

MABS Submission to the Credit Servicers Directive Public Consultation

MABS PUBLIC DOCUMENT

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Document Information

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The Department of Finance: Public Consultation on the Credit Servicers Directive

Deadline 8 March 2023

MABS Submission

The Money Advice and Budgeting Service (MABS) welcomes the opportunity to contribute to the Department of Finance's Public Consultation of the Credit Servicers Directive.¹ As a publically funded, national organisation with over 30 years' experience providing debt and money advice, we endorse all public efforts to safeguard the rights of individual consumers and their access to a fair and balanced credit service for non-performing loans.

The consumer credit market has changed dramatically over the past 10 years, in Ireland and throughout Europe. It is imperative that new types of loan products and the activities of non-banking entities, including credit servicers and credit purchasers, are subject to further regulation as required. Recent developments in the Irish financial services 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 digitalisation of basic services, have had an immense 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.

As stated in the Consultation document,² the main purpose of this Directive is to develop a secondary market for non-performing loans, outlining a common framework for the transfer and management of bank originated non-performing loans (transferred or sold after 29 December 2023) to purchasers and servicers of such credit agreements. We posit that increased regulatory measures to ensure the safeguarding of consumer rights is imperative in the Irish context. This is due to the significant rise in activities of these purchasers and credit service providers in recent years, in particular for those facing mortgage arrears.

According to the most recent Central Bank statistics on Mortgage Arrears,³ there were 45,746 domestic mortgages in arrears in Ireland in September 2022 – of these, over half or 25,469 are owned

¹ Directive (EU) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU. [EUR-Lex - 32021L2167 - EN - EUR-Lex \(europa.eu\)](#)

² [gov.ie - Credit Servicers Directive Public Consultation \(www.gov.ie\)](#)

³ [2022q3 ie mortgage arrears statistics.pdf \(centralbank.ie\)](#)

by non-banking entities. As such, the total share of the market for non-banks stands at 56% (as of September 2022), up from 43% in March 2021 and 37% in March 2019.⁴ Non-banking entities also hold higher proportions of those mortgages that display the highest level of arrears. In total, non-banking entities held a significant 74% of all domestic mortgage accounts in arrears for more than 1 year in September 2022, up from 54% in March 2021.

As such, non-banking entities have and continue to purchase mortgages and other non-performing loans (including SME loans) from banks at discounted rates, and play a considerable role in a growing secondary market for non-performing loans. A massive concern for us at MABS is that, while these entities bought non-performing loans at significantly reduced rates, they can act in a manner that further penalises consumers. This includes those clients with voluntary ARAs (Alternative Repayment Arrangements) and with statutory insolvency arrangements sanctioned under the current Irish Personal Insolvency Act, options that serve as a lifeline for MABS clients in mortgage arrears. For example, over the past 6 months, one fund has increased its mortgage interest rates to over 6%, more than twice the ECB (European Central Bank) tracker average of 3%. This is a particularly alarming trend during a cost of living crisis, and is having disastrous effects for MABS clients. With another 0.5% rise in mortgage interest rates indicated by the ECB for this month, we are wary that the situation will continue to worsen.⁵

Under the Abhaile and Dedicated Mortgage Arrears (DMA) schemes, MABS plays an integral role in government policy to support distressed mortgage holders. We frame our response to the questions posed in this Consultation with the understanding, from our years of experience working with borrowers facing the stressful situation of arrears, that the more direct engagement between purchaser and credit service providers the better the outcome for all parties. Traditional, mainstream banks have, notwithstanding their responsibility for regulatory compliance, a level of cultural accountability in Ireland, a history of engagement with ourselves at MABS and offer a suite of supports for clients in financial distress. In many cases, non-banking entities do not have these traits and can be less willing to accommodate clients and their needs. It is important that increased regulatory efforts

⁴ 'From Pillar to Post' FLAC (2022): 'Conclusions from a decade of attempting to resolve family home mortgage arrears in Ireland': see: https://www.flac.ie/assets/files/pdf/flac_pillar_to_post_paper_2_final_v.pdf

⁵ MABS staff have observed that the overall behaviour of non-banking entities towards clients (such as the decision to enter into insolvency arrangements) depends on the entity and their own internal protocols, and the amount of documentation received from the original mortgagee bank. It should be noted that in cases where their loan books are sold, clients receive the details of these sales via post, and have no legal basis to appeal the sale. This is true of all clients, regardless of whether or not they are in arrears. For more on this, see: https://mabs.ie/wp-content/uploads/2022/03/Final_MABS-Support-CLG-Submission-to-CBI-Mortgage-Measures.pdf

for these institutions work to support Irish consumers first and foremost. With this context in mind, our responses to the Consultation questions are outlined below.

Question 1: Do you think that Ireland should exclude public notaries, bailiffs and lawyers from the application of the Directive as transposed into Irish law?

MABS Response: No

As a consumer-based organisation, we recognise that the inclusion of public notaries, bailiffs and lawyers under the application of the CCD when conducting credit servicing activities could serve to benefit borrowers. However, we recognise that such an extension would impose rigorous and onerous restructuring of the entire Irish legal sector. Accordingly, we propose that only those public notaries, bailiffs and lawyers that specialise, or have a section of their business that specialises in credit servicing activities, should be included.

Question 2: Do you think that credit servicers authorised in Ireland under this Directive should be allowed to receive and hold funds from borrowers, or should be prevented from doing so?

MABS Response: Yes. The caveat should be that credit servicers must support demonstrably affordable and sustainable outcomes for consumers and therefore engage meaningfully with debt advice services such as MABS.

At MABS, we recognise the importance of regulatory frameworks that best serve the needs and rights of our clients, and provide support to those who are navigating the difficult situations of arrears. A third party business model, with a 'middle man' to hold funds and assess repayment of arrears, can at times result in the borrower having a less favourable outcome/repayment option versus working directly with the original loan provider. However, as this Directive aims to set forth a secondary market for the handling of non-performing loans, we recognise that credit servicers will be in a position to have and hold funds from borrowers. We therefore answer 'Yes' to this question, but maintain that these credit purchasers/servicers must work towards a demonstrable affordable and sustainable solution for borrowers that reflects the fact that the borrowing has been purchased at a discount from the original loan provider.

MABS and other supportive debt and client advocacy organisations play a crucial role in ensuring the realisation of this goal. Therefore, credit servicers must engage with MABS meaningfully and regularly in our work on behalf of clients. We enjoy a positive working relationship, built over years of mutual

trust and respect, with mainstream Irish retail banks. It is imperative that this relationship continues in our engagement with non-banking entities.

Question 3: Do you think that Ireland should require credit servicers to keep and maintain relevant records for a period of more than five years after the termination of a credit servicing agreement with a credit purchaser?

MABS Response: Yes

Yes, we believe that credit servicers should keep and maintain records for a period of ten years after the termination of a credit servicing agreement, the maximum limitation period set forth in the Directive. In our experience, loan documents and relevant statements are often lost during the loan sale process, and this makes it difficult to validate the accurate accrual of debt/arrears balance. Extending the period for credit servicers to retain documentation would work to help ensure transparency and safeguard against this issue.

Question 4: Do you think that Ireland should exercise this discretion and provide that EU based credit purchasers should appoint credit servicers under this EU framework in respect of credit agreements other than non-performing agreements concluded with consumers?

MABS Response: No

It is important to note that this may have limited applicability in the Irish context, as the most prominent non-banking credit purchasers (funds) at work are based in the UK, Australia and the USA (therefore are outside the EU). Notwithstanding this fact, the experiences of MABS clients in their dealings with credit servicers appointed by existing credit purchasers in respect of non-performing loans including, inter alia, lack of flexibility in terms of interest rate options and staffing issues, means that MABS does not think that Ireland should exercise this discretion, particularly given that it is in respect of credit agreements other than non-performing agreements concluded with consumers.

Question 5: Do you think Ireland should exercise this discretion to allow natural persons to service credit agreements which fall within the scope of this Directive?

MABS Response: No

We see no reason, particularly with regard to governance and resourcing issues, why an individual should be empowered to service a credit agreement in place of existing credit purchasers/credit service providers.

Question 6: Do you think Ireland should allow a credit servicer to comply, on behalf of the credit purchaser, with the obligations of the credit purchaser including in relation to credit registers?

MABS Response: Yes

Credit servicers should comply, on behalf of the credit purchaser, with the obligations as set forth in the Central Credit Register.

Question 7: Do you think Ireland should exercise this discretion and not provide for all of the identified forbearance measures in the transposition of the new Article 16a of the Consumer Credit Directive?

MABS Response: No

No, Ireland should provide for all the forbearance measures as outlined in Article 16a on 'Arrears and enforcement', in the transposition of the new Article 16a of the Consumer Credit Directive.

Question 8: Do you think that Ireland should allow creditors to (i) define and impose charges on a consumer arising from default, (ii) if so, require that those charges shall be no greater than is necessary to compensate the creditor for costs it has incurred as a result of the default, (iii) allow creditors to impose additional charges on the consumer in the event of default and (iv) if the answer to (iii) is in the positive, what cap should be placed on those charges?

MABS Response:

- (i) Yes, in the case of the original default, the Central Bank already allows creditors to define and impose charges on consumers. However, in the cases of a consumer defaulting on a voluntary ARA (Alternative Replacement Arrangement),⁶ than the answer to this question is no, there should be no additional charges imposed on consumers. For clarity, under

⁶ In cases where loans with ARAs in place are sold to credit servicers, these arrangements should not be liable to interest rate increases above ECB levels, and should be completely exempt from any increased charges, for instance in cases where a credit servicer defers an interest rate increase and adds to principal owed at end of ARA.

Provision 11 of the CCMA:⁷ 'lenders are restricted from imposing charges and/or surcharge interest on *arrears* arising on a mortgage account in arrears to which this Code applies, unless the borrower is not co-operating.' Charges only apply in theory for those customers classified under Provision 29 of the CCMA as not 'co-operating'.

- (ii) Yes, in all cases, any charges imposed on a consumer in default should not be greater than necessary to compensate the creditor for costs it has incurred as a result of the default.
- (iii) Absolutely not, creditors should not impose additional charges. This is the particular recommendation for those consumers with ARAs in place with original lenders, whose loan is then sold to a credit servicer. The credit servicer should honour the original ARA, and should not be permitted to impose additional charges. This should also be the case for those in Personal Insolvency Arrangements (PIAs).⁸
- (iv) No cap as no additional charges should be introduced.

Question 9: Similar to Question 7, do you think Ireland should exercise this discretion and not provide for all of the identified forbearance measures in the transposition of the amendment to Article 28 of the Mortgage Credit Directive?

MABS Response: No

Ireland should provide for all of the identified forbearance measures in the transposition of the amendment to Article 28 of the Mortgage Credit Directive.

Question 10: Do you think that Ireland's existing national authorisation and regulatory regime in respect of credit servicing firms (i) is equivalent to, or stricter than, those established in this Directive for credit servicing activities and (ii) if so, should such regulated entities be automatically recognised as authorised credit servicers?

MABS Response: Yes

- (i) Neutral. Ireland's existing national authorisation and regulatory regime is broadly equivalent to those established in the Directive.

⁷ [2013 Code of Conduct on Mortgage Arrears \(centralbank.ie\)](#)

⁸ MABS has clients with PIAs in place with investment funds, and the funds are increasing rates during the life of the PIA and after the PIA. No option for a fixed rate, and of course, in nearly all of these cases, this will make the PIA unaffordable. The PIA will fail, and as there are only one PIA is permitted in a person's lifetime, this is exceptionally unfair on the client.

- (ii) As such, yes, the automatic recognition of regulated entities as authorised credit servicers is appropriate in this case.



The MABS Helpline **0818 07 2000**
Monday to Friday from 9 a.m. to 8 p.m.

