

Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

November 2013

# Consultation on Additional Consumer Protection Requirements for Debt Management Firms

## Consultation Paper CP 75

## Contents

1.	Debt Management Firms – Requirement for Regulation .....	2
2.	Definition of Debt Management Services .....	3
3.	Application of Central Bank’s Consumer Protection Code .....	3
4.	Purpose of Consultation .....	4
5.	Proposed additional Consumer Protection Requirements for Debt Management Firms.....	4
5.1.	Why are additional requirements for the debt management sector needed? .....	4
5.2.	What are the proposed additional requirements and questions for consideration?.....	4
6.	Making Your Submission .....	13
	APPENDIX A .....	14

## Foreword

The impact of the economic downturn and the significant increases in the levels of personal debt in Ireland has resulted in an increase in the demand for debt management services. The latest data from the CSO Quarterly National Household Survey (Q2 2013) recorded that two fifths of those surveyed were concerned about their level of personal debt. Over half of these said that they were currently more concerned than they had been twelve months previously and only 5% indicated that their level of concern had decreased. The continuing rise in the number of new clients contacting the Money Advice and Budgeting Service (MABS) is indicative of the rising levels of people struggling to deal with over-indebtedness in recent times. Coupled with this, the numbers of private firms offering debt management services to indebted consumers has increased.

The proposals set out in this Consultation Paper are intended to provide a cohesive package of consumer protection measures for those consumers who wish to avail of debt management services. The draft proposals reflect the following principles:

- To promote a culture of consumer protection behaviour amongst debt management firms.
- To promote high standards in terms of the quality of debt management services provided to consumers so that consumers receive advice that is in their best interest and in accordance with their individual circumstances.
- To deliver improved transparency for consumers so they have the information necessary to make informed decisions when availing of debt management services.

The proposals under consideration as part of this Consultation Paper have been informed by, and developed through a process of engagement with key stakeholders and research of regimes operating in other jurisdictions.

### **1. Debt Management Firms – Requirement for Regulation**

Part V of the Central Bank Act 1997 (the “Act”) has been amended by Part 10 of the Central Bank (Supervision and Enforcement) Act 2013 (the “S&E Act”) to provide for a regulatory regime in respect of debt management firms. The Central Bank of Ireland (‘Central Bank’) is responsible for the authorisation and supervision of debt management firms under Part V of the Act. In July 2013, the Central Bank published its Consultation Paper on the Authorisation Requirements and Standards for Debt Management Firms (CP70). The Central Bank published the finalised Authorisation Requirements and Standards for Debt Management Firms on 10 October 2013.



## 2. Definition of Debt Management Services

Section 28 of the Act defines a “debt management firm” as meaning-  
*“a person who for remuneration provides debt management services to one or more consumers, other than an excepted person”<sup>1</sup>*

The Act defines “debt management services” as meaning-

- “(a) giving advice about the discharge of debts (in whole or in part), including advice about budgeting in connection with the discharge of debts,*
- (b) negotiating with a person’s creditors for the discharge of the person’s debts (in whole or in part), or*
- (c) any similar activity associated with the discharge of debts.”*

At the outset it is important to point out that the rules under discussion will apply solely in relation to the “debt management services” of firms (as defined above). It should be noted that a firm authorised as a debt management firm will not be authorised to hold client funds (e.g. in circumstances where a firm is making payments on behalf of its client to the client’s creditors) except where it holds another appropriate authorisation such as an authorisation as a payment institution and / or a money transmission business pursuant to the European Communities (Payment Services) Regulations 2009 or Part V of the Act respectively.

## 3. Application of Central Bank’s Consumer Protection Code

Any person authorised by the Central Bank to operate as a debt management firm is required to comply with the Central Bank’s Consumer Protection Code (the “Code”). Provisions of that Code apply where they are relevant to the activity of debt management services. The Code offers strong protections for consumers of debt management firms through the General Principles and other provisions such as the following:

- Conflicts of interest;
- Personal visits and contact with consumers;
- Provision of information;
- Knowing the consumer and suitability;
- Advertising;
- Errors and complaints resolution; and
- Records and compliance

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<sup>1</sup> Excepted persons are defined in section 28 of the Act and include e.g. banks, charities, MABS etc.

The Consumer Protection Code is available for download at <http://www.centralbank.ie/REGULATION/PROCESSES/CONSUMER-PROTECTION-CODE/Pages/codes-of-conduct.aspx> and an electronic copy is also available at <http://www.centralbank.ie/CONSUMER/CPC/Pages/home1.aspx>.

At the time the Code was implemented, debt management services were not regulated by the Central Bank. Our analysis has identified a number of areas where we believe additional sector specific requirements for debt management firms is needed, arising from actual or potential consumer detriment associated with this particular sector. This risk identification exercise was based on research of debt management regimes operating in other jurisdictions and a process of engagement with relevant stakeholders in this jurisdiction.

#### **4. Purpose of Consultation**

The views of all interested parties are now being sought on the proposed additional consumer protection requirements (“the Additional Requirements for Debt Management Firms”) that debt management firms will be obliged to comply with.

### **5. Proposed additional Consumer Protection Requirements for Debt Management Firms**

#### **5.1. Why are additional requirements for the debt management sector needed?**

Imposing additional consumer protection requirements for debt management services reflects the Central Bank’s approach of requiring regulated entities to adopt a consumer focused approach to the provision of financial services. We have identified a number of sector specific areas which pose a risk of actual or potential consumer detriment where we believe further rules are required to provide increased consumer protection to consumers of debt management firms. We propose therefore to impose additional sector specific requirements for debt management firms.

#### **5.2. What are the proposed additional requirements and questions for consideration?**

The proposed additional requirements are outlined in **Appendix A**. Your views are sought on this draft version of the proposed requirements. Respondents who disagree with particular proposed provisions should put forward alternative proposals and set out reasons why they feel those proposals would be more appropriate.

In addition to the proposed additional requirements outlined in Appendix A, we are also seeking views on the following key issues under consideration in order to inform our thinking before deciding on a final approach on the requirements to be imposed on debt management firms:

- (i) Advertising of debt management services;
- (ii) Charging for debt management services and transparency of charges;
- (iii) Financial assessments and quality of advice;
- (iv) Conflicts of interest; and
- (v) Review of debt management arrangements.

### **(i) Advertising of debt management services**

Concerns have been identified in relation to the marketing practices in this sector and in particular the following have been cited:

- a) Misleading advertising, in particular misrepresenting a debt management service as being free when it is not.
- b) Inflated or exaggerated claims - promising to achieve the write off of some or all of a consumers' debt in a fast and easy way or implying that debt management advice is stress free and/or can provide an immediate solution.
- c) Making negative statements/claims about free debt advice services, for example referring to long waiting times for these services.
- d) Search engines which direct consumers to commercial debt management firms, even where the consumer has specifically searched for a free debt advice provider by name.
- e) Misleading advertising used by 'lead generator'<sup>2</sup> firms in order to entice consumers to provide their details which can then be sold on to debt management firms.

We believe that Chapter 9 of the Code, which includes detailed advertising requirements, affords consumers strong protections against the marketing practices cited in a), b) and c) above. Of particular relevance in this context are the following requirements:

- Provision 9.2 which states that a regulated entity must ensure that:
  - a) the design, presentation and content of an advertisement is clear, fair, accurate and not misleading;
  - b) an advertisement does not seek to influence a consumer's attitude to the advertised product or service or the regulated entity either by ambiguity, exaggeration or omission; and

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<sup>2</sup> Businesses that introduce or generate client leads to debt management firms.

- c) the nature and type of the advertised product or service is clear and not disguised in any way.
- Provision 9.3 g), which states that, without limiting the generality of Provision 9.2, a regulated entity must ensure that an advertisement is not misleading in particular in relation to past performance or possible future performance of the advertised product or service.
  - Provision 9.11, which states that a regulated entity must ensure that any assumptions, on which a statement, promise or forecast contained in an advertisement is based, are clearly stated, reasonable and up to date.
  - Provision 9.13, which states that a regulated entity must ensure that any recommendations or commendations quoted are complete, fair, accurate and not misleading at the time of issue, and relevant to the advertised product or service.
  - Provision 9.18, which states that a regulated entity must ensure that an advertisement only describes a product or service as free where the product or service in its entirety is available free of charge to the consumer.

In relation to items d) and e) above, it should be noted that the Central Bank does not have jurisdiction over such internet search engines or ‘lead generator’ firms and cannot impose requirements on these activities. However, we have included **Requirement 2.2 of the draft Additional Requirements for Debt Management Firms** in Appendix A which prevents a debt management firm from paying a fee, commission or other reward or remuneration to a third party in respect of client leads or referrals unless the firm is satisfied that the marketing and advertising materials used by such third party is clear, fair, accurate and not misleading with regard to the nature of the service being offered.

**Question 1:** *Do you agree that the current advertising requirements under the Code adequately protect consumers from the potential for consumer detriment associated with debt management services?*

**Question 2:** *If you believe that additional advertising rules should be introduced for the activity of debt management services, please outline what measures you think should be considered.*

**Question 3:** *Do you agree with the proposed approach relating to client leads as outlined above? If not, please explain why?*

## **(ii) Charging for debt management services and transparency of charges**

Commercial debt management firms charge fees to their clients and pricing structures vary from firm to firm and can be expected to evolve over time. Concerns have been

raised about the lack of transparency in relation to such fees. The position is also complicated by the fact that the debt management firms may also provide additional services of money transfer (which falls under a different legislative heading for the Central Bank), so it can be difficult potentially to discern what portion of their overall charge relates to ‘debt management services’ (as defined) and what relates to money transfer. In addition, some fee structures may act as an impediment to competition because consumers who have paid a large upfront fee may be reluctant to switch firms especially where they may be required to pay further fees to a new firm. Research of the experiences in other jurisdictions<sup>3</sup> supports these concerns.

We believe it is important that consumers have clarity up-front on what services will be provided and how debt management firms will charge them for those services. Moreover, if there is an ongoing charge it should be clear what the consumer is getting in return (including where the firm provides other services such as money transfer). We are therefore proposing the following rules:

- a) **Requirement 1.1 of the draft Additional Requirements for Debt Management Firms** which states that prior to providing debt management services, the consumer must be given details of the services that will be provided, the total cost of the service and when the charges will be payable by the consumer; and
- b) **Requirement 3.1 of the draft Additional Requirements for Debt Management Firms** which includes an obligation on firms to provide a standard information template ‘Using Debt Management Services – what you should know’ which summarises the type and range of potential charges (attached at Appendix 1 to the Additional Requirements for Debt Management Firms).

**Question 4:** *Do you think that these information requirements for improved transparency of charges are sufficient? If not, please outline any further measures you think are necessary in this area.*

The issue of accepting credit as a means of paying for debt advice has been cited as an example of unfair business practice in some other jurisdictions<sup>4</sup>. Issues may arise where the use of such payment method is increasing the indebtedness of the consumer. On the other hand, there may be instances where the consumer may have no other means to pay for such service. We are seeking your views on this issue.

<sup>3</sup> OFT Debt management (and credit repair services) guidance, March 2012, Office of Fair Trading *Debt management guidance compliance review*, September 2010, The Money and Advice Trust consumer research on ‘*Sustaining Debt Repayments: Experiences of people in informal repayment arrangement*’, November 2012, the Ontario Ministry of Consumer Services proposal for public comment on *Improving Consumer Protection Debt Settlement Services*, January 2013, the Fair Trading Act and the Collection and Debt Repayment Practices Regulation in Alberta, Canada, ASIC Report 358 *Review of credit assistance providers’ responsible lending conduct relating to debt consolidation*, July 2013.

<sup>4</sup> UK’s Office of Fair Trading *Debt Management (and credit repair services) guidance*, March 2012.



**Question 5:** *Do you think that there should be a prohibition on the payment by means of credit of fees or charges for debt management services?*

### (iii) Financial assessments and quality of advice

From our stakeholder engagement and review of regimes operating in other jurisdictions, the most prevalent issues cited around the quality of advice include:

- a) Mismatch between advice offered and the consumer’s individual circumstances.
- b) Offering a solution without a full financial assessment.
- c) Recommending a course of action without sufficient explanation of the possible negative consequences of the particular course of action.
- d) Not giving sufficient consideration of the full range of debt solutions available and suitable for the consumer, having regard to their individual circumstances.

A robust and holistic approach to financial assessment is crucial in ensuring that any debt management solution recommended to a consumer is suitable to that consumer’s needs and circumstances. The approach to information gathering under the budgeting/financial assessment process needs to be comprehensive and the financial assessment should consider which options are suitable for the consumer’s personal financial circumstances including their income and expenditure, their debts and the availability of any surplus income or assets.

Moreover, we believe that some level of consistency is necessary in terms of the approach adopted by debt management firms to the financial assessment process. We are therefore proposing under **Requirement 4.1 of the draft Additional Requirements for Debt Management Firms** that the Standard Financial Statement (the “SFS” attached at Appendix 2 to the Additional Requirements for Debt Management Firms) developed and used under the Central Bank’s Code of Conduct on Mortgage Arrears (CCMA) should be used as a standardised tool for financial assessment. The following factors were considered in selecting the SFS as the appropriate standardised tool for financial assessment:

- Clients who are in mortgage arrears will most likely have already completed the SFS and therefore using SFS for the purposes of the debt management financial assessment process will reduce duplication for consumers in terms of information being sought under requirement 4.1 of the draft Additional Requirements for Debt Management Firms.
- In consumer research conducted by the Central Bank as part of the CCMA Review in 2013, there was a largely positive response regarding completion of the SFS.
- The SFS is also used by the Money Advice and Budgeting Service (MABS).

- The information gathered within the SFS is consistent with the Prescribed Financial Statement, which is required to be completed by applicants seeking arrangements under the Personal Insolvency Act.

However, given that the SFS was designed specifically for mortgage arrears, there may be alternative approaches worthy of consideration to take account of the specificities of the activity of debt management (which in some instances may not involve mortgage arrears/mortgage debt). We are seeking your views on this point.

**Other alternative options under consideration** include:

- a) Use of the Insolvency Service of Ireland's Prescribed Financial Statement as a standardised method of financial assessment; or
- b) Development of a bespoke Financial Statement for debt management advice.

**Question 6:** *Do you agree that a standardised method of financial assessment is required for this sector? If not, please explain why?*

**Question 7:** *In respect of the potential options for a standardised method of financial assessment as outlined above, which is your preferred approach and please explain why?*

**Question 8:** *What alternative measures do you think we should consider to achieve a robust and holistic approach to financial assessment?*

Chapter 5 of the Code includes detailed obligations around assessing suitability of a product or service for a consumer. Provisions 5.1 and 5.3 of the Code require firms to gather and record sufficient information from the consumer prior to making a recommendation, including in instances where there is any material change in a consumer's circumstances. Provisions 5.16 and 5.17 of the Code requires firms to ensure that a product or service offered to a consumer is suitable for that consumer having regard to the facts disclosed by the consumer and any other facts about that consumer of which the firm is aware. Provision 5.19 of the Code requires firms to prepare a written statement setting out why the product is suitable, to give a copy of this written statement to the consumer and to retain a copy.

Quality of advice is of paramount importance in relation to the activity of debt management services. Fundamental to the advice process is that consideration should be taken of the suite of debt management options that are available and an assessment of whether these are suitable for the consumer. To clarify our expectations in this area, we are proposing the following additional rules:

- a) **Requirement 4.2 of the draft Additional Requirements for Debt Management Firms**, which imposes an obligation on the firm to consider at least the following options:
- arrangements with creditors to apply reduced payments for an interim period;
  - arrangements with creditors to reschedule debt (for example by reducing interest rates and/or making payments over a longer term);
  - arrangements with creditors to restructure the outstanding debt (for example, debt write down/off);
  - options under insolvency legislation (while noting that the debt management firm may be limited in advising the customer in this regard beyond pointing to the existence of these options).
- b) A statement of suitability is already required by the Code. Along with outlining the reasons why the course of action is the most suitable option for the consumer based on his or her individual circumstances, for debt management firms **Requirement 4.4 a) of the draft Additional Requirements for Debt Management Firms** requires that the statement should also explain the risks and consequences of acting on such advice. The description of the potential or actual risks and consequences should include, where relevant:
- that creditors are not obliged to accept reduced repayments or freeze interest or charges;
  - that creditors' collection activities may continue even though a debt management firm has been engaged;
  - that if they cancel payments to their creditors, they will be in breach of their agreement and their account(s) will go into arrears or further into arrears;
  - that reducing their payments may mean it takes longer to pay off their creditors and they may pay more than if they paid over a shorter term;
  - that if they are a property owner, as part of any arrangement they may be required to re-mortgage their property to pay off some or all of their debts. Their ability to do so may be restricted and a mortgage may only be offered at a higher interest rate; or
  - that undertaking the proposed course of action may affect their credit rating, which may limit their ability to access credit in the future.
- c) **Requirement 4.8 of the draft Additional Requirements for Debt Management Firms** imposes a requirement that, where a debt management firm has negotiated with the consumer's creditors on their behalf, the debt management firm must highlight any variations from the proposed course of action outlined in the original statement of suitability and set out the reasons why the negotiated course of action is considered to be suitable to that consumer.

- d) **Requirement 4.6 of the draft Additional Requirements for Debt Management Firms** imposes an obligation on the firm to clearly explain to the consumer what steps the consumer must take in order to undertake the proposed course of action, including whether the assistance of a third party will be required, the nature of that assistance and the likely cost (where known).

*Other options under consideration* include:

- e) Imposing an obligation on the firm after the statement of suitability is provided to the consumer, for example 5 days, to allow the consumer time to absorb and react to the information provided, during which period the consumer can decide whether or not to proceed with the proposed course of action. If such a timeframe was imposed, we would also consider allowing consumers who feel that they do not require this time to waive their right to such timeframe.

***Question 9:** Do you agree with the proposed requirements outlined at a), b, c) and d) and with the option outlined at e) above? If not, please outline why.*

#### **(iv) Conflicts of interest**

Chapter 3 of the Code imposes the following obligations on regulated entities, with respect to conflicts of interest:

- Provision 3.28, which states a regulated entity must have in place and operate in accordance with a written conflicts of interest policy;
- Provision 3.29, which states that where a conflict cannot reasonably be avoided, the nature and source of such conflict must be disclosed to the consumer; and
- Provision 3.32, which states that a regulated entity must ensure its remuneration arrangements are not structured in such a way to impair the firm's obligations to act in the best interests of consumers.

Concerns were raised during the stakeholder engagement process around the potential for conflicts of interest arising in this sector and specifically in instances where debt management firms receive payments from third parties, for example creditors, and this may adversely influence the advice they provide to consumers. To address these concerns, **Requirement 4.5 c) of the draft Additional Requirements for Debt Management Firms**, imposes an obligation on the debt management firm to set out in the statement of suitability any fees, charges or monetary benefit receivable by the debt management firm from any third party.

**Question 10:** *Do you think these protections are sufficient to address the potential conflicts of interest risks identified above? If not, please outline any further measures you think are necessary for this particular sector.*

### **(v) Review of debt management arrangements**

Evidence in the UK<sup>5</sup> on consumers' experiences of debt management services indicates the benefits of on-going contact between the debt management firm and the consumer. On the other hand, concerns have been raised that ongoing contact with consumers could increase stress levels and is of little benefit to consumers. In addition, concerns were raised that firms may use this as an opportunity to impose additional charges on the consumer.

**Requirement 5.1 of the draft Additional Requirements for Debt Management Firms** allows a debt management firm to undertake a review of the debt management arrangement put in place for a consumer if requested to do so by the consumer. In such circumstances, the requirements in 1.1 and 2.1 of the Additional Requirements for Debt Management Firms would apply, where relevant.

**Question 11:** *Do you agree with the proposed approach relating to reviews of debt management arrangements as outlined above? If not, please explain why?*

**Question 12:** *Do you think that:*

- i) Such review should be allowed only at a consumer's request; or*
- ii) Such review should be allowed only when there is a change in a consumer's circumstances; or*
- iii) No limitations should be imposed on debt management firms in relation to undertaking reviews of debt management arrangements; or*
- iv) Should there be an obligation for periodic reviews without specifying the frequency of these?*

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<sup>5</sup> The Money and Advice Trust *Sustaining Debt Repayments: Experiences of people in informal repayment arrangements*, November 2012.



## 6. Making Your Submission

The closing date for submissions is 18 February 2014. Any submissions received after this date will not be considered.

When addressing or commenting on any particular issue set out in Appendix A: Additional Requirements for Debt Management Firms, or on the various questions posed in Section 5.2 above, please use the headings and provision numbering used to identify the section you are referring to. If you are raising an issue that is not referred to either in the Appendix or section 5.2, please indicate this in your submission.

The Central Bank intends to make submissions available on our website after the deadline for receiving submissions has passed. Because of this, please do not include commercially sensitive material in your submission, unless you consider it essential. If you do include such material, please highlight it clearly so that we may take reasonable steps to avoid publishing that material. This may include publishing submissions with the sensitive material deleted and indicating the deletions.

Despite the approach outlined above, the Central Bank makes no guarantee not to publish any information that you deem confidential. Therefore, please be aware that, unless you identify any commercially sensitive information, you are making the submission on the basis that you consent to it being published in full.

Please clearly mark your submission “Response to Consultation on Consumer Protection Requirements for Debt Management Firms”. Please make your submissions electronically by email to [code@centralbank.ie](mailto:code@centralbank.ie) or, in writing to:

Consumer Protection – Policy Section  
Central Bank of Ireland  
PO Box 559  
Dame Street  
Dublin 2

**APPENDIX A**

**November 2013**

**Additional Requirements for Debt Management Firms**

## 1. GENERAL

- 1.1. A **debt management firm** must not provide **debt management services** to a **consumer** unless the **consumer** has signed an agreement which clearly specifies:
- the **charges** payable;
  - when the **charges** will be payable and how they can be paid;
  - the services that will be provided for those **charges**; and
  - the likely duration of the agreement.

## 2. RESTRICTIONS

- 2.1. A **debt management firm** must not accept payment for any **charges** for the provision of **debt management services** until it has received the agreement under requirement 1.1 signed by the **consumer**.
- 2.2. A **debt management firm** must not pay a fee, commission, other reward or remuneration to any **person** in respect of client leads or referrals unless the **debt management firm** is satisfied that information used by that **person** in any marketing and advertising material about the nature of the service being offered is clear, fair, accurate and not misleading. A **debt management firm** must retain documentation evidencing that such an assessment was carried out.
- 2.3. A **debt management firm** must not prevent or seek to obstruct a **consumer** from communicating directly with its creditors.
- 2.4. A **debt management firm** must not provide a completed **standard financial statement** to a **consumer's** creditor(s) unless the **debt management firm** has received the **consumer's** prior written consent to do so.

## 3. PROVISION OF INFORMATION

### INFORMATION ABOUT DEBT MANAGEMENT SERVICES

- 3.1. Prior to entering into an agreement with a **consumer**, a **debt management firm** must provide the **consumer** with a standard information template on 'Using **Debt Management Services** – what you should know' in the form set out in Appendix 1.

#### 4. KNOWING THE CONSUMER AND SUITABILITY

##### KNOWING THE CONSUMER

- 4.1. In the case of **debt management services**, a **debt management firm** must use a **standard financial statement** to obtain the financial information required under Provision 5.1 [of the Code].

##### SUITABILITY

- 4.2. When providing **debt management services** to a **consumer**, in addition to the requirements outlined in Provision 5.16 [of the Code], a **debt management firm** must at least consider and document, whether the following options are suitable to the **consumer's** needs and objectives:
- a) arrangements with creditors to apply reduced payments for an interim period (for example to address a short-term shortfall);
  - b) arrangements with creditors to reschedule debt (for example by reducing interest rates and/or making payments over a longer term);
  - c) arrangements with creditors to restructure the outstanding debt; or
  - d) insolvency options.
- 4.3. A **debt management firm** must not advise a **consumer** to carry out a transaction, or series of transactions, with a frequency or in amounts that, when taken together, are deemed to be detrimental to the **consumer's** best interests.

##### *Statement of suitability*

- 4.4. Once a **debt management firm** has identified a proposed course of action for a **consumer**, the **debt management firm** must prepare a written statement of suitability setting out the reasons why the **debt management services** provided to the **consumer** are considered to be suitable to that **consumer**.
- a) The reasons set out in the statement must be based on the information gathered under Provision 5.1 [of the Code] and requirement 4.1 and include an explanation of the options available to the **consumer**, how these options work and a description of the risks and consequences for the **consumer** of accepting such **debt management services**. This should include a description of the actual or potential consequences of the proposed course of action and include the following, where relevant:
    - i) that creditors are not obliged to accept reduced repayments or freeze interest or **charges**;

- ii) that creditors' collection activities may continue even though a **debt management firm** has been engaged;
  - iii) that if the **consumer** cancels payments to their creditors, they will be in breach of their agreement and their account(s) will go into **arrears** or further into **arrears**;
  - iv) that reducing their payments may mean it takes longer to pay off their creditors and they may pay more than if they paid over a shorter term;
  - v) that if the **consumer** is a property owner, as part of any arrangement, they may be required to re-mortgage their property to pay off some or all of their debts. Their ability to do so may be restricted and a mortgage may only be offered at a higher interest rate; or
  - vi) that undertaking the proposed course of action may affect their credit rating, which may limit their ability to access credit in the future.
- b) The **debt management firm** must sign the statement and provide a copy of this statement on paper or on another **durable medium**, dated on the day on which it is completed, to the **consumer** and must retain a copy for six years from the date on which the **debt management firm** ceased to provide any service to the **consumer** concerned.

4.5. Where relevant, the statement required under requirement 4.4 must set out:

- a) any cost savings to the **consumer**;
- b) any additional fees or **charges**, including those charged by the **debt management firm**; and
- c) any fee, commission or monetary benefit receivable by the **debt management firm** from a third party.

4.6. A **debt management firm** must clearly explain to the **consumer** what steps the **consumer** must take in order to undertake the recommended course of action, including whether the assistance of a third party will be required, the nature of that assistance and the likely cost (where known).

4.7. In relation to the proposed course of action outlined in requirement 4.4, a **debt management firm** must clearly explain to the **consumer** in the statement of suitability:

- a) the circumstances in which the **consumer** can withdraw from the new arrangements;
- b) the steps required to withdraw from the new arrangements;
- c) the circumstances under which any cancellation **charges** may become payable by a **consumer**; and
- d) the amount of any cancellation **charges**.



- 4.8. A **debt management firm** must provide a notification within three **business days** to a **consumer**, on paper or another **durable medium**, of the outcome of any negotiations with creditors. This information must highlight any variations from the proposed course of action outlined in requirement 4.4 and set out the reasons why the negotiated course of action is considered to be suitable to that **consumer**.
- 4.9. A **debt management firm** must provide a notification within three **business days** to a **consumer**, on paper or another **durable medium**, where a creditor of the **consumer** has declined to engage with the **debt management firm**. This notification must include:
- a) a copy of any correspondence to and from the creditor concerned; and
  - b) confirmation that the **debt management firm** has confirmed to the creditor that it has the **consumer's** written consent to act on his or her behalf in relation to his or her debts.

## 5. POST-SALE INFORMATION REQUIREMENTS

### INFORMATION ABOUT SERVICES

- 5.1. Where a **debt management firm** provides **debt management services** to a **consumer** over a period longer than 6 months, the **debt management firm** must provide to the **consumer** a statement on paper or another **durable medium**, at least every six months, which must include, where relevant:
- a) details of the activities completed by the **debt management firm** over the 6 month period to which the statement relates;
  - b) fees charged over the 6 month period to which the statement relates; and
  - c) the status of the **consumer's** debt position as at the end of the 6 month period to which the statement relates.

## APPENDIX 1

### INFORMATION TO BE PROVIDED TO CONSUMER [PURSUANT TO REQUIREMENT 3.1]

#### PART A

The following information, which is to be communicated to a **consumer** before entering into a contract for the provision of **debt management services**, must be provided in a clear and accurate manner and on paper or on another **durable medium**.

The title 'USING **DEBT MANAGEMENT SERVICES** – WHAT YOU SHOULD KNOW' must appear prominently at the top of the first page of the document.

An explanatory statement must appear directly underneath the title. It must read:

'This document provides you with key information about **debt management services**. It is not marketing material. The information is required by law to help you understand the nature of this service and the risks of using the service. You are advised to read it so that you can take an informed decision about whether debt management services are suitable for your personal circumstances.'

The information must be provided to a **consumer** using the prominent titles indicated in this paragraph. Instructions on the information to be included under each section are provided in Part B.

- (1) There are sources of free debt advice and services
- (2) You will know the total cost to you of any fees and charges associated with the service
- (3) Your advisor will go through a full financial assessment process with you which will cover all the options for dealing with your debt
- (4) You will receive a statement of suitability
- (5) You should be aware that there may be potential risks and/or disadvantages associated with the service
- (6) If you want to stop using the services of the debt management firm at any stage you may do so
- (7) If you are not happy with the service you receive, you have the right to complain

## PART B

### Instructions to develop the information template

In developing the information template, the following instructions must be followed:

#### *Section '(1) There are sources of free debt advice and services'*

- (a) Information must be included on the availability of free assistance from the Money Advice and Budgeting Service (MABS).
- (b) Contact details must be provided for the MABS National Helpline and links to the relevant website(s) operated by MABS services.

#### *Section '(2) You will know the total cost to you of any fees and charges associated with the service'*

- (a) In compliance with Provision 4.56 [of the Code], this section must explain the fees and **charges** that could apply.

#### *Section '(3) Your advisor will go through a full financial assessment process with you which will include all the options for dealing with your debt'*

- (a) A description that the advisor will use a **standard financial statement** to obtain financial information from **consumers**.
- (b) A warning to **consumers** to ensure all information about their personal and financial circumstances which they supply as part of the financial assessment is accurate.
- (c) Notice that the **debt management firm** will consider the full range of debt management options available to the **consumer**.

#### *Section '(4) You will receive a statement of suitability'*

- (a) Notice that the statement of suitability will identify why the proposed course of action is identified as suitable.
- (b) A description that the actual or potential risks and consequences of the proposed course of action will be explained in the statement of suitability.
- (c) An explanation that where a **debt management firm** has negotiated with the **consumer's** creditors on their behalf, the **debt management firm** will highlight any variations from the proposed course of action outlined in the original statement of suitability and will set out the reasons why the negotiated course of action is considered to be suitable to the **consumer**.

***Section '(5) You should be aware that there may be potential risks and/or disadvantages associated with the service'***

(a) This section must include the following statements:

- Creditors are not obliged to accept reduced payments or freeze interest or charges;
- Creditor's collection activities may continue even though a ***debt management firm*** has been engaged;
- If you cancel payments to your creditors, you will be in breach of your credit agreement and your account(s) will go into ***arrears*** or further into ***arrears***;
- Reducing your payments may mean it takes longer to pay off your creditors and you may pay more than if you paid over a shorter term;
- If you are a property owner, as part of any arrangement, you may be required to re-mortgage your property to pay off some or all of your debts. Your ability to do so may be restricted and a mortgage may only be offered at a higher interest rate; and
- Undertaking the proposed course of action may affect your credit rating, which may limit their ability to access credit in the future.

***Section '(6) If you want to stop using the services of the debt management firm at any stage you may do so.'***

- (a) This section must explain that the ***consumer*** can notify the ***debt management firm*** that they no longer wish to use its services.
- (b) A description of how any outstanding ***charges*** for services provided will be dealt with if the ***consumer*** ceases using the service.

***Section '(7) If you are not happy with the service you receive, you have the right to complain'***

- (a) This section must specify that ***consumers*** have the right to complain to the ***debt management firm*** and this will be handled in accordance with the firm's complaints process.
- (b) An indication that the ***consumer*** can take a complaint to the Financial Services Ombudsman and the contact details must be provided.

## APPENDIX 2

### STANDARD FINANCIAL STATEMENT

Section A: Account & Borrower Details				
		<b>Borrower Information:</b>		
		<b>Borrower 1</b>	<b>Borrower 2</b>	
<b>A1</b>	Name			
<b>A2</b>	Mortgage Account Reference No (s)			
<b>A3</b>	Outstanding Mortgage Balance (€)			
<b>A4</b>	Estimated Current Value of Primary Residence (€)			
<b>A5</b>	Monthly Mortgage Repayments Due (€)			
<b>A6</b>	Correspondence Address			
<b>A7</b>	Property Address if different to correspondence Address			
		<i>Please indicate preferred contact method</i>		
<b>A8</b>	Home Telephone			
<b>A9</b>	Mobile			
<b>A10</b>	Work Telephone			
<b>A11</b>	E-mail			
<b>A12</b>	Marital Status			
<b>A13</b>	Date of birth	DD/MM/YYYY	DD/MM/YYYY	
<b>A14</b>	No. and age of dependent children	Child1 Child 2 Child 3 Child 4		
<b>A15</b>	Total number in household			
<b>A16</b>	Employed Y/N; if self-employed give details			
<b>A17</b>	Occupation (if unemployed give previous occupation)			
<b>A18</b>	In Permanent employment Y/N			
<b>A19</b>	Name of Employer & Length of Service			
<b>A20</b>	Reason(s) for Review/Arrears			



Section B: Your Monthly Income		Borrower 1	Borrower 2	TOTAL	
<b>B1</b>	Gross Monthly Salary (before tax and any other deductions at source)				
<b>B2</b>	Net Monthly Salary (after tax and any other deductions at source) <sup>6</sup>				
<b>B3</b>	Monthly Social Welfare Benefits <i>Please list</i>				
<b>B3 (a)</b>	Benefit-				
<b>B3 (b)</b>	Benefit-				
<b>B3 (c)</b>	Benefit-				
<b>B4</b>	Child Benefit				
<b>B5</b>	Mortgage Interest Supplement				
<b>B6</b>	Family Income Support				
<b>B7</b>	Maintenance				
<b>B8</b>	Other, e.g. Pension, room rent, grants (Please Specify)				
<b>B9</b>	Monthly Income from Property assets (other than primary residence) (see E5)				
<b>B10</b>	Monthly income from non-property assets (see F8)				
<b>B11</b>	<b>Total Monthly Income (sum of B2 to B10)</b>				<b>G1</b>

<sup>6</sup> Do not include any deductions made from your salary at source (e.g., pension contribution, health insurance etc.) anywhere else on this form.

**Section C: Monthly Household Expenditure**

	Average Charge <sup>7</sup>	Arrears (where applicable)
<b>Utilities</b>		
<b>C1</b> Electricity		
<b>C2</b> Gas /Oil		
<b>C3</b> Phone (Landline & Internet) <sup>8</sup>		
<b>C4</b> TV/Cable <sup>3</sup>		
<b>C5</b> Mobile Phone		
<b>C6</b> Refuse Charges		
<b>C7</b> TV Licence		
<b>Household</b>		
<b>C8</b> Childcare		
<b>C9</b> Elderly care (e.g., carer, nursing home fees etc)		
<b>C10</b> Food/Housekeeping/Personal Care		
<b>C11</b> Clothing and Footwear		
<b>C12</b> Household Repairs/Maintenance		
<b>Transport Costs</b>		
<b>C13</b> Petrol		
<b>C14</b> Motor Insurance /Tax/NCT		
<b>C15</b> Rail/Bus/Taxi Costs (including school transport costs for children)		
<b>C16</b> Car Maintenance/Repairs		
<b>C17</b> Car Parking and Tolls		
<b>Primary Residence Mortgage-related Costs</b>		
<b>C18</b> Mortgage Protection/Endowment Premium		
<b>C19</b> Payment Protection		
<b>C20</b> House Insurance		
<b>Education</b>		
<b>C21</b> Books		
<b>C22</b> School/ College Fees		
<b>C23</b> Uniforms		
<b>C24</b> Extra Curricular activities (e.g. school outings)		
<b>C25</b> Other (e.g. voluntary contributions)		
<b>Medical</b>		
<b>C26</b> Medical Expenses and Prescription Charges <sup>9</sup>		
<b>C27</b> Health Insurance <sup>10</sup>		
<b>Social</b>		
<b>C28</b> Lifestyle Expenses (e.g., family events, Christmas, Birthdays, eating out etc.)		
<b>C29</b> Club membership		

<sup>7</sup> Average charge calculated by totalling last three utility bills and dividing by the number of months to get the average monthly cost.

<sup>8</sup> Please identify if these bills are bundled.

<sup>9</sup> Medical expenses include dentist, optician and any other costs related to health.

<sup>10</sup> Do not include if Health Insurance is deducted from your wages at source,( i.e., if it has already been deducted from B2)

**Consultation of Additional Consumer Protection Requirements for Debt Management Firms**

<b>C30</b>	<i>Other - please specify</i>		
		<b>Average Charge</b>	<b>Arrears (where applicable)</b>
	<b>Other</b>		
<b>C31</b>	Life Assurance		
<b>C32</b>	Pension Contribution <sup>11</sup>		
<b>C33</b>	Maintenance paid to spouse/child (if applicable)		
<b>C34</b>	Rent		
<b>C35 (a)</b>	Property Service/Management Charges		
<b>C35 (b)</b>	<i>Other - please specify</i>		
<b>C35 (c)</b>	<i>Other - please specify</i>		
<b>C36</b>	Monthly expenditure on property assets (see E5)		
<b>C37</b>	Monthly Savings		
<b>C38</b>	<b>Total Monthly Expenditure (sum of C1 to C37)</b>		<b>G2</b>

Please provide details of any steps you have already taken to reduce your monthly expenditure and the savings you have achieved:

Please provide details of any steps you propose to take to reduce your monthly expenditure and the savings you expect to achieve:

<sup>11</sup> Do not include if Pension Contribution is deducted from your wages at source,( i.e., if it has already been deducted from B2)

**Section D: Your Current Monthly Debt Payments**

	Debt Type	Monthly Repayments		Remaining Term	Total Outstanding Balance €	Arrears Balance €	Lender	Purpose of Loan	Secured? Y/N	Currently Restructured? Y/N	Payment Protection Insurance Y/N
		Due €	Being Paid €								
<b>D1</b>	<b>Mortgage for Primary Residence</b>		G4								
<b>D2</b>	Court Mandated Debt (Please Specify) <sup>12</sup>										
<b>D3</b>	Court Mandated Debt										
<b>D4</b>	Credit Union										
<b>D5</b>	Credit Union										
<b>D6</b>	Overdraft										
<b>D7</b>	Hire Purchase										
<b>D8</b>	Store Card										
<b>D9</b>	Catalogue Debt										
<b>D10</b>	Credit Card 1										
<b>D11</b>	Credit Card 2										
<b>D12</b>	Credit Card 3										
<b>D13</b>	Personal Loan 1 (please specify)										
<b>D14</b>	Personal Loan 2 (Please specify)										
<b>D15</b>	Personal Loan 3 (please specify)										
<b>D16</b>	Loans from family/ friends										

<sup>12</sup> e.g., fines, instalment orders, judgements

ID	Debt Type	Monthly Repayments		Remaining Term	Total Outstanding Balance €	Arrear s Balance €	Lender	Purpose of Loan	Secured? Y/N	Currently Restructured? Y/N	Payment protection Insurance Y/N
		Due €	Being Paid €								
D17	Mortgage Debt on property other than primary residence (see E5)										
D18	Other Debt (please specify)										
D19	Other Debt										
D20											
D21											
D22	<b>Total (sum of D2 to D21)</b>		G5								



Section E: Property Assets (other than Primary Residence)														
	Property (give details below)	Property Type (e.g. Buy to let)	Ownership Type <sup>13</sup>	Current Value (est) <sup>14</sup> €	Loan Balance €	Arrears Balance €	Monthly Rental Income €	Monthly Expenditure (e.g., upkeep, maintenance)		Re-structured Y/N	Monthly Mortgage Payments		Lender	For Sale Y/N
											Due €	Being Paid €		
E1	1													
E2	2													
E3	3													
E4	4													
E5	<b>Total</b>							B9		C36			D17	

Property Assets (other than Primary Residence)		
Property	Address	Date of Purchase
1		
2		
3		
4		

- MONTHLY INCOME AND EXPENDITURES RELATED TO PROPERTY ASSETS SHOULD ALSO BE INCLUDED IN SECTIONS B AND C RESPECTIVELY
- MONTHLY MORTGAGE REPAYMENTS RELATING TO PROPERTY ASSETS SHOULD BE INCLUDED IN SECTION D

<sup>13</sup> For example, sole or joint ownership. Where a property/premises is not 100% owned by customer(s), please state the % amount that is owned

<sup>14</sup> Please provide a reasonable estimate of the current value of these assets.

Section F: Non-Property Assets					
	Asset Type	Original Cost/ Value(€)	Current Estimated Value €	Net Monthly Income	Please Give Any Relevant Details
<b>F1</b>	Savings/deposits/current account				
<b>F2</b>	Shares				
<b>F3</b>	Motor Vehicle (s)				
<b>F4</b>	Redundancy Payment(s)				
<b>F5</b>	Long-term investment (s)				
<b>F6</b>	Other investment(s)				
<b>F7</b>	Other Assets (e.g., stock, machinery etc)				
<b>F8</b>	<b>Total (sum of F1 to F7)</b>				<b>B 10</b>

Please list all other liabilities, for example any guarantees given with respect to company borrowing or borrowing by a family member.

Please provide any other information which you believe to be relevant to above:

## Protecting Your Information

“Your **Debt Management Firm** will keep your information confidential and will only use this information for the purpose of providing debt management services to you and in accordance with your **Debt Management Firm’s** obligations under the Data Protection Acts 1988 and 2003. For more information on your rights under the Data Protection Acts, see the Data Protection Commissioner’s website at [www.dataprotection.ie](http://www.dataprotection.ie)”

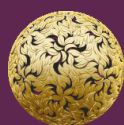
**I consent to [name of lender] conducting a credit reference check.**

**Signed:** \_\_\_\_\_ **Date:** \_\_\_\_\_

[**Note:** Declarations confirming the accuracy of the information provided and consent to a credit reference check must be completed for every SFS. Any other declarations requiring the consumer’s signature (for example to give permission for the **debt management firm** to contact other parties regarding the consumers financial situation) must be optional (i.e. a **debt management firm** cannot deem the SFS to be incomplete if such declarations are not signed by the consumer).]

Section G: Financial Statement Summary (for office use only)		
<b>G1</b>	<b>Total Monthly Income (B11)</b>	
<b>G2</b>	<b>Less Total Monthly Expenditure (C38)</b>	<b>( )</b>
<b>G3</b>	<b>Sub-Total (G1 minus G2)</b>	
<b>G4</b>	<b>Less Mortgage Repayments Due (D1)</b>	<b>( )</b>
<b>G5</b>	<b>Less Other Monthly Debt Due (D22)</b>	<b>( )</b>
<b>G6</b>	<b>Total Surplus/Deficit (subtract G4 and G5 from G3)</b>	

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