



## **IBF-MABS Operational Protocol: Working Together to Manage Debt**

**June 2009**

Irish Banking Federation (IBF) is the leading representative body for the banking and financial services sector in Ireland, representing over 70 member institutions and associates, including licensed domestic and foreign banks and institutions operating in the financial marketplace here.

MABS is the State-funded national, free, confidential and independent service for people in debt or in danger of getting into debt. First established as five pilot projects under the 1992 Budget, MABS today comprises 53 offices nationwide.

# PART I - General Principles

## 1. Partnership Approach

- (a) This Protocol is designed to further improve the operational effectiveness of IBF Creditor/MABS Adviser engagement. It sets out the process by which IBF Creditors (“Creditors”) and MABS Advisers agree to approach debt problems experienced by personal customers/clients. The process will commence when a personal debtor approaches the MABS Service for assistance.
- (b) This Protocol enables IBF Creditors and MABS Advisers to continue to work together effectively to help personal customers/clients to address debt problems and, wherever possible, to formulate a mutually-acceptable, affordable and sustainable repayment plan.
- (c) This Protocol accepts that each creditor adopts a different approach to debt recovery and each case of indebtedness is unique and needs to be treated differently.
- (d) This Protocol recognises in full and is subject to the provisions of all relevant consumer legislation and regulation; and it will take account of relevant codes of practice.
- (e) The importance of full disclosure and the concept of debt settlement \* are recognised by IBF Creditors and MABS.

\* For the purposes of this Protocol the concept of debt settlement is understood to mean a process of negotiation with creditors to accept payment that may be less than the full amount of the debt owed.

## 2. Creditors Approach

- (a) IBF Creditors are committed to helping their customers to responsibly manage their debt. They will advise the customer that it is in his/her own interests to ensure that his/her income is being maximised and that a budgeted approach to expenditure is maintained. Where circumstances warrant it, IBF Creditors will refer the customer for guidance to the MABS National Helpline or the local MABS service.
- (b) IBF Creditors are committed to working with MABS Advisers to help resolve customer debt problems in an effective and realistic manner.
- (c) IBF Creditors recognise that, when borrowers experience an unexpected change in their circumstances, their financial plans can be disrupted and they may experience difficulties in repaying money they have borrowed. In such situations, Creditors will work with their customers and with MABS Advisers, as appropriate, to formulate a mutually acceptable, affordable and sustainable repayment plan.
- (d) IBF Creditors recognise the distinction between customers who are unable to pay, or have reduced capacity to pay, and customers who could pay some or all of their debt but will not. Creditors also acknowledge the MABS objective of supporting their clients in protecting an acceptable standard of living – ref. 3(c) below. Creditors will seek to identify genuine cases and will handle these sympathetically and positively, in order to assist customers in meeting their obligations.

- (e) Once contacted by MABS on behalf of a customer with debt problems, IBF Creditors will review the situation with the aim of finding a mutually-acceptable, affordable and sustainable repayment plan. In the operation of this Protocol the Creditor will try to facilitate the customer as much as possible, taking previous payment history and relationship into account.
- (f) IBF Creditors will provide customers in financial difficulty, on request, with contact details for the MABS website or the MABS National Helpline and be proactive in advising them to make an appointment with the service. Creditors will engage with an Adviser about a particular case at the customer's request or when approached by the Adviser and when provided with written customer consent.
- (g) IBF Creditors agree to adopt flexible procedures for working with MABS Advisers in handling debt problems, subject to their regulatory requirements, internal controls and previous experience with the customer. Such procedures are aimed at assisting the customer as far as possible in his/her particular circumstances.
- (h) During the MABS engagement on behalf of a customer/client IBF Creditors will not commence any legal action and will suspend or adjourn legal action that may have already commenced – subject to ongoing compliance with a mutually-acceptable, affordable and sustainable repayment plan. Where seeking judgement is deemed necessary, an undertaking will be given by the IBF Creditor not to execute that judgement subject to ongoing compliance with the mutually-acceptable, affordable and sustainable repayment plan. See 2(c),3 (c),9.

### **3. MABS Approach**

- (a) MABS Advisers recognise that there is distinction between clients who are unable to pay, or have a reduced capacity to pay, and clients who could pay some or all of their debt but will not.
  - (b) The role of the MABS Advisers in their contact with creditors, on behalf of clients, is to resolve difficulties through the formulation of a mutually-acceptable, affordable and sustainable repayment plan by providing, with the client's consent, a standard financial statement and other relevant documentation. MABS Advisers are thereby committed to a positive working relationship with IBF Creditors in support of their clients.
  - (c) MABS Advisers aim to support clients to protect a standard of living for themselves which is acceptable and, at minimum, is above the poverty line \* – including the prevention of homelessness or fuel disconnection, the loss of essential goods or services or the loss of liberty, the retention of social welfare payments.
- \* The MABS perspective is reflected in the following wording: People are living in poverty if their income and resources (material, cultural and social) are so inadequate as to preclude them from having a standard of living which is regarded as acceptable by Irish society generally.<sup>1</sup>
- (d) MABS Advisers will treat IBF Creditors and other Creditors impartially and fairly and will not seek to give any Creditor priority over another in a similar position – while having due regard to point 4(b).
  - (e) MABS Advisers aim to support clients to access justice and to uphold their rights in the event of legal action being taken.

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<sup>1</sup> National Action Plan on Social Inclusion 2007-2016

- (f) MABS Advisers will remain aware of and respect individual structures and internal controls, codes and regulatory bodies under which Creditors and their staff may be working.
- (g) Clients will be fully informed of their responsibilities to commence and maintain agreed repayment schedules and of their duty to advise their IBF Creditors and MABS Adviser if this is not possible. The Creditor will be informed by the Adviser if the client is no longer availing of the MABS Services.

#### **4. Framework for Addressing Debt Problems**

Working together, the IBF Creditor and MABS Adviser agree to adopt the following principles in addressing customer/client debt problems.

- (a) Examine the debt/arrears situation on its individual merits, as each situation is different and is likely to require different solutions.
- (b) Prioritise debts in terms of secured over unsecured debt and thereafter on the basis of consequences for non-payment. Secondary Creditors will be treated on an equitable (pro rata) distribution basis.
- (c) Consider the customer/client's overall indebtedness in establishing ability to repay; first giving priority to protection of repayment of mortgage or rent for appropriate accommodation and payment for essential utilities such as heat and light and other basic necessities.
- (d) Explore, as appropriate, alternative repayment measures, ensuring that the customer/client receives a clear explanation of any alternative repayment arrangements being considered, together with details of any additional interest or administration charges that may arise; in the process; avoiding as much as possible giving rise to further credit facilities by the customer/client.
- (e) Inform the customer/client as to the full details of the repayment arrangement as well as, in so far as possible, the potential consequences of not adhering to this and the continued impact on his/her credit rating.
- (f) Provide the customer/client with relevant contact details.
- (g) Monitor the mutually-acceptable, affordable and sustainable repayment plan that is put in place.

#### **5. Application of the Protocol**

- (a) The IBF Creditor reserves its right to enforce the loan in circumstances where it deems application of this Protocol is not appropriate.
- (b) This Protocol will not apply if, in an individual case, the MABS Adviser and/or IBF Creditor considers it inappropriate.
- (c) This Protocol does not relieve debtors of their contractual duties until such time as the debt is settled in full or otherwise agreed by the IBF Creditor.

## **6. Confidentiality**

The relationship between IBF Creditors and their customers is based on mutual respect and trust. Any information held by Creditors on their customers is kept on a strictly confidential basis. Customer information may be given to a third party in four exceptional cases as follows:

- (i) where disclosure is made at the request or with the consent of the customer on the presentation of a signed authorisation in an agreed format
- (ii) where a bank is legally compelled to do so
- (iii) where there is a duty to the public to disclose
- (iv) where it is necessary for the bank to present its case - e.g. in court or in other circumstances of a related nature.

The confidential relationship between the MABS Advisers and their clients is a core value of the MABS service. It is a serious undertaking that MABS gives to clients. Information can be given to IBF Creditors by the MABS Adviser only with the written permission of the client.

## **PART II - Procedures**

### **7. General Arrangements**

- (a) MABS Advisers seek to encourage self-reliance and, to this end, support clients to take ownership of their debt problem and to communicate directly with their IBF Creditors when appropriate at the request of the client. To this end, through the website, national helpline or face-to-face advice, MABS provides clients with an appropriate level of information, advice and support.
- (b) IBF Creditors will provide MABS with contact details for their centralised debt collection offices and will advise of any changes.
- (c) MABS will provide each IBF Creditor with relevant contact details. Creditors can then provide this information to their customers, as appropriate.
- (d) MABS Advisers and IBF Creditors will use an agreed, generic, standardised form for the customer/client's Financial Statement of Affairs - to be accurately completed and signed by the customer/client with the assistance of the MABS Adviser.

[**Note:** The MABS Financial Statement will be used in conjunction with this Protocol.]

### **8. Agreeing a Repayment Plan**

#### **Step 1**

The Protocol for agreeing a mutually-acceptable, affordable and sustainable repayment plan can begin to apply only when the MABS Adviser contacts the IBF Creditor on behalf of the customer. In response, the Creditor will advise how they propose to proceed and explain the basis for doing so.

## **Step 2**

Within 20 working days of the initial point of contact with the IBF Creditor the MABS Adviser will endeavour to submit on behalf of the customer/client the following documentation:

- a. signed authorisation from the customer/client that the Creditor and MABS Adviser can discuss his/her accounts
- b. the completed and signed Financial Statement of Affairs
- c. a realistic proposal with regard to the repayment of the debt

To facilitate this, the Creditor will provide the Adviser with the relevant documentation and statements requested as obliged under Section 43 of the Consumer Credit Act 1995.

[**Note:** The MABS Authorisation Form will be used in conjunction with this Protocol.]

## **Step 3**

The IBF Creditor will follow up with the MABS Adviser within 10 working days of receipt of the standardised Financial Statement of Affairs and other documentation referred to under Step 2.

## **Step 4**

Once agreement has been reached on a mutually-acceptable, affordable and sustainable repayment plan, the IBF Creditor will accept payments and will monitor the situation on an ongoing basis.

## **Step 5**

The MABS Adviser will hold a review with the customer/client every six months to ensure that the repayment agreement is operating effectively. The outcome of each review will be advised to the IBF Creditor.

## **9. Managing the Repayment Plan**

(a) During the repayment schedule, the IBF Creditor will:

1. monitor the situation on an ongoing basis
2. alert the customer/client of any default on payments as soon as the Creditor becomes aware of a problem and advise what corrective action is required
3. advise the MABS Adviser as to the situation
4. work with the customer/client and/or MABS Adviser to identify both how the repayment schedule can best be put back on track and the timescale involved
5. consider, prior to expiry of the timescale identified under 9(4) above, any new proposals for repayment
6. where such proposals are rejected, provide to the MABS Adviser an opportunity to discuss the grounds for such rejection in an effort to arrive at an alternative, mutually-acceptable, affordable and sustainable repayment plan.

(b) During the repayment schedule, the MABS Adviser will:

1. inform the IBF Creditor within 10 working days of any new developments in the customer/client's financial situation of which the Adviser becomes aware
2. inform the Creditor within 10 working days if the Adviser is informed or becomes aware that an agreed payment cannot be made on the agreed date
3. contact the customer/client in advance of any agreed review to ensure that any new proposals can be submitted to the Creditor in a timely manner

If the customer/client defaults, or if the MABS Adviser reports that the customer/client is no longer working with them, the IBF Creditor may then have no alternative, depending on the situation and level of arrears, but to pursue a more serious course of action. The Creditor will try to facilitate the customer/client as much as possible, taking into account previous payment history and the relationship with the customer/client.

At the end of the Protocol process, the information recorded in the Irish Credit Bureau will reflect the closing position of the customer/client account.

**ends**

**The following IBF Creditors subscribe to the *IBF/MABS Operational Protocol: Working Together to Manage Debt* (effective from 28<sup>th</sup> September 2009)**

- ACC Bank
- AIB Bank
- Anglo Irish Bank
- Bank of Ireland
- Bank of Scotland (Ireland)
- EBS Building Society
- Investec/Nua Homeloans
- Irish Nationwide Building Society
- KBC Bank Ireland
- National Irish Bank
- Permanent tsb
- Postbank Ireland
- MBNA Europe Bank
- Ulster Bank