expand upon this later in this document in our responses to questions relating to Consumer Credit.

Question 2

Given the extent to which banks are implementing material changes to their business models and service delivery, in your opinion, have these changes been implemented with a satisfactory customer-focus? Please explain the reasons for your answer.

MABS Response: No

As mentioned in response to Question 1 above, the regulation of Credit Unions and An Post needs to be prudential, but at the same time should allow an increased agility in order to meet the changing needs and demands of their customers and to offer services that are competitive alternatives to those offered by traditional financial institutions.

In addition, further regulation of digital (and traditional) banking providers is needed in order to ensure that the onus is on them to be fully aware of the capacity and vulnerability of consumers when assessing loan applications.

The Central Bank's Consumer Protection Code 2012 (currently under review) contains *Chapter 5 KNOWING THE CONSUMER AND SUITABILITY*. Provision 5.1b of this documents states that a regulated entity must gather and record sufficient information from the consumer prior to offering, recommending, arranging or providing a product or service appropriate to that consumer. The level of information gathered should be: (1) appropriate to the nature and complexity of the product or service being sought by the consumer; (2) to a level that allows the regulated entity to provide a professional service; and (3) ensure it includes details of the consumer's age, health, knowledge and experience of financial products, dependents, employment status, known future changes to his/her circumstances.

However, there are two major points to highlight in reference to this:

- Where regulated entities are providing credit under credit agreements which fall within the scope of the European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281 of 2010), the ***Provisions in Chapter 5 do not apply*.**
- Where regulated entities are providing payment services and/or issuing electronic money, the ***Provisions in this Chapter 5 also do not apply.***

Furthermore, in 2020 the European Commission launched a public consultation relating to its consumer agenda, including a review of the Consumer Credit Directive ("CCD"). An impact assessment was completed by the Commission and a number of areas of improvement were identified. The below bullet points set out a summary of the Commission's findings and the proposed changes as a result.

- The scope of the CCD is too narrow. It does not adequately protect consumers given the emerging trends in consumer credit. These trends may lead to over-indebtedness / financial difficulty and include:
    - Peer-to-peer and non-bank credit providers; and
    - High cost and instant loans for an amount under €200.

- Transparency requirements for advertisements and pre-contractual information does not reflect the use of new digital devices like smart phones / tablets in the credit application process. Single click credit may impact the behaviour of customers and lead to irresponsible lending.

- The information requirements introduced by the CCD may result in documentation being provided to consumers which is overly complex and does not allow for the easy comparison of credit offers between providers.

- The provisions regarding creditworthiness checks are ambiguous; they do not provide sufficient safeguards to ensure responsible lending and do not specify the types of data that can be used for this purpose.

This results in variances in standard practice across the European Union ("EU") and may lead to unfair treatment of borrowers; and the CCD does not deal with hardship and forbearance in the event of an "exceptional and systemic economic disruption", such as that caused by the current COVID-19 pandemic.

As such, there is no direct mention of consumer vulnerability in the CCD, nor in the European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281 of 2010. The CCD is currently under review in the European Parliament and Council.[2]

2. Competition

Question 3

Since the GFC the retail banking sector has become more concentrated, however new competitors have entered the market providing various products and services including mortgages, SME credit and payments. Following the departure of Ulster Bank and KBC, do you consider that the level of competition in the retail banking sector will be appropriate and sustainable, bearing in mind population and market size in Ireland? Please provide reasons for your answer.

MABS Reponses: No

In your opinion, are there actual or potential barriers to entry that are resulting in less competition both in terms of product availability and product price? Please provide reasons for your answer.

MABS Response: Yes

These barriers are due, in large part, to the fact that only two lenders (AIB and Bank of Ireland) are poised to control nearly 70% of the Irish mortgage market in its entirety, once Ulster Bank and KBC exit.[3] This significantly reduces competition and the number and type of products (and in particular interest rates) that are available for buyers. We discuss this more in our responses to questions 8 and 9 dealing with Mortgages and question 14 on other retail banking services.

In answering both these questions, you should consider the growth in the provision of retail banking services by digital and non-banks in relation to (a) mortgages (b) SME lending and (c) current and payment accounts.

Non-banking entities have and continue to purchase mortgages and other non-performing loans (including SME loans) from banks at discounted rates. Accordingly, any classification of their market share as "growth" has to be compared with the equal decline in the market share of the selling Banks. Furthermore, the non-banking entities are not providing new lending and their market share will decline as they manage down their loan books. In addition, Digital Banks are not providing mortgage finance at this point in time.

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[2] For more on this and additional recommendations for the CCD's review, see: Will the revised EU Consumer Credit Directive fully protect vulnerable consumers? | Finance Watch (finance-watch.org)

[3] For more, see: Irish banking sinks deeper into crisis as KBC follows Ulster out the door – Dowlings (dowlingfinancial.ie)

Competition from Digital Banks is welcome in the area of current and payment accounts, many of which are currently fee-free and compare favourably to the same services offered by Banks where such fees are applied, usually monthly or quarterly. Of course, Digital Banks have lower costs due to having no branch network.

3. Branch Services

Question 4

The significant shift from physical banking to the use of technology has seen the closure of a material number of bank branches. In your opinion, have the actions taken by the banks to mitigate the impact of branch closures on delivery of services to consumers and SMEs been satisfactory? Please provide reasons for your answer.

MABS Response: No

If your answer is "No", please outline the measures that could be taken by the firms in the retail stamp banking sector, Government, regulators or other relevant stakeholders to address the issues you identified. Where appropriate, please distinguish between consumers and SMEs in your response.

MABS would have concerns about certain consumers, particularly those who live in rural areas, who face an increased risk of financial exclusion with the lack of banking branches in some small towns. The inexorable shift from physical banking to technology presents further dangers in this regard. Issues such as accessing public transport services in their localities further exacerbate the challenges these consumers encounter.
To counteract this, we identify the following measures that could be taken by firms in the sector:

- An Post to provide Basic Bank accounts.
- Credit Unions to provide Basic Bank accounts.
- Expansion of qualifications for Basic Bank accounts and making other non-fee accounts available for social welfare recipients.
- Government to enable the provision of Basic Bank accounts by Credit Unions and An Post for an agreed period subject to review after 3 years.
- The provision of contactless payment feature to be enabled on Basic Bank account debit cards.
- Banks closing branches and "sub-contracting" banking services to An Post to identify the total amount lodged into each consumers account within the previous year and where that amount is less than the national minimum wage, the account to transfer to a basic bank account.
- Basic Bank accounts to remain free of fees and charges once the total amount lodged into each consumers account within the previous year is less than the national minimum wage. Government and Banks to enable same.
- Basic Bank account debit cards to be exempt from government stamp duty.
- The Government to enable the payment of all Social Welfare payments into all current and Basic Bank accounts at the request of the account holding consumer and not at the discretion of the Department of Social Protection.

Question 5

One of the principal factors impacting the level of interest rate that a bank charges on its loans, including mortgages, is the level of operational costs that a bank incurs to run its business. Two of the more significant operational costs that a bank has are costs relating to staffing and premises.
Do you consider that it would be an acceptable trade-off to see more cost reductions at banks if these cost reductions increased the capacity of banks to lower the interest rate they currently charge to consumers and SMEs? Please explain the reasons for your answer.

MABS Response: We would debate the fundamental relationship between cost reductions and interest rates implied in the question

We argue that it is debatable as to what capacity banks would have to lower interest rates by reducing their staff and premises costs. Interest rates are high for several reasons (unrelated to staff and premise costs); including newer excess capital requirements because of the business models applied by banks pre the 2008 crash and the (continuing) lack of overall competition in the market.

We would therefore take issue with the premise of the question and the implication that closing premises is the only way to reduce the cost of providing support to in-person baking services. We would in turn question the extent to which alternative forms of premises-cost reduction have been considered, including but not limited to Sale and Lease Back and Sub-letting. We also would argue that banks have been reducing costs across three decades by lowering the pay rates for junior staff.

4. Cash services

Question 6

Noting the concerns being raised that access to cash and cash services are generally reducing, should Government or other relevant stakeholders introduce policy or other measures to protect access to cash? Please explain the reasons for your answer.

MABS Response: Yes

If you have answered "yes", please outline the measures that could be taken by the firms in the retail banking sector, Government, regulators or other relevant stakeholders to address the issues you identified.

When consumers pay with cash (in particular for utilities and other related costs) they oftentimes end up paying more for the same services and products – for instance, those reliant on cash would not be able to access to cheaper online deals or discounts for direct debit/online payments. Basic bank accounts with free contactless payment debit cards (up to a limit) would be attractive to many consumers. For customers to be financially included the Government and the banks should embark on a public educational campaign to encourage cashless payments. At the same time, access to cash should be protected. We expand upon this in our response to the following question.

Question 7

Given the extent to which the ATM network is now primarily owned by unregulated entities, should Government legislate for the regulation of these providers? Please explain the reasons for your answer.

MABS Response: Yes

If you have answered "yes", please outline the areas or activities that should now be regulated to address the issues you identified.

There needs to be protections and regulations when it comes to accessing cash at ATMs – more often than not, the minimum amount available to withdraw is €50, other countries offer €10 notes in their ATM machines. This is a particular concern for families on low incomes who may not have €50 in the account to withdraw but need access to cash.

The Irish State could also adapt a similar legal provision to that which was passed recently in the UK, The new Financial Services and Markets Bill[4] protects access to cash withdrawal and protects the continued availability of cash withdrawal and deposit facilities across the UK.

5. Mortgages

Question 8

In your opinion, is there an acceptable level of consumer choice in the Irish market in relation to:
The number and type of mortgage provider?

MABS Response: No

There is not an acceptable level of consumer choice in the Irish market in relation to the number and type of mortgage provider. The market is constricted due to the following reasons:

- Withdrawal of Ulster Bank and KBC
- Mortgages are not available from all Credit Unions
- Also are not available from digital providers
- Also not available from other EU banks

The mortgage product range? Please explain the reasons for your answer.

MABS Response: No

There is not an acceptable level of mortgage product range. This is due in part to the withdrawal of tracker rates post-2008 and the fact that Credit Union rates are generally not competitive with mainstream banks. In order to counteract this, the following should take place:

- Government to facilitate more competition in the market.
- Regulator to work with Credit Unions to enable interest rate reduction.
- Enablement of mortgage offerings from digital providers by the Regulator

[4] For more, see: UK government unveils new law to protect access to cash - FinTech Futures

- Examination and report from the Regulator of provision of mortgage finance by EU banks or their subsidiaries through the EU single market

Question 9

There are indications that certain mortgage borrowers in Ireland would benefit from a lower interest rate by switching their mortgage to an alternative provider, however levels of switching have been low. In your opinion, are there measures that could be taken by the firms in the retail banking sector, Government, regulators or other relevant stakeholders to increase the level of switching?
Please explain the reasons for your answer.

Rather than increasing the level of switching to provide benefits to consumers, thereby placing the onus on consumers themselves, Government and Regulators should put an onus on Lenders to reward customer loyalty by providing mortgages that provide an automatic tiered reduction in interest rates as loan to value reduces during the mortgage term.

In addition, there also could be further mortgage interest rate reductions for the Consumer for the following activities:

- keeping their mortgage business with the Lender
- keeping other business with the Lender (for example, AIB reportedly waives current account fees if the customer has an AIB mortgage)
- Accessing new products from the Lender
- Introducing new business from third parties to the Lender

6. Consumer Credit

Question 12

Credit can play a pivotal role in the lives of consumers. It is therefore important that consumers have good access to credit, appropriate levels of consumer choice, whilst also being protected from over- indebtedness. For both (a) and (b), please explain the reasons for your answer.
In your opinion:

a) Is there adequate access to and availability of credit from the retail banking sector (including appropriate product choice) to meet the needs of consumers?

MABS Response: No

The Retail Banking Sector (under their corporate social responsibility role) need to provide more micro-finance to facilitate financial inclusion and enable consumers to access finance at interest rates that are mutually beneficial to both parties. MABS would also support protections to credit access for those who have made it through a debt arrangement/post insolvency.

In addition, where income payments are mandated, the reduced risk to the credit provider should be reflected in the interest rate charged.

- If necessary, government to consider subsidising the provision of micro-finance through a loan guarantee scheme, subject to review after 3 years. This review would involve an assessment of take up rates and the overall efficacy of this measure.
- Government to encourage enterprise and job creation by considering a separate loan guarantee scheme for small limited company enterprises to negate the need for the signing of personal guarantees by the principals in these firms. Repayment capacity to be demonstrated by the firm and signed-off by the lender in advance.
- Government to consider a loan guarantee scheme for students in cases where grants will not cover the full cost of education or where ineligibility for grant funding will prevent a student from progressing to appropriate third-level or further education due to lack of family financial resources.
- The retail banking sector to provide repayment terms and interest rates that reflect both the status of students and the fact that the loans are guaranteed in the above circumstances.

b) What are the main risks to consumers in the area of consumer credit?

Where you have identified issues, please outline the measures that could be taken by the firms in the retail banking sector, Government, regulators or other relevant stakeholders to address the issues you identified.

A major concern we would have at MABS is in relation to financial exclusion and the subsequent dependence on high cost credit providers and/or illegal moneylenders for many of our clients. This leads to the following adverse consequences:

- Social exclusion due to financial exclusion.
- Fuel poverty due to income being diverted elsewhere because of financial exclusion.
- Self-disconnection of energy sources due to income being diverted elsewhere because of financial exclusion.
- Exit of Provident from the Irish market.
- Non-availability of credit due to risk-averse practices of lenders such as insistence on the signing of personal guarantees.
- The emergence of Buy Now Pay Later (BNPL) credit provision and the fact that checking the Central Credit Register is currently discretionary for providers of loan amounts of less than €2,000. Debit card details are also provided to BNPL providers by borrowers, thus enabling increased access to the Borrowers funds.
- The light regulation of credit intermediaries, particularly in the areas of car finance, I.T. hardware/software finance, white goods finance, furniture finance to name some of the more prominent areas.

7. Other retail banking services

Question 13

With respect to deposit/savings accounts, in your opinion, is there an acceptable level of choice for consumers and SMEs in the Irish market in relation to the:

- *Number and type of providers?*
- *Product range?*

Please provide reasons for your answers.

MABS Response: We recognise that there are a number of savings vehicles in Ireland – from Banks, An Post, credit unions, Community Savings clubs, Savings stamps in prominent retailers and new digital providers. However, a government-backed scheme for low-income persons would be favourable to counteract the high number of households with little to no savings.

Surveys[5] have consistently shown that a substantial section of the population have low levels of savings (in particular long-term savings and retirement) and low financial resilience to weather negative financial shocks. At MABS, we see the impact having little savings has on households. We would support the introduction of a savings incentive scheme, similar to the 'Help to Save' initiative in the UK,[6] targeted at those who are low-income and reliant on social welfare. The Government could be the lead partner in this with the banks, credit unions and An Post. Also the CCPC 'nudge and boost' strategy[7] should be encouraged by the government and used as part of this initiative.

In addition, financial resilience or the lack thereof has been highlighted by the current cost of living crisis. Not only is a savings incentive scheme required, but we would also advocate for a community/Government subsided insurance scheme, if only for home content insurance. We find that many clients approach MABS who face insurance exclusion.

Question 14

With respect to current/payment accounts, in your opinion, is there and acceptable level of choice for consumers and SMEs in the Irish market in relation to:

- *Number and type of providers?*
- *Product range and features?*

Please provide reasons for your answers.

MABS Response: No to both

- In respect to current/payment accounts, there is not an acceptable level of choice for consumers. Noticeably, the impending exit of Ulster Bank and KBC limits choice and in turn reduces competition for circa one million Consumers currently using that type of Provider. It also exposes those Consumers who switch their business to retail banks to potentially higher fees and charges.

- In respect to product range and features, there is not an acceptable level of choice for consumers. Again, not all Consumers are proficient in I.T. and the Basic Bank account has great potential to be used as a gateway product for this cohort. Recognition of this potential by Government and the Central Bank followed by sustained promotion/marketing in conjunction with the retail banks would be welcome.

As such, if An Post was able to offer Basic Bank accounts, this would enable both social welfare payments to be paid into these accounts and the introduction of digital services to that cohort of Consumers still dependent on cash and cash transfers. It also has the potential to help modernise/expand/diversify the

[5] For example, see CCPC 2018 Research: CCPC publishes financial well-being research - CCPC Business
[6] Get help with savings if you're on a low income (Help to Save): How it works - GOV.UK (www.gov.uk)
[7] For more on this, see: CCPC recommends shock tactics to boost savings (businessplus.ie)

Household Budget Scheme. This Scheme is currently operated by An Post and allows the payment of rent and utility bills direct from Social Welfare payments with the balance collected in cash from An Post by the social welfare recipient/Consumer.

Question 15

As different providers in the retail banking sector have different fee structures and charges, it may be possible to make savings by switching current/payment accounts. Research previously found that switching rates in Ireland were very low.

In your opinion, are there measures that could be taken by the firms in the retail banking sector, Government, regulators or other relevant stakeholders to increase the level of switching? Please explain the reasons for your answer.

MABS Response: Yes

The following measures could be taken by firms in the retail banking sector, Government, regulators and/or other relevant stakeholders to increase the level of switching:

- CCPC to run a yearly advertising campaign to highlight the benefits of switching
- CCPC in conjunction with the Central Bank to conduct focus groups with Consumers and/or Consumer groups to provide a two-way flow of information to allow for improvements to the switching process for all stakeholders.
- Direct Debit originators to be required to allow Consumers to amend their bank account details online and also be required to alert Consumers on all correspondence (such as statements/invoices/bills) that this service can be availed of.

If you consider that the Central Bank's Code of Conduct on the switching of payment and current accounts should be amended, please outline the changes you would propose.

Retail banks to be required under the Code to alert Consumers on all correspondence (such as current account statements) both to the fact that the Consumer has the option to switch their account(s) and to where the Consumer can access more information on the switching process. As such, the Central Bank's Code of Conduct on the Switching of Payment Accounts with Payment Service Providers 2016 needs reviewing. Many commentators on the UB/KBC withdrawal do not have confidence in the switching process and advise customers to do it themselves.

8. Capital

Question 17

Banks are required to hold capital for all key risks including the risk of credit losses arising on their loan portfolios. A key measure of the riskiness of a bank is how effectively it manages all aspects of credit risk – from loan origination to distressed debt.

In the context of the capital levels banks are required to hold for mortgage lending there has been discourse over a number of years on the impact on capital levels of the requirements of the Central Bank's Code of Conduct on Mortgage Arrears (CCMA) and the time it can take to recover collateral through the judicial process, which in turn can contribute to higher levels of interest paid by Irish mortgage holders relative to European counterparts.

Regarding the repossession of security for PDH mortgage debt, do you consider there is an appropriate balance between the rights of a borrower who is in financial difficulty, compared to the rights of a lender, when a borrower has been afforded due process in line with the CCMA, and where it has been established that the borrower cannot repay their mortgage? Please explain the reasons for your answer.

MABS Response: No

If you have answered "no", please outline the measures that could be taken by the firms in the retail banking sector, Government, regulators or other relevant stakeholders to address the issues you identified.

The repossession of security for PDH mortgage debt (family home) arises where it has been established that the borrower cannot repay their mortgage, generally as per the terms of the original mortgage contract. Accordingly, whether there is an appropriate balance between the rights of a borrower who is in financial difficulty compared to the rights of a lender and whether a borrower has been afforded due process in line with the CCMA are matters for the Courts to decide.

Unless and until debt write down and permanent interest rate reduction are adopted by Banks and Non-Banks as solutions they offer as a means to resolve mortgage arrears the intractability will continue. Both Banks and Non-Banks must adopt all solutions specified under Provision 39 of the CCMA as policy in addressing the problem rather than the current selective approach.

The delays in the legal process are highlighted as a flaw/weakness in the system. However, the fact that the legal process is an inappropriate means to address mortgage arrears is never highlighted.

When an institution enters into a mortgage contract with a borrower they are often entering into a 30 to 40 year relationship. Realistically there are going to be blips and shocks to a household's financial position during that timeframe. In this context, there must be better options to the legal process to address mortgage arrears as a consequence of interim blips and shocks.

During the early years of the crash, lenders definitely took a more aggressive approach to liquidating assets through repossession rather than attempting to work with borrowers to provide solutions to arrears situations.

Prior to the economic downturn most banks and mortgage lenders had very little experience of the court process, but legal action through legal departments within the banks and in legal firms has now evolved to just become part of the Collections process, and at a certain point in the arrears cycle lenders will proceed with initiating legal action.

The CCMA, which was supposed to provide a framework for lenders to work with borrowers in arrears, has instead, in some cases, created a documented process for banks to follow to classify borrowers as not co-

operating and proceed with legal action as the natural final phase in the process.

Borrowers remain at a disadvantage – they do not understand acronyms such as CCMA, MARP, SFS, and ARA. Lenders do not take the time to explain the process or the terminology fully, such as why a financial statement is needed, what solutions are available and the consequences of remaining in arrears. It is only when a borrower comes to MABS and gets intervention from an Advisor who does understand, and can explain how the process works, that any real progress seems to be made. It is often already in the legal process when the borrower comes to MABS.

The CCMA timelines are specific for borrowers (such as giving 20 days to return supporting documents) but vague for lenders (SFS must be assessed in a 'timely manner') putting the balance of power and control solely in the hands of the lender. If the borrower delays at all, or doesn't fully understand what they are being asked to supply to the lender, then they get classified as 'Not-Cooperating' and the lender simply moves onto the next provision in the CCMA that documents how the legal process must work. Legal action has come to be seen by the lenders as simply being the next step.

A long running issue is the inconsistent application of the CCMA and MARP and the concern that same is treated as a 'box-ticking exercise' by lenders. The Central Bank of Ireland, in its Suitability Guidelines for lenders dealing with mortgage restructures provides that any solutions offered should be based on "the best economic resolution for both parties". Frequently, this is felt not to be the case with borrowers being offered ostensibly affordable short-term restructures but which do not provide for long-term sustainability or provide for the creditor to make an excessive return (via high interest rates) in comparison the borrower's means.

MABS is of the view that the CCMA should be reviewed because it is not proving sufficiently effective in resolving legacy arrears, especially with regard to older borrowers, low-income borrowers and as it applies to separated couples and it may be the case that weaknesses in the CCMA/ its application by lenders have contributed to borrower disengagement. While the CCMA provides that creditors should treat separated borrowers as individuals in their dealings with them under the Code, frequently long-term solutions will not be offered due to the fact that the creditor either (a) needs agreement from an 'absconded' borrower or (b) the creditor will not recognise the reality that the separated borrower remaining in the property is the one servicing the mortgage (and often has been the one servicing the mortgage for a number of years).

72,342 mortgages were classified as restructured in the Central Bank quarterly mortgage arrears statistics for March 2021. Of these 59054 (82%) were not in arrears while 63019 (87%) are categorised as meeting the terms of their arrangement. The adherence to the terms of restructured arrangements is high with both Banks and Non-Banks at 88% and 83% respectively.

These are high levels of positive engagement and compliance from borrowers. Where such high levels of compliance and engagement exist, why are permanent solutions not being offered by Banks and Non-Banks to resolve the mortgage arrears in any meaningful way?

Excluding 'Other' Restructures there are 56,773 mortgage restructures where the exact nature of the restructure has been identified in the Central Bank quarterly mortgage arrears statistics for March 2021. Of these 56,773 restructures, 29,928 are not permanent restructures. Split mortgages, 21,616 make up the largest proportion of these temporary 'fixes', with temporary repayment reductions or payment moratoria

8,312, making up the remainder.

These cases are that of engaging borrowers. Why are lenders so reluctant to implement permanent solutions to the mortgage arrears problem where borrowers are clearly engaging?

From the Central Bank mortgage arrears statistical tables there are three arrangements that may be classified as permanent solutions. These are Permanent Interest Rate Reduction, Term Extension and Arrears Capitalisation. The prevalence of these solutions gives an insight into the policy positions of Bank and Non-Bank institutions towards mortgage resolution. 26,845 mortgage restructures fell within these three offered solutions.

In all, there were 150 permanent interest rate reductions. These have all been put in place by Non-Banks. Banks, it appears do not offer permanent interest rate reductions as a potential solution. Why?

7,373 term extensions have been implemented. 6,947 of these put in place by Banks. This represents 31% of the permanent solutions instigated by Banks. Non-Banks put in place 426 such arrangements, representing 9% of permanent solutions effected. Why?

Interestingly no restructuring arrangements incorporating debt write-down are displayed in the Central Bank statistical tables. MABS experience is that such arrangements are rarely agreed by lenders. Yet Banks are willing to sell portions of their loan books to Non-Banks at considerable discounts. Were these discounts/write-offs, or parts thereof made available to borrowers how many of those loans still in arrears would have been resolved?

Lifetime mortgages and or equity share mortgages are solutions that should be also be explored, especially for older clients.

Bank, Non Bank and Court Engagement with Insolvency as an Effective Tool

As a means of addressing the substantial indebtedness embedded in the Irish Financial System following the Financial Crisis the Personal Insolvency Act 2012 was introduced. This enabled distressed borrowers, facilitated by a Personal Insolvency Practitioner, to agree restructured arrangements with their creditors so that the debtor could return to solvency in a reasonable timeframe. Uptake of the solutions available under the Insolvency Act has fallen far short of anticipated uptake. Initial uptake forecasts were based on the experience in other jurisdictions (UK). The percentage of arrangements being accepted by creditors also fell short of those anticipated, again based on the experience in the UK.

In an effort to increase both uptake and success rates the Personal Insolvency Act was revised in 2015 and again in 2021. In 2015, the concept of an appeal (Section 115a) to the court to approve and arrangement previously rejected by a lender was introduced for mortgaged debt. At that time creditor approval rates for Personal Insolvency Arrangements (PIAs) proposed by PIPs was over 75%. Since the introduction of the Section 115a appeal mechanism, creditor approval rates have consistently declined, dipping below 50% for the first time in Q2 2021. Creditors have not embraced the provisions of the Personal Insolvency Act when it comes to resolving mortgaged debt.

At a webinar on 7 October 2021 participants were informed by a practicing Insolvency Practitioner that up to

last year (2020) only one lender was willing to approve debt write down within a PIA without forcing the PIP to invoke the appeal mechanisms. In 2021, there are four lenders willing to do so. This however does not negate the fact that some institutions have policy positions preventing debt write off as a solution to mortgaged arrears in almost all circumstances.

The Land and Conveyancing Law Reform (Amendment) Act 2019 brought in a new Section 2A to the 2013 Land and Conveyancing Reform Act. It provides that a borrower who has unsuccessfully explored a PIA or who has availed of a 'designated scheme' such as the Abhaile service offered by MABS, but same has not resolved the arrears, can ask the Court to consider the following matters when deciding whether or not it is appropriate to grant the order for possession:

a. whether the making of the order would be proportionate in all the circumstances;
b. the circumstances of the mortgagor/borrower and his/her dependants;
c. whether the mortgagee/Lender has made a statement to the mortgagor/borrower of the terms on which the mortgagee/Lender would be prepared to settle the matter in such a way that the mortgagor/borrower and his/her dependants could remain in the PPR.
d. the details of any proposal made, whether prior to or following the commencement of the proceedings by, or on behalf of, the mortgagor/borrower to enable the mortgagor/borrower and his or her dependants to remain in the PPR, including any proposal for participation by the mortgagor/borrower in a designated scheme, or to secure alternative accommodation.
e. the response, if any, of the mortgagee/Lender to any proposal referred to at (d) above;
f. the conduct of the parties to the mortgage in any attempt to find a resolution to the issue of dealing with the mortgage arrears.
g. Regarding the proportionality referred to in subsection (3)(a) above, the matters to which the court may have regard include the following:
    i. the total amount that remains to be paid to the mortgagee/Lender on foot of the mortgage or any associated loan agreement
    ii. the amount of mortgage arrears
    iii. the advised market value of the PPR on the date on which proceedings were commenced.

As of yet, there is no practice directions, rules of court or indeed case law that can be used by the Circuit Court to assist in the detailed assessment and consideration as provided by Section 2A of the 2019 Act.

Mortgage to Rent

The mortgage-to-rent scheme was introduced in 2012 following a recommendation in the Keane Report and is mentioned in the CCMA as an Alternative Repayment arrangement that *may* be made available by Lenders. Under the scheme, a homeowner in mortgage arrears would become a social-housing tenant of an 'approved housing body' (AHB), paying a differential rent based on their income. The basic mortgage-to-rent model was sound. Homeowners gained certainty around their long-term housing needs.

The rate of uptake for mortgage-to-rent with AHBs to date has been low. In 2021, a total of 5,874 cases have been submitted under the Mortgage to Rent scheme. 1,294 were completed and 1,027 were being actively progressed. Significantly 3,553 were ineligible or terminated during the process.

The failure of the scheme in terms of numbers participating is attributable to a number of factors:

a. Multitude of stakeholders involved and excessive bureaucracy.
b. A substantial number of mortgage-to-rent cases do not complete because none of the AHBs express an interest in acquiring the subject property.
c. There are limitations in the geographical areas covered by the AHBs.
d. In addition, local authorities had not been progressing applications if the property was in an area with no future social-housing need.
e. Many mortgagees do not meet the eligibility criteria.

The social and economic benefits to be derived from mortgage-to-rent are obvious, and the scheme offers an effective solution. Currently Mortgage to Rent is the only viable solution that can be delivered as a solution to mortgages deemed 'unsustainable'.

9. Climate

Question 20

The Government has set targets to reach net-zero emissions no later than 2050. As part of the Government's plan to reach this target, there are indicative ranges of emissions reductions for each sector of the economy, as well as objectives to retrofit residential buildings. It is expected that the retail banking sector will assist consumers and SMEs to fund the work that is needed to assist them transition to a low carbon future.

In your opinion, is the retail banking sector providing consumers and SMEs with appropriate support and funding to transition to carbon neutral?. Please explain the reasons for your answer.

MABS Response: No

If you have answered "no", please outline the measures that could be taken by the firms in the retail banking sector, Government, regulators or other relevant stakeholders to address the issues you identified.

According to reports,[8] the IMF have estimated that climate transition in Ireland will need an investment of around 20 billion EUR. It has further estimated that two thirds of this investment will come from the private market, and bank finance, and one third from the State. This is substantial investment, and prolonged and enhanced financial contributions from the retail banking sector is required.

In terms of business investment, enhanced supports and low-cost lending opportunities for SMEs to help them reduce carbon emissions is imperative.[9] In terms of the residential sector, we would endorse those interventions that, in particular, serve to ensure that lower income households do not bear the burden of a transition to low-carbon economy. Financial incentives, such as zero-interest lending for retrofitting, free home energy upgrades and an overall expansion of the supports offered under the SEAI programme, would serve as a step in the right direction. However, these interventions alone will not be enough.[10]

[8] Banks to play a critical role in driving a carbon neutral future - Banking & Payments Federation Ireland (bpfi.ie)
[9] Final-Document.pdf (bpfi.ie)
[10] ENERGISEpolicybriefingpdf.pdf (ucc.ie)

Conclusion

The Money Advice and Budgeting Service (MABS) very much welcomes the Department of Finance's Review of retail banking services, and hope that the Department and the financial services sector continue to expand more proactive efforts to support people regardless of their circumstances. At MABS, we work with those who have experienced mortgage or other debt problems and have impaired credit ratings. These persons also consequently have poor relationships with banks and other financial service providers – however they do have a continuing need for banking services and access to affordable credit.

We also worry that recent changes and dominant trends in the Irish retail banking sector (including the withdrawal of KBC and Ulster Bank, as well as the closure of in-person banking facilities and the drive towards digital banking) will continue to cause difficulties for consumers if alternative options and approaches are not considered and adequately resourced. We also are concerned that these trends will also further deteriorate public trust in major banks – as relations between banks and customers undoubtedly remain on tenuous footing since the 2008 crisis.[11] As such, MABS hope for continual engagement with the Department of Finance and the retail banking sector on this and related issues in the future.

[11] For more on the 'low levels' of public trust that remain towards the Irish banking sector, see this report compiled by the Irish Banking and Cultural Board (IBCB) in 2021. According to this research, 43% of those surveyed say their perception of banks has dis-improved since 2008. IBCB-2021-eist-Public-Trust-in-Banking-Survey-ONLINE-v2.pdf (irishbankingcultureboard.ie)

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