MABS Submission to The Central Bank on regulatory requirements for commercial debt management companies pursuant to Central Bank Consultation Paper CP 75 and Appendix A ("Draft Additional Requirements for Debt Management Firms") thereto

February 2014

Introduction

The Money Advice and Budgeting Service (MABS) was established in 1992 to help people on a low income to cope with debts and take control of their own finances. It is a free, confidential and independent service. It currently comprises 51 MABS Services, located in over 60 offices nationwide. MABS is funded and supported by the Citizens Information Board.

MABS National Development Limited (MABSndl) was established in 2004 to further develop the MABS Service in Ireland. It provides training and technical support to MABS staff nationally. MABSndl also assists the MABS service in providing educational and informational supports as well as assisting in highlighting policy issues that arise in the course of the money advice work on behalf of clients. MABSndl has responsibility for the ongoing development of the MABS website www.mabs.ie and for providing the MABS National Helpline service.

MABS Submission:

This submission is prompted and informed by the 22 years' experience which MABS has built up in dealing with and supporting those in indebted, multi-indebted and over-indebted circumstances, especially vulnerable individuals and groups, to enable them to better manage their debt profiles with the aim of facilitating their exit from indebtedness. MABS has a valuable contribution to make as regards the proposed regulatory regime in relation to commercial debt management companies.

This document will take the form of answers to the questions posed in CP 75 where indicated. Remarks on the proposed draft additional requirements set out at Appendix A to CP 75 will also be included, and the relevant clause of those requirements indicated where amendments are suggested.

Question 1 and Questions 2 of CP 75: 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? / 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.

Answer: It is suggested that commercial debt management services make clear across all advertising the commercial nature of their services as distinct from publicly funded free services. In order to prevent commercial debt management services from making negative representations about publically funded free debt management services such as MABS, a clause should be inserted at Clause 2 (Restrictions) in Appendix A to cover this. Suggested wording would be:

"A regulated entity shall not make negative statements or claims about free debt advice/management services, for example referring to long waiting times for appointments, whether or not those statements can be demonstrated to be accurate at the material time"

Suggested amendment to clause 2.4 of Appendix A: After the words "standard financial statement", it is suggested that the words "or any other evidence of the consumer's personal financial affairs" is inserted.

Question 3 of CP 75: Do you agree with the proposed approach to client leads as outlined above? If not, please explain why.

Answer: Clause 2.2 of Appendix A would appear to meet the case. Ideally a requirement for debt management firms to ensure that care has been taken by the "lead generator" firm to avoid harvesting data belonging to particularly vulnerable persons, or targeting them in general as potential consumers of debt management services could be included here, but it is accepted that the Central Bank has no regulatory role in this regard.

Question 4 of CP 75: 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.

Answer: An explicit breakdown of charges to be applied for debt management services and charges to be applied for money transfer activity should be a requirement, making it clear which charges apply to which service and when. This should be in a format which is clear and easy to understand, and designed with persons of poor numeracy or literacy skills in mind. The breakdown should be provided to the consumer on paper or another durable

medium immediately following the first consultation between the consumer and the debt management firm staff. There should be no escalation of fees (other than increases in cost of service in line with inflation, CPI, or other unavoidable increases in professional fees), or application of penalty charges by the debt management company for any reason whatsoever.

Question 5 of CP 75: Do you think that there should be a prohibition on the payment by means of credit of fees or charges for debt management services?

Answer: This is a very difficult question to answer. On the one hand, in serious cases of multi-indebtedness and over-indebtedness, it would appear to be counter-productive for debt management companies to accept payment of their fees/charges by credit card or other forms of credit, which will then add to the indebtedness of the consumer concerned. On the other, there may be situations in which the only means of payment available to potential consumers of debt management services is by way of credit. Furthermore, it may be regarded as an undue interference with individual civil liberties and private management of financial affairs to proscribe payment for these services by credit.

On the other hand, if the ultimate aim is to lift potential consumers of debt management services out of unmanageable debt, it would seem to be counter-productive, as stated above, to allow for acceptance of payment of fees by way of credit.

A further point for consideration is the stipulation contained in the Personal Insolvency Act 2012 that 25% or more of debts cannot be incurred within the 6-month period prior to application for a DSA or a PIA (this restriction does not apply to applications for DRNs, and the 25% is exclusive of secured debt in the case of PIAs). Conceivably, fees payable or paid to debt management services by way of credit could end up constituting 25% or more of a debtor's overall debt. Therefore, a warning should be issued by the debt management firm prior to the consumer taking up their services that there is a possibility of the consumer locking themselves out of eligibility to apply for a DSA or PIA until a period of 6 months has elapsed from the date of payment to the debt management company (depending on the size of the debt management company fees relative to the overall debt profile of the consumer), and that appropriate advice should be taken on this point.

Questions 6 and 7 of CP 75: Do you agree that a standardised method of financial assessment is required for this sector? If not please explain why. / In respect of the potential options for a standardised method of financial assessment as outlined above, which is your preferred approach and why?

Answer: A standard financial statement is a useful information-gathering tool and a good starting point. Obviously fairness and consistency should be the approach in all cases. The industry-standard SFS devised by the Central Bank in the context of the Code of Conduct on Mortgage Arrears would appear to be fit for purpose. It is suggested that one form of SFS is used where there is a profile of both secured and unsecured debt, and another where unsecured debt only is concerned.

In addition, the industry-standard SFS needs to take account of new universal outgoings such as water charges, property tax and septic tank levies, which did not exist when this document was first designed. Columns for these new outgoings need to be entered on the SFS itself to avoid them being overlooked either by consumers of debt management services, or by the staff of those firms themselves, if they are assisting a consumer to complete an SFS. The same applies to property management company fees for apartment owners, which are in the nature of a utility bill but are generally hugely expensive for apartment owners, representing far and away their most expensive utility outgoing. Again, these can often be overlooked by persons filling in SFS forms.

Finally, extra space on the SFS needs to be allowed to account for second and third properties, and all outgoings associated with them. The page dealing with second, third and further properties should be stand-alone, so that as many copies as necessary can be printed off, depending on the individual consumer's property profile.

Question 8 of CP 75: What alternative measures do you think we should consider to achieve a robust and holistic approach to financial assessment?

Answer: the regulated application of reasonable living expenses as outlined in the Personal Insolvency Act 2012 as a minimum standard of living would lock in some sort of security for persons availing of debt management services. Alternatively the RLEs plus 10% could be applied. It is most important that RLEs are fixed at at least the level contemplated by the relevant legislation and the ISI, as otherwise particular consumers may feel under pressure to agree to a regime whereby they may end up relying on a level of living expenses below this line simply in order to make accommodations with creditors, and thereby put themselves and their dependents at risk of sliding into hardship. Given that child poverty is on the rise in Ireland it is most important that statutory RLEs, or RLEs plus 10%, are ring-fenced through regulation.

Furthermore any obvious vulnerability on the consumer's part, such as a physical or intellectual disability, or chronic illness, should be taken into account. Allowances need to be made for dependent children (which would be covered by the RLEs) but extra provision should be made for any dependent children with special needs, or other vulnerable

dependents of the indebted person. This is of course dependent on full disclosure by the consumer as to their precise financial and personal circumstances.

Suggested amendment to Clause 4.2 (c) of Appendix A: CP 75 at page 10 mentions "debt write-down/off"; however no such inclusion has been made at Clause 4.2 (c) of the actual Appendix A (which presumably constitutes the draft requirements which will eventually find their way into the regulatory environment). This clause should be redrafted to read: "arrangements with creditors to restructure the outstanding debt (for example, debt write-down/off"

Suggested amendment to Clause 4.3 of Appendix A: The phrase "the consumer's best interests" here is too vague and needs further debate and definition.

Suggested amendment to Clause 4.6 of Appendix A: An addition to this clause should read: "A written note of such advice must be retained on the consumer's file for a period of six years".

Suggested amendment to Clause 4.8 of Appendix A: This needs clarification. Firstly, is the three-day deadline realistic in all cases? Secondly, in a multi-indebted situation, does the three-day deadline apply on a creditor-by-creditor basis (ie, when a reply is received from a creditor pursuant to an offer from the debt management firm, is it communicated to the customer within three days of receipt) or does it apply on a comprehensive basis (ie, does the debt management firm wait until replies from ALL creditors concerned have been received before communicating the situation to the customer, within three days of receipt of an answer from the last creditor)?

Question 9 of CP 75: Do you agree with the propose requirements outlined at a), b) c) and d) and with the option outlined at e) above? [please see relevant document]. If not, please outline why.

Answer: In relation to b) the statement of suitability together with a written explanation of why a certain course of action is considered the most suitable one for the consumer, as well as the explanation of potential or actual risks to the consumer, should be retained on the hard copy and e-copy of the firm's file for a minimum of 6 years. This should be furnished to the consumer on request.

In relation to c), where any variations to the original debt management plan are proposed, such variations should be set out in writing, explained to the consumer, and a written record of both the variation and the explanation should be retained on the hard copy and e-copy of the firm's file for a minimum of 6 years. This should be furnished to the consumer on request.

In relation to d), a written exposition of the steps the consumer must take in order to undertake the proposed course of action should be given to the consumer, and retained on the hard copy and e-copy of the firm's file for a minimum of 6 years.

In relation to e) ("Other options under consideration include:") This should be formalised into an official cooling-off period of at least ten business days.

Question 10 of CP 75: Do you think these protections are sufficient to address the potential conflicts of interest identified above? If not, please outline any further measures you think are necessary for this particular sector.

Answer: Yes. This would appear to be adequately covered by Requirement 4.5 (c) of Appendix A.

Suggested amendment to Clause 4.6 of Appendix A: This should be amended by the addition of the sentence "A written note of such advices must be retained on the hard copy and e-copy of the firm's file for a minimum of 6 years, and furnished to the consumer on request"

Questions 11 and 12 of CP 75: Do you agree with the proposed approach relating to reviews of debt management arrangements as outlined above? If not, please explain why. / Do you think that: a) such reviews should only be allowed at a consumer's request; b) such reviews should be allowed only where there is a change in a consumer's circumstances; c) no limitations should be imposed on debt management firms in relation to undertaking reviews of debt management arrangements; or d) should there be an obligation for periodic reviews without specifying the frequency of these?

Answer 11: Yes. Six-monthly reviews are proposed, which, while being sufficiently regular to allow for good case management, is not unduly oppressive to the consumer. However in addition to this, there is provision for reviews to be conducted whenever requested in writing by the consumer. This will take account of changes in a consumer's financial affairs which may occur more often than once every six months.

Answer 12: a) No – they should be conducted BOTH at the consumer's request AND automatically every six months.

Answer 12: b) Not necessarily, unless the consumer instigates the review or there is a positive duty on the consumer to alert the debt management firm or the relevant creditors to a material change in circumstances

Answer 12: c) No. Limitations need to be imposed on the frequency of reviews to obviate oppressive or harassing behaviour on the part of debt management firms

Answer 12: d) No. The more clarity that exists surrounding the provision for reviews the better.

[submission ends]