

## **Written Submission on the Consumer Protection (Regulation of Credit Servicing Firms (Amendment) Bill 2018 – Private Members Bill**

*May 2018*

### **Origin of the submission**

The MABS National Development submission on the Consumer Protection (Regulation of Credit Servicing Firms (Amendment) Bill 2018, ('the 2018 Bill'), is prepared in response to a request for a written submission to assist the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach, in its consideration of the draft legislation, on behalf of the Committee (Ref:I 2018/495). The request noted that the Committee has expressed an interest in the following areas:

- views on the policy rationale for each Bill
- possible implications/consequences arising from the Bill
- technical, legal and drafting aspects of the Bill
- possible areas where the Bill might be improved
- or any other comments.

In so far as possible these matters are addressed below. It should be noted that in making this submission we are reflecting on the questions asked based on our experiences and respectfully acknowledge that policy matters of this kind fall outside of our remit.

### **MABS and Mortgage Arrears- general observations**

1. The Money Advice and Budgeting Service (MABS), works with people who are in debt, or at risk of getting into debt, and endeavours to support borrowers and loan owners to put in place mutually agreeable, realistic, affordable and sustainable solutions<sup>1</sup> to arrears difficulties. MABS relies heavily on the strength of relevant market regulation in its casework approach, through which it empowers its clients to uphold their legitimate rights as consumers in achieving a resolution to their arrears difficulties.
2. MABS has always had a role in supporting borrowers in home mortgage arrears. Since mid-2015, it has had an additional role (through its Dedicated Mortgage Arrears MABS (DMA MABS) project) in providing support to borrowers in late-stage mortgage arrears who are at risk of losing their home and, since July 2016, in acting as the 'Gateway to Debt Advice' under the Government's ABHAILE scheme. These areas of MABS casework provide an important insight into the difficulties facing borrowers whose mortgages are owned by funds (AKA credit agreement owners). MABS also has a deep understanding of the issues which first caused borrowers to get into financial difficulty and the many related challenges facing them when they engage to address their arrears.
3. While acknowledging that the composition of funds' loan books is different to those of other institutions, MABS experience of working to support borrowers at court<sup>2</sup> indicates that non-bank entities appear to be over represented in mortgage arrears-related legal proceedings relative to their market share. Legal proceedings, it appears, are one of the primary means of realising value for credit agreement owners, and as such, having full clarity on borrowers' rights and protections is vital.

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<sup>1</sup> <http://www.welfare.ie/en/pressoffice/pdf/ibf-mabs%20protocol%20final%20june%2009%20logo.pdf>

<sup>2</sup> MABS 'Court Mentors' attend repossession list hearings and act as a support to borrowers, linking them in to MABS, the Duty Solicitor or the ABHAILE service as appropriate.

4. We have seen many cases where borrowers are paying the contractual amount and some are also making a payment towards arrears on a sustained and sustainable basis and nonetheless are unable to put in place an arrangement. Disillusioned by the process, some disengage, thereby increasing the likelihood that they may lose their home. If this is a deliberate strategy by funds to ‘wear borrowers down’, it is sharp practice and should be prohibited.
5. Finally, we submit that the regulation of credit agreement owners is a necessary but insufficient step in resolving legacy home mortgage arrears and a continued focus is needed on supporting borrowers to engage in resolving their arrears, with the overall aim of keeping them in their home where this is possible.

#### *Policy rationale*

We submit that legislation/ policy-making fall outside our remit and limit our observations once again to reflections derived from casework experience.

6. We suggest that there is now a need for regulation of credit service agreement owners on a *prima facie* basis, to assist in counteracting the embedded and very poor public perception of the new loan owners. In encouraging borrowers to engage with their arrears difficulty it is of central importance that they can have full confidence that the unilateral actions of credit agreement owners cannot lead to a diminution of their important consumer protections. This is of paramount importance where borrowers are at risk of losing their homes.
7. While funds have been operational in this area of the Irish market for several years, their activity has recently begun to scale up. Against this backdrop, the business model as it applies to the resolution of home mortgage arrears in this jurisdiction is relatively new and untested; intuitively suggesting the need for a heavier, rather than a lighter regulatory approach, particularly where the family home is at stake.
8. We view the Bill as an opportunity to more closely tether the new loan owners to the Irish market thus potentially enabling a more long-run perspective, and an improved prospect for the emergence of a fuller suite of options for borrowers, while also limiting the potential for speculative involvement, particularly where family homes are concerned.
9. We note the proposal to amend section 33A of the Central Bank Act 1997, with specific respect to the provision of specified information to impacted customers. We believe that it is important that borrowers and their nominated advisors have greater transparency about the sale of their loans. The existing lack of transparency is a cause of much frustration and mistrust for borrowers and an obstacle to the efficacy of day-to-day casework for MABS advisors.

#### *Possible implications/consequences arising from the Bill*

This submission is based on experience gained through the generality of MABS casework and we cannot speculate on possible implications/ consequences. In the below paragraphs observations are made based on the experiences of working with borrowers in home mortgage arrears whose loans have been sold.

10. In MABS experience, the approach adopted by the new credit agreement owner/their credit servicing firm has, in some cases, proven effective. This occurs only when the borrower is fully assured that they have been afforded due process in arriving at an outcome. We would suggest therefore, that the emphasis for the future needs to be on achieving the best (clearest, most straightforward, most transparent) processes and outcomes, not just for the loan owners but also for the affected customer/borrower.

11. We note also that the Bill emerges within the wider context of a possible review of the Code of Conduct on Mortgage Arrears (CCMA) 2013<sup>3</sup>. We believe that it is essential that the parameters of any revised CCMA extend to credit agreement owners and credit servicing firms. In this context, we highlight the several references throughout the CCMA to borrower engagement with MABS (or ‘an appropriate alternative’) and note that if this channel is to continue to be effective for borrowers, MABS must be able to engage productively with the credit agreement owner/credit servicing firm on behalf of borrowers. In this regard we would wish, *inter alia*, to see within a revised Code, greater compulsion towards meaningful engagement by both credit servicing firms and credit agreement owners with MABS.

#### *Technical, legal and drafting aspects of the Bill/ possible areas where the Bill might be improved*

We preface our observations by acknowledging that there are complex economic, technical and regulatory issues at play and we do not profess to have the required expertise to contribute on these or relevant drafting issues. Our comments are therefore limited to general observations on the main elements of the Bill based on casework experience.

12. The Bill appears (sections 2 to 5) to be addressing the main deficits in the existing regime by including the new credit agreement owners in the ambit of relevant regulation and setting out related revisions to the authorisation regime.
13. Under section 5, the Bill explicitly excludes loans where ‘such purchase is made by way of securitisation’. We note that the wording in this section is broad and could potentially impact the structure of future sales or the way in which the loan owners structure themselves going forward with the overall aim of falling outside of the scope of proposed regulation.
14. The sale of a loan from one entity to another can be a distressing period for a consumer. Lack of transparency results in suspicion, frustration and mistrust and therefore section 8, which relates to the provision of information to customers, will assist in alleviating concerns and is welcome. We would add that this information must be provided in ‘plain language’ so that it is readily understood by customers<sup>4</sup>. Additionally, and on this point, certain borrowers have experienced ‘churn’ as their loans have passed from firm to firm (originator, new loan owner, credit servicing firm to second credit servicing firm etc.) and we have an ongoing concern about the quality and reliability of the underlying paperwork as it transitions and would wish to see this issue addressed.
15. We would suggest that section 8 (6) could go one step further in providing greater clarity to customers in relation to the future status of any restructuring arrangement in place at the time of sale. We would have particular concerns about the number of split mortgage in existence and the future status of these arrangements. With regard to 8 (6) (c ), we question how the provision of this information will assist customers in practice.
16. It is imperative that all borrowers who are experiencing difficulty with mortgage arrears should be afforded the protections of the Code of Conduct on Mortgage Arrears. Therefore we welcome section 8 (7) of the Bill, together with proposals to review the CCMA.

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<https://www.rte.ie/news/2018/0227/943951-central-bank-code-of-conduct-mortgages/>

<sup>4</sup> *Applying Behavioural Insights to Encourage Earlier Engagement from Borrowers in Mortgage Arrears*, pp16-17. Available online from <http://housingrights.org.uk/news/behavioural-insights-team-report>, Behavioural Insights Team (2015) is instructive in this regard.

17. We note that section 10 of the Bill proposes to enlarge the Central Bank's powers to direct redress for customers under section 43 of the Central Bank (Supervision and Enforcement Act) 2013. We believe that this is an important inclusion which will ensure that consumer protection is prominent in credit agreement owners' operations in the Irish market. With respect to section 43, we agree with the insertion of the definition of 'relevant default' and the items listed at (f-j) thereunder seem comprehensive in their coverage of the range of potentially relevant issues.
18. We believe broadening access to the Financial Services and Pensions Ombudsman's complaints' mechanism is a positive step which will also enhance consumer protection, improve access and create equity.

***Any other comments.***

We note that section 12 of the Bill relates to the publication of statistics on loans and, while not taking a view on the composition of particular statistical releases, view greater awareness about the activities of credit agreement owners positively. This, in combination with improvements in the provision of information to customers, will improve transparency. Notwithstanding this, the proliferation of new loan owners and credit servicing firms over recent years has made it difficult for organisations like MABS, to acquire essential operational information needed to expedite its casework, including information on who owns a loan, the relevant credit servicing firm etc. and this remains as a deficit. MABS relies on productive one-to-one engagement with major lenders/creditors across all areas of its work in accessing information, achieving standardisation and improved operational practice and facilitating resolution of shared casework issues. We have mentioned already our need for meaningful channels of engagement with the newly emergent industry which is the focus of this Bill and highlight again that this may need to be addressed within the CCMA.