



Banc Ceannais na hÉireann
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Eurosystem

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Second Consultation on Additional Consumer Protection Requirements for Debt Management Firms

Consultation Paper CP 82

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Background

The Central Bank (Supervision and Enforcement) Act 2013 (the S&E Act), which was enacted on 1 August 2013, provides for a regulatory regime in respect of debt management firms. The finalised Authorisation Requirements and Standards for Debt Management Firms were published on 10 October 2013. Firms that were providing debt management services prior to 1 August 2013 were required to submit an application for authorisation to the Central Bank of Ireland (the “Central Bank”) by 31 October 2013 in order to continue to provide these services, pending a decision being made by the Central Bank on their application. These firms “stand authorised” during this period, and are obliged to comply with relevant provisions of the Central Bank’s Consumer Protection Code (the “Code”)¹.

On 26 November 2013, the Central Bank published Consultation Paper 75 (CP75), setting out proposed new requirements in order to strengthen the protections for consumers of debt management services. The consultation period closed on 18 February 2014 and a total of eight responses were received. We are grateful to all parties who responded to the consultation and we thank them for their time and effort.

1. Analysis to date

Eight submissions were received in response to CP75, all of which are available on our website at [Central Bank of Ireland - Closed Consultation Papers](#). The submissions reflected a cross section of interests, from consumer representative bodies, charities, industry bodies and a government department.

¹ The Code applies to these firms by virtue of them falling within the definition of a ‘regulated entity’ to which that Code applies automatically upon their authorisation.

We have undertaken a robust analysis of the comments received during the consultation process and have also carried out further analysis of the issues under consideration. We believe that the approach we are now taking achieves our objectives:

- 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; and
- to deliver improved transparency for consumers so they have the information necessary to make informed decisions when availing of debt management services.

Additional consumer protection requirements for debt management firms

Once implemented, the Additional Consumer Protection Requirements for Debt Management Firms (the “Additional Requirements”) will provide for new and expanded protections for consumers who seek debt management services from debt management firms. These requirements will be added as an additional chapter to the Code and debt management firms will be obliged to comply with them in addition to the other applicable requirements of the Code. The Additional Requirements provide for:

- enhanced requirements on information provided to consumers to ensure transparency in relation to the services being provided and the charges for those services;
- a standard approach to assessing a consumer’s financial circumstances;

- obligations on debt management firms to ensure that the advice they offer on solutions is suitable and affordable for the consumer; and
- timely negotiation with creditors to assist consumers who are encountering financial difficulties.

2. Responding to Consultation Paper CP82

We are firmly of the view that, in the interests of consumers, the proposed Additional Requirements need to be put in place as early as possible. Consequently, a move to swift implementation is a key priority for us. However, before the final publication, we have decided to seek further views on certain aspects of what we are proposing. Therefore, to achieve our objective of prompt introduction of the Additional Requirements in the second half of 2014, this second consultation is specific in its purpose, responses required and timeframe for responding.

3. Purpose of Consultation

3.1 Purpose

The purpose of this second consultation is three-fold:

- i) to outline the position we have reached on some of the issues and questions posed in CP75;
- ii) to highlight a number of new or amended provisions which have come to our attention as part of our analysis of the submissions received in response to CP75 and also as a result our ongoing regulatory work; and
- iii) to give a final opportunity to our stakeholders to review a full version of the proposed new Additional Requirements.

3.2 Responses Sought

While we are providing an opportunity for all interested parties to review the latest version of the revised Code, we are only seeking comments on certain proposals. In this regard:

- Section 1 below outlines the analysis undertaken and the decisions reached on some of the specific areas where we requested responses as part of CP75. This section is for information only and we are not seeking further responses on these issues.
- Section 2 below outlines the areas where we are seeking comment from interested parties. This section outlines new proposals not included in the first consultation which have come to light as a result of our analysis of submissions received or through ongoing regulatory work, and also outlines significant amendments to provisions that were contained in the first consultation.

Section 1: Our position on issues/questions raised in CP75

1.1 Scope of debt management services

The Central Bank Supervision and Enforcement Act 2013 (the “Act”) provides for the authorisation of debt management firms. 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 person²” .

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.”

The services covered by the legislation, therefore, mainly comprise **debt advice and negotiation** and do not include the holding of client funds or making of payments on behalf of a consumer. Firms who make such payments require a separate authorisation under the European Communities (Payment Services) Regulations 2009 (the “Payment Services Regulations”) and the holding of client funds and making payments on behalf of a consumer are governed by those Regulations.

The Payment Services Regulations were the means of transposing the Payment Services Directive (2007/64/EC) (the “Payment Services Directive”) into Irish law. As

² Excepted persons are defined in section 28 of the Act and include e.g. banks, charities, MABS etc.

the Payment Services Directive is a maximum harmonisation directive, national law may not exceed the terms of the Directive (gold-plating). Therefore, it is not possible for us to impose requirements for activities which are already governed by the Payment Services Regulations.

Consequently, responses that we received to CP75 which included suggestions in relation to activities governed by the Payment Services Regulations cannot be taken on board by the Central Bank in drafting the additional Code requirements as they do not relate to “debt management services”, as defined.

Such comments related to:

- transparency of Fees;
- reviews; and
- the applicability of Professional Indemnity Insurance to client funds.

1.2 Advertising of debt management services

CP75 requested views on whether the existing advertising requirements in the Code were adequate to protect consumers or whether additional requirements were necessary for debt management services.

Several submissions indicated that the existing Code requirements for advertising were adequate, while other respondents suggested additional requirements that could be included. For example, it was suggested that consideration should be given to strengthening provision 9.9 of the Code which does not require that warning statements are included if an advertisement does not refer to the benefits of a product or service. New provisions that were suggested for the advertising chapter included that a warning must be included in advertisements that the consumer may still have debt outstanding after completing the debt management

process. In relation to fees, it was suggested that advertisements and promotions (including web promotions) should prominently state that free advice services are available and that advertisements should include details of fees and charges in a standard format. It was suggested that a prohibition should be imposed on debt management firms from advertising comparisons between fee charging services and free services and on advertising potential savings which may result from availing of debt management services.

We do not propose to include any additional advertising requirements. The existing advertising requirements contained in the Code protect consumers from unclear, unfair, inaccurate and misleading information. However, it has been decided to include a warning in the agreement which is provided by debt management firms to consumers at the outset of the relationship (Provision 13.2) cautioning the consumer that he or she may still have debt outstanding after completing the debt management process.

1.3 Transparency of fees for debt management services

Two provisions were proposed in CP75 to provide for transparency in the area of fees. One required that, prior to providing debt management services, the consumer must be given details of the services that will be provided, the total cost of those services and when the charges will be payable by the consumer. The second required that the consumer must be provided with a standard information template summarising the type and range of potential charges.

Responses suggested that greater clarity is necessary on the potential fees and charges that may arise at different stages during the debt management service; and that possible repercussions (including potential costs) of withdrawing from the agreement with the debt management firm are brought to the consumer's attention at the outset of the relationship. It was suggested that a consumer should

receive regular statements outlining the amount of fees that have been charged to them. Concerns were expressed that the obligation on customers to pay fees and charges to the debt management firm could have the effect that the consumer pays all, or substantially all, of those fees in priority to making repayments to lenders or undermines the consumer's ability to make significant repayments of a consistent amount to the consumer's creditors throughout the duration of the debt management plan, starting with the first month of the plan. It was also contended by some respondents that it would not be possible to know the total fees or the likely duration of the agreement in advance as this would be dependent on the amount of work involved.

A number of respondents to this question put forward proposals in relation to how fees would be levied (e.g. a percentage of the final write down of debt; fees per hour, etc.).

With regard to fees, we believe that the focus needs to be on ensuring that the consumer is made aware, at the outset of the relationship with the debt management firm, of the fees that he or she is likely to incur. The firm must therefore be in a position to provide this information. Even if the exact amount is not known at the outset, the firm must give an indication of the type of fees that will be charged, the precise service that will be provided for those fees and an indication of the likely charge. This information gives the consumer the option to decide to proceed with the agreement or withdraw at this point. As regards the duration of the agreement, and therefore the charges that may apply, the debt management firm should be in a position to provide a reasonable indication of this, together with the relevant charges. The Central Bank does not include specific requirements in relation to how fees and charges are calculated.

Please see the revised provisions 13.1, 13.2, 13.15, 13.17, 13.18 and 13.24 for details of the requirements regarding fees.

1.4 Financial Assessment

CP75 requested views on measures that should be considered to achieve a robust and holistic approach to assessment of a consumer's financial circumstances.

Three respondents recommended that the Insolvency Service of Ireland (ISI) guidelines in respect of reasonable living expenses and sample arrangements would be useful. A further respondent suggested that the ISI reasonable living expenses +10% should be considered as a minimum standard of living. One respondent stated that focus should be on the process which would result in protecting an acceptable standard of living for consumers - this would include maximising income (including social welfare and tax relief), minimising non-essential expenditure and using whatever remains for debt payments. This respondent also stated that prioritising of debt is essential with pro-rata payments for non-essential debt, with such prioritisation based on the likely consequences of non-payment so that an acceptable minimum standard of living and the ability to provide basic necessities for the consumer and their family is protected. One respondent contended that while a standard approach is necessary, it should also be flexible enough to take account of individual circumstances. One respondent suggested that a firm should be required to look at priority debts and the importance of paying such debts first and foremost, and this respondent also suggested that language used in a financial assessment should not be too technical for the consumer to understand.

Given the importance attached to the quality of advice to be provided by debt management firms, we have set out, in provision 13.12, the additional 'suitability' requirements which a debt management firm must satisfy when providing debt management services, while provision 13.14 requires that a debt management firm

must prepare a written statement of advice setting out the reasons why the course of action proposed to the consumer is considered to be suitable and affordable for that consumer. We have not included a requirement regarding reasonable living expenses as we believe it is in the consumer's best interest that the obligation imposed on a debt management firm is to achieve an outcome/solution for the consumer that is suitable and affordable for them. Such an approach does not preclude a debt management firm from using the ISI's reasonable living expenses or any other tool to achieve the overall outcome/solution.

1.5 Review of debt anagement arrangements

CP75 included a provision which would allow 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. We asked whether this was appropriate and whether such reviews should be allowed only (i) at a consumer's request; or (ii) only when there was a change in a consumer's circumstances; or (iii) whether limitations should be imposed in relation to undertaking reviews of debt management arrangements; or (iv) whether there should be an obligation for periodic reviews to be carried out.

Six of the eight respondents agreed with the principle of reviews, two of whom suggested that reviews should be carried out and one who stated there should be a specific requirement that any reviews are for the consumer's benefit. However, another respondent suggested that reviews should not be automatically provided. Noting issues such as the additional stress and duress for the consumer, there was general agreement that where reviews do take place, these should be at the consumers' instigation. It was also suggested that where a review takes place, the debt management firm should provide the consumer with a written explanation of why it is taking place. Alternatively, it was suggested that reviews should only occur if there are material changes in the consumer's circumstances. Other

suggestions were that this item could be agreed between the parties at the outset of an arrangement; that reviews should take place on an annual basis; that the firms should be required, rather than permitted, to conduct reviews at the consumers' request and that there should be a prohibition on additional fees for reviews. It was further suggested that the "information to be provided to the consumer" document could highlight that the "statement of suitability is based on assessment of your current financial situation and should be re-examined if your circumstances change".

We have considered the responses received in this area and concluded that debt advice and negotiation services should result in recommendations to the consumer on how he or she should proceed. Where revised payment structures are agreed with creditors, it is the consumer's responsibility to ensure these payments are made. If other options are suggested, such as social welfare entitlements or tax relief that the consumer can claim, the consumer is responsible for pursuing these options. Therefore, unless a consumer's financial situation changes or they are unable to comply with the revised arrangements that have been put in place, compulsory reviews should not be necessary. However, if the consumer feels that he or she needs further advice at a later date, he or she can access debt management services again, either from the same firm, a different firm, a free service or a Personal Insolvency Practitioner. Therefore, to afford consumers greater control and choice, we have not imposed a requirement for reviews to be undertaken.

1.6 Standard Financial Statement

We sought views in this area in CP75 on the approach that should be required when debt management firms are assessing the financial circumstances of their consumers. We asked if a standardised method of financial assessment is required for this sector, and, if so, what the preferred option would be.

All respondents agreed with the suggestion that a standardised method is required. However, we received differing views regarding the version to be used as the standard. Five respondents were in favour of using the Standard Financial Statement (SFS) which is contained in the Code of Conduct on Mortgage Arrears (CCMA). However, some respondents suggested that there should be amendments made to the SFS to make it more tailored towards debt management services. These suggestions included:

- It should be less specific to mortgage-related debt;
- That rent costs should be brought to a single housing section;
- Separate forms should be available - one where there is both secured and unsecured debt and another where there is only unsecured debt;
- Amendments should be made to the existing document to take account of items that did not exist at the time it was drafted: property tax, water charges, septic tank charges, etc.;
- Amendments should be made to the existing document so that primary residence details be kept separate from “buy to let”; and that the page dealing with second (and further properties) should be standalone so that the number of copies used is appropriate for the individual consumer’s property profile;
- One respondent suggested that the Prescribed Financial Statement (PFS) which is issued by the Insolvency Service of Ireland’s should be used as the standardised method of financial assessment.
- One respondent suggested that either the PFS or SFS would be acceptable.

We agree with the majority view that that the current SFS will be the standard document to be utilised in order to comply with Provision 13.10. We believe that the document is sufficiently flexible and can accommodate items such as water

charges, property tax, etc. We are committed to keeping this document under review and any necessary amendments may be made in the future.

1.7 Assessment of a consumer's circumstances and advice given to the consumer

Five suggested requirements were included in CP75:

- a) Requirement 4.2 (of the draft Additional Requirements attached to CP75) which would impose an obligation on the firm to consider specific options.
- b) Requirement 4.4 a) would require that a statement of suitability should explain the risks and consequences of acting on advice.
- c) Requirement 4.8 which would impose 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 which would impose 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).
- 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.

Three respondents agreed with the proposed requirements. One respondent suggested that a distinction needs to be made between a statement of suitability for products such as life assurance, pensions and investments on the one hand, and a statement for debt management services on the other, as it is likely the consumer will not be able to choose an option from several provided. One respondent suggested that the Code should require creditors to accept reasonable payment offers made by consumers (or by debt management firms acting on their behalf). One respondent suggested that the risks of acting on advice should be outlined to consumers. Two respondents noted the absence of a provision requiring the maintenance on file by the debt management firm of the relevant documentation.

In relation to Requirement 4.4 a) (which is now Provision 13.14) we have renamed the 'statement of suitability' as a 'statement of advice' as this more accurately reflects its purpose. In addition, we have included an additional point here that requires the firm to inform the consumer that he or she is responsible for making payments to creditors, where the firm does not have the necessary authorisation to carry out this service.

We have not included a requirement that creditors must accept offers from consumers or a debt management firm as the Central Bank does not have such authority, in particular where creditors are entities which do not fall to be regulated by the Central Bank, for example, utility companies.

We believe that the record keeping requirements that are contained in Chapter 11 of the Code adequately address record keeping. Nevertheless, we have included additional requirements in relation to instructions and consent from consumers at Provisions 13.19, 13.20 and 13.22.

1.7 Conflicts of Interest

It was noted in CP75 that while Chapter 3 of the Code imposes the obligations on regulated entities, with respect to conflicts of interest, we were considering an additional requirement which would impose 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. CP75 requested views on this issue.

Five respondents agreed with the provision. One respondent suggested a written statement that the debt management firm has done everything to ensure that its remuneration arrangements are not structured in such a way as to impair the firm's obligations to act in the best interests of the consumer and the firm should be obliged to disclose all sources of revenue relating to the consumer's case to that consumer in writing. One respondent suggested that this provision should be accompanied by an explanation to consumers demonstrating that such payments do not compromise the debt management firm's independence and impartiality. One respondent suggested that this provision does not go far enough and that there should also be an obligation to clearly indicate where such payments may represent a conflict for the debt management firm.

Debt management firms are subject to the existing requirements of the Code regarding conflicts of interest (Provisions 3.28 to 3.36) and therefore some of the concerns highlighted in responses are already addressed in the Code. We have decided therefore not to amend this provision and it remains in the Code Requirements at Provision 13.15c.

1.8 Information to be provided to the consumer [pursuant to requirement 3.1]

CP75 contained a requirement (at provision 3.1) that a standard information document must be developed by each firm, based on the template contained in the

appendix to CP75, and provided to a consumer at the outset of their relationship with the debt management firm.

One respondent voiced concerns that there may be an information overload for consumers, given that the additional provisions already include a requirement for the consumer's signature. One respondent disagreed with the requirement to inform consumers that free services are available. Another respondent suggested that an additional requirement be included which would prohibit regulated entities from making negative statements or false claims about free debt management services. One respondent suggested a clear definition of the terms "free" and "non-profit" should be included in the requirements.

We have revised the Appendix, (now Appendix D) to streamline this document and to ensure that it will be a standard document. We believe that it is important that the consumer understands at the outset of the relationship with the debt management firm what services he or she can expect from the debt management firm and the likely costs. It is also important that the consumer is aware that free services are available.

Section 2: Additional/Emerging issues

2.1 *Client Leads*

CP75 included a suggested requirement preventing debt management firms from paying a fee, commission or other reward or remuneration to third party in respect of client leads unless the debt management firm was satisfied that the marketing and advertising materials used by the third party are clear, fair, accurate and not misleading with regard to the service being provided.

While some respondents agreed with the approach that was proposed, it was also suggested that the debt management firm should be required to ensure that lead generator firms avoid harvesting data belonging to particularly vulnerable persons or targeting them in general as potential consumers for debt management firms. Another respondent indicated that while lead generator companies should ensure that advertising is clear, fair and accurate, it is unreasonable to expect debt management firms to be in a position to verify this before they make payments, while a further respondent's view is that this provision is vague and may lead to a situation where a firm, supervised and regulated by the Central Bank would be responsible for the assessment of a (potentially) unregulated entity.

Following further consideration, we have concluded that the activity of lead generation, whose only role is to collect information from consumers to sell on to debt management firms offers little, if any, value to consumers who are seeking debt management services. Furthermore, this activity could create unnecessary confusion for consumers and add additional costs to the process. Therefore, we have revised the requirements as set out below.

13.6 A **debt management firm** must not pay a fee, commission, other reward or remuneration to any **person** in respect of client leads or referrals.

13.7 A **debt management firm** must not contact a **consumer** whose details were referred to it by a **person** unless the **consumer** has given his or her specific consent to that **person** for his or her details being referred to that specific **debt management firm**.

Question 1: Do you agree with approach that we now propose taking with regard to client leads? If not, please explain why.

2.2 Payment of debt management fees by credit

CP75 requested views on whether there should be a prohibition on the payment by means of credit of fees or charges for debt management services. While some respondents agreed with such a prohibition, others recognised that it may be the only option for consumers who wish to, or need to, avail of debt management services. UK research on Consumer Credit and Consumers in Vulnerable Circumstances³ found that debt advice is effective but many people do not get help soon enough. We have decided therefore not to prohibit the use of credit but to amend the requirements as follows:

13.4 A **debt management firm** must not recommend or arrange credit, and must not assist the **consumer** to arrange credit, for the purpose of paying fees or **charges** for **debt management services**.

13.5 Where a **consumer** proposes to avail of credit to pay fees or **charges** to a **debt management firm** for **debt management services**, the **debt management firm** must inform the **consumer** that such borrowings will increase the amount of debt owed by the **consumer**.

³ Published by the Financial Conduct Authority in April 2014
<http://www.fca.org.uk/static/documents/research-papers/consumer-credit-customers-vulnerable-circumstances.pdf>

Question 2: Do you agree with approach that we now propose taking with regard to credit as a means of paying fees for debt management services? If not, please explain why.

2.3 Cooling-off Period

CP75 contained a proposed requirement which would impose 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.

This issue solicited responses that reflected several different opinions. Where there was agreement that a cooling off period should apply, the times proposed by respondents for this varied from five days, 10 business day and 14 business days (reflecting the timeframe permitted by the Distance Market Regulations). One respondent contended that five days to reflect is a tight period and that this could lead to more pressure on the consumer to make a decision rather than allowing them the sufficient time they need. Other comments in this regard were that there should be no cooling off period; that there should be no facility to waive the timeframe; that consumers should not be charged fees up to this point.

In relation to a cooling off period, we have considered the different responses and our view is that a consumer should be permitted sufficient time to consider their options after they have received the statement of advice. Therefore, we have included the following requirement that the cooling off period, which will apply after the consumer has received the statement of advice, must be at least five business days. However we are also conscious that a creditor may impose a

deadline for accepting their offer. Consequently, we believe that flexibility is required in such circumstances and are therefore giving the consumer the choice to waive this cooling off period. This could, for example, arise in cases where a creditor imposes a shorter timeframe for a consumer to accept an offer or a remedy or solution. The following provisions are included in the revised requirements:

13.18 Where a **debt management firm** has provided a statement of advice to a **consumer** as required under Provision 13.14, and before undertaking any actions outlined in that statement, a **debt management firm** must:

- a) allow the **consumer** at least five **business days** to consider the statement; and
- b) ensure that the **consumer** has signed an agreement in accordance with Provision 13.2 in relation to those actions.

13.19 In very exceptional circumstances, where there is a relevant and compelling reason for the **consumer** to proceed within the timeframe outlined under Provision 13.18 a), a **consumer** may waive this right. In such circumstances, the **debt management** firm must document the relevant and compelling reason put forward by the **consumer** and retain a **record** of the **consumer's** written consent to this.

Question 3: Does the approach that we now propose provide sufficient protection for a consumer?

2.4 Additional information and contact with consumers

We have included new provisions in the Additional Requirements that require debt management firms to provide additional information to consumers on an ongoing basis. These include:

- Provision 13.17 which requires the debt management firm, having provided a statement of advice to the consumer but prior to providing negotiation services, to provide details of the charges payable to that point;

- Provision 13.21 which prevents the debt management firm from agreeing to a negotiated outcome with a creditor without first seeking the consent of the consumer; and
- Provision 13.22 which requires the debt management firm, while negotiations with creditors are ongoing, to provide an update on the status of these negotiations to the consumer, on at least a monthly basis, until the process of negotiation is completed.

Question 4: Do you agree that the above protections are appropriate and adequate to ensure transparency and control for the consumer in relation to the progress being made to resolve their problems? If you disagree, please provide the reasons.

4. Making Your Submission

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

When addressing or commenting on any particular issue set out in Appendix 1: “Additional Code Requirements for Debt Management Firms”, 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 in the Appendix 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 Second Consultation on Additional Consumer Protection Requirements for Debt Management Firms”. Please make your submissions electronically by email to code@centralbank.ie or, in writing to:

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

APPENDIX 1

June 2014

Additional Requirements for Debt Management Firms

CHAPTER 13

PROVISION OF INFORMATION

INFORMATION ABOUT DEBT MANAGEMENT SERVICES

13.1 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 D.

GENERAL

13.2 A *debt management firm* must not provide *debt management services* to a *consumer* unless the *consumer* has signed an agreement which clearly specifies:

- The services that will be provided;
- the *charges* payable for those services;
- when the *charges* will be payable and how they can be paid;
- the likely duration of the agreement;
- whether or not the *debt management firm* is authorised to hold client funds and make payments on behalf of the *consumer* to his or her creditors; and
- any *charges* that will be payable if the *consumer* withdraws from the agreement and when those *charges* will be payable.

This information must be provided to the *consumer* in a standalone document which also includes the following warning statement:

Warning:
You may still have debt outstanding after completing the debt management process

RESTRICTIONS

13.3 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 Provision 13.2 signed by the *consumer*.

13.4 A *debt management firm* must not recommend or arrange credit, and must not assist the *consumer* to arrange credit, for the purpose of paying fees or *charges* for *debt management services*.

- 13.5 Where a **consumer** proposes to avail of credit to pay fees or **charges** to a **debt management firm** for **debt management services**, the **debt management firm** must inform the **consumer** that such borrowings will increase the amount of debt owed by the **consumer**.
- 13.6 A **debt management firm** must not pay a fee, commission, other reward or remuneration to any **person** in respect of client leads or referrals.
- 13.7 A **debt management firm** must not contact a **consumer** whose details were referred to it by a **person** unless the **consumer** has given his or her specific consent to that **person** for his or her details being referred to that specific **debt management firm**.
- 13.8 A **debt management firm** must not prevent or seek to obstruct a **consumer** from communicating directly with his or her creditors.
- 13.9 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.

KNOWING THE CONSUMER AND SUITABILITY

KNOWING THE CONSUMER

- 13.10 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.

SUITABILITY

- 13.11 A **debt management firm** must seek to agree a long term solution for the **consumer**.
- 13.12 When providing **debt management services** to a **consumer**, in addition to the requirements outlined in Provision 5.16, and Section 26 (2) (f) of the Personal Insolvency Act 2012, a **debt management firm** must at least consider and document:

- a) whether the following options are suitable to the **consumer's** needs and objectives:
 - i) arrangements with creditors to apply reduced payments for an interim period (for example to address a short-term shortfall);
 - ii) arrangements with creditors to reschedule debt (for example by reducing interest rates and/or making payments over a longer term);
 - iii) arrangements with creditors to restructure the outstanding debt (for example debt write-down/debt write off); or
 - iv) insolvency options;and
- b) whether the proposed course of action for the **consumer** is likely to be affordable and suitable for that **consumer**.

13.13 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 advice

13.14 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 advice setting out the reasons why the course of action proposed to the **consumer** is considered to be suitable and affordable for that **consumer**.

- a) The reasons set out in the statement of advice must be based on the information gathered under Provision 5.1 and Provision 13.10 and include an explanation of the options available to the **consumer**, how these options work and a description of the consequences for the **consumer** of accepting such options. 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 the **consumer** is responsible for making payments to creditors and for undertaking the actions proposed and may engage a third party to assist them;
 - ii) that creditors are not obliged to accept reduced repayments or freeze interest or **charges**;
 - iii) that creditors' collection activities may continue even though a **debt management firm** has been engaged;

- iv) 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**;
 - v) 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;
 - vi) 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;
 - vii) that if the **consumer** is a property owner that, where relevant, failure to make the negotiated payments to creditors could result in the **consumer** losing his or her home and
 - viii) that undertaking the proposed course of action may affect their credit rating, which may limit their ability to access credit in the future.
- b) Where the **debt management firm** assesses that insolvency options are the most suitable course of action for the **consumer**, the **debt management firm** must advise the **consumer** of the opportunity to avail of the services of a **Personal Insolvency Practitioner** in order to explore insolvency options.
- c) The **debt management firm** must sign the statement of advice 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.

13.15 Where relevant, the statement required under Provision 13.14 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.

13.16 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).

13.17 Following compliance with Provisions 13.14 to 13.16 above, a **debt management firm** must provide the **consumer** on paper or another **durable medium** with details of the **charges** payable to date to the **debt management firm**.

NEGOTIATION

13.18 Where a **debt management firm** has provided a statement of advice to a **consumer** as required under Provision 13.14, and before undertaking any actions outlined in that statement, a **debt management firm** must:

- a) allow the **consumer** at least five **business days** to consider the statement; and
- b) ensure that the **consumer** has signed an agreement in accordance with Provision 13.2 in relation to those actions.

13.19 In very exceptional circumstances, where there is a relevant and compelling reason for the **consumer** to proceed within the timeframe outlined under Provision 13.18 a), a **consumer** may waive this right. In such circumstances, the **debt management firm** must document the relevant and compelling reason put forward by the **consumer** and retain a **record** of the **consumer's** written consent to this.

13.20 A **debt management firm** may begin negotiations with a **consumer's** creditors only when it has received the **consumer's** consent to do so, and must retain a **record** of the **consumer's** consent. Such negotiations must take place without delay.

13.21 a) 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 negotiations with creditors. However, such notification must take place without delay where the creditor has imposed a shorter timeframe for acceptance of a negotiated outcome.

- b) This notification must:
 - i) highlight any variations from the proposed course of action outlined in Provision 13.14 and set out the reasons why the negotiated outcome is considered to be suitable and affordable for that **consumer**;
 - ii) include details of the steps that the **consumer** must take in order to comply with the terms negotiated with creditor(s) and the timeline imposed by the creditor(s) for complying with these steps;
 - iii) include details of the circumstances in which the **consumer** can withdraw from the new arrangements and the steps required to withdraw from the new arrangements;
 - iv) include details of the circumstances under which any cancellation charges may become payable by the **consumer**;

- v) include details of any penalties that may be applied by creditors if the **consumer** fails to meet the terms of the new arrangements; and
- vi) include details of creditor(s) that have declined to engage with the **debt management firm**.

13.22 A **debt management firm** must not agree to a negotiated outcome with a **consumer's** creditor(s) without the prior written agreement of the **consumer** and must retain a **record** of the **consumer's** agreement.

13.23 While negotiations with creditors on behalf of a **consumer** are ongoing, a **debt management firm** must provide an update to the **consumer**, at least on a monthly basis, on the status of the negotiations. The **debt management firm** must provide these updates until the process of negotiation is completed.

STATEMENTS

13.24 Where a **debt management firm** provides **debt management services** to a **consumer** over a period longer than six 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 six month period to which the statement relates; and
- b) fees charged over the six month period to which the statement relates.

APPENDIX D

INFORMATION TO BE PROVIDED TO CONSUMER [PURSUANT TO PROVISION 13.1]

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 must appear prominently at the top of the first page of the document followed by the explanatory statements.

USING DEBT MANAGEMENT SERVICES – WHAT YOU SHOULD KNOW

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.

[Insert if relevant: WE CANNOT MAKE PAYMENTS TO YOUR CREDITORS ON YOUR BEHALF

We are not authorised to hold your funds or make payments on your behalf. If an arrangement is agreed with your creditor(s), it will be your responsibility to make the revised payments to the creditors].

THERE ARE SOURCES OF FREE DEBT ADVICE AND SERVICES

The Money Advice and Budgeting Service (MABS) offers free advice for people in debt, or in danger of getting into debt, in Ireland.

MABS can be contacted at its Helpline (0761 07 2000) which operates Monday to Friday from 9am to 8pm or by email at: helpline@MABS.ie

MABS has over 60 offices nationwide. For details of your nearest office, visit the [Contact MABS](#) area of its website at: www.mabs.ie

YOU WILL KNOW THE TOTAL COST TO YOU OF ANY FEES AND CHARGES ASSOCIATED WITH THE SERVICE

Our fee and charges will be applied as follows:

[Insert details of the basis on which fees and charges will be calculated and on the precise services that will be provided for each of those fees and charges]

YOUR ADVISOR WILL GO THROUGH A FULL FINANCIAL ASSESSMENT PROCESS WITH YOU WHICH WILL COVER ALL THE OPTIONS FOR DEALING WITH YOUR DEBT

Your advisor will use a standard financial statement to obtain financial information from you.

You must ensure that all information about your personal and financial circumstances which you supply as part of the financial assessment is accurate.

Your advisor will consider the full range of debt management options available to you.

YOU WILL RECEIVE A STATEMENT OF ADVICE

This statement of advice will provide you with details of a proposed course of action for you and explain why this proposed course of action is suitable and affordable for you.

How the proposed options work as well as any actual or potential consequences of the proposed course of action will be explained to you in the statement of advice.

YOU SHOULD BE AWARE THAT THERE MAY BE POTENTIAL RISKS AND/OR DISADVANTAGES ASSOCIATED WITH USING A DEBT MANAGEMENT SERVICE

- You may be responsible for undertaking the actions proposed and you may engage a third party to assist you.
- Your creditors are not obliged to accept reduced repayments or freeze interest or charges.
- Your creditors' collection activities may continue even though you have engaged a debt management firm.
- If you cancel payments to your creditors, you will be in breach of your agreement with them and your account(s) will go into arrears or further into arrears.
- If you reduce your payments it 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 undertake a proposed course of action it may affect your credit rating, which may limit your ability to access credit in the future.

IF YOU WANT TO STOP USING OUR SERVICES AT ANY STAGE YOU MAY DO SO

If you wish to stop using our services, you can notify the firm that this is the case.

If you stop using our services, any outstanding charges will be payable as follows:

[Insert a description of how any outstanding charges for services provided will be dealt with if the consumer ceases using the service]

IF YOU ARE NOT HAPPY WITH THE SERVICE YOU RECEIVE FROM US, YOU HAVE THE RIGHT TO COMPLAIN

If you are not happy with the services we provide to you, you have the right to make a complaint to us. This will be handled in accordance with our complaints handling process.

If your complaint is not resolved to your satisfaction, you have the right to refer your complaint to:

The Financial Services Ombudsman's Bureau,
3rd Floor, Lincoln House, Lincoln Place, Dublin 2.
Telephone: 1890 88 20 90 or 01 662 0899

APPENDIX E
STANDARD FINANCIAL STATEMENT

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

Section B: Your Monthly Income		Borrower 1	Borrower 2	TOTAL	
B1	Gross Monthly Salary (before tax and any other deductions at source)				
B2	Net Monthly Salary (after tax and any other deductions at source) ⁴				
B3	Monthly Social Welfare Benefits <i>Please list</i>				
B3 (a)	Benefit-				
B3 (b)	Benefit-				
B3 (c)	Benefit-				
B4	Child Benefit				
B5	Mortgage Interest Supplement				
B6	Family Income Support				
B7	Maintenance				
B8	Other, e.g. Pension, room rent, grants (Please Specify)				
B9	Monthly Income from Property assets (other than primary residence) (see E5)				
B10	Monthly income from non-property assets (see F8)				
B11	Total Monthly Income (sum of B2 to B10)				G1

⁴ 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 ⁵	Arrears (where applicable)
Utilities		
C1 Electricity		
C2 Gas /Oil		
C3 Phone (Landline & Internet) ⁶		
C4 TV/Cable ³		
C5 Mobile Phone		
C6 Refuse Charges		
C7 TV Licence		
Household		
C8 Childcare		
C9 Elderly care (e.g., carer, nursing home fees etc)		
C10 Food/Housekeeping/Personal Care		
C11 Clothing and Footwear		
C12 Household Repairs/Maintenance		
Transport Costs		
C13 Petrol		
C14 Motor Insurance /Tax/NCT		
C15 Rail/Bus/Taxi Costs (including school transport costs for children)		
C16 Car Maintenance/Repairs		
C17 Car Parking and Tolls		
Primary Residence Mortgage-related Costs		
C18 Mortgage Protection/Endowment Premium		
C19 Payment Protection		
C20 House Insurance		
Education		
C21 Books		
C22 School/ College Fees		
C23 Uniforms		
C24 Extra Curricular activities (e.g. school outings)		
C25 Other (e.g. voluntary contributions)		
Medical		
C26 Medical Expenses and Prescription Charges ⁷		
C27 Health Insurance ⁸		
Social		
C28 Lifestyle Expenses (e.g., family events, Christmas, Birthdays, eating out etc.)		
C29 Club membership		

⁵ Average charge calculated by totalling last three utility bills and dividing by the number of months to get the average monthly cost.

⁶ Please identify if these bills are bundled.

⁷ Medical expenses include dentist, optician and any other costs related to health.

⁸ Do not include if Health Insurance is deducted from your wages at source,(i.e., if it has already been deducted from B2)

C30	Other - <i>please specify</i>		
		Average Charge	Arrears (where applicable)
	Other		
C31	Life Assurance		
C32	Pension Contribution ⁹		
C33	Maintenance paid to spouse/child (if applicable)		
C34	Rent		
C35 (a)	Property Service/Management Charges		
C35 (b)	Other - <i>please specify</i>		
C35 (c)	Other - <i>please specify</i>		
C36	Monthly expenditure on property assets (see E5)		
C37	Monthly Savings		
C38	Total Monthly Expenditure (sum of C1 to C37)		G2

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:

⁹ 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 €								
D1	Mortgage for Primary Residence		G4								
D2	Court Mandated Debt (Please Specify) ¹⁰										
D3	Court Mandated Debt										
D4	Credit Union										
D5	Credit Union										
D6	Overdraft										
D7	Hire Purchase										
D8	Store Card										
D9	Catalogue Debt										
D10	Credit Card 1										
D11	Credit Card 2										
D12	Credit Card 3										
D13	Personal Loan 1 (please specify)										
D14	Personal Loan 2 (Please specify)										

¹⁰ e.g., fines, instalment orders, judgements

Section E: Property Assets (other than Primary Residence)

	Property (give details below)	Property Type (e.g. Buy to let)	Owner-ship Type ¹¹	Current Value (est) ¹² €	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	Total							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

Section F: Non-Property Assets

¹¹ For example, sole or joint ownership. Where a property/premises is not 100% owned by customer(s), please state the % amount that is owned

¹² Please provide a reasonable estimate of the current value of these assets.

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

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”

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)		
G1	Total Monthly Income (B11)	
G2	Less Total Monthly Expenditure (C38	()
G3	Sub-Total (G1 minus G2)	

G4	Less Mortgage Repayments Due (D1)	()
G5	Less Other Monthly Debt Due (D22)	()
G6	Total Surplus/Deficit (subtract G4 and G5 from G3)	

T +353 1 224 6000 F +353 1 224 6561 www.centralbank.ie code@centralbank.ie



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

**Bosca PO 559, Sráid an Dáma, Baile Átha Cliath 2, Éire
PO. Box No 559, Dame Street, Dublin 2, Ireland**