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## Scheme of Aid and Advice for Borrowers in Home Mortgage Arrears (the “Scheme”)

### ACCOUNTANTS PANEL

### TERMS AND CONDITIONS

#### 1. Introduction

- 1.1 On 22nd January 2016 the Government announced a scheme to help people who are insolvent, and are in serious mortgage arrears on their home, to access independent expert financial and/or legal advice and assistance, which will help them to find the best available solutions, with priority to remaining in their homes where possible.
- 1.2 This Scheme is co-ordinated by the Department of Justice and Equality (“DJE”) and the Department of Social Protection (“DSP”), in co-operation with the relevant agencies including the Money Advice and Budgeting Service (“MABS”), the Insolvency Service of Ireland (“ISI”), the Legal Aid Board (“LAB”), and the Citizens Information Board (“CIB”).
- 1.3 The Scheme is intended to be open for up to three years: it will be reviewed after 6 months, and yearly thereafter.
- 1.4 Under the Scheme, eligible borrowers can be referred for independent financial advice and assistance to a panel of accountants, which is being established under the Scheme. The panel will be composed of accountants who agree to provide specified fixed services free of charge to the borrower, at fixed fees payable by the Scheme, in accordance with these Terms and Conditions. The fixed services which may be provided consist of financial advice and assistance under component (a) of the Scheme (see para 2.3), and are specified in detail in part 7 and in Appendix A.
- 1.5 The Citizens Information Board (CIB), on behalf of the Department of Social Protection, is responsible for establishing and maintaining the Accountants panel under the Scheme. DSP will contact the relevant Accountancy Bodies to seek expressions of interest from their members who wish to participate in the panel. An expression of interest received by CIB from a member of any of the Accountancy Bodies will be taken as agreement by that member to these Terms and Conditions. Expressions of interest should be sent by e mail to the Citizens Information Board. See Part 6 for details on panel.

## 2. Overview of the Scheme

- 2.1 Where a borrower is seeking help under the Scheme, MABS will act as the single Government gateway to the Scheme. MABS will direct an eligible borrower for appropriate advice and assistance under the Scheme. (Details on borrower eligibility are set out in part 3.)
- 2.2 In addition to the help and advice which can be provided by MABS, in particular, by MABS Dedicated Mortgage Arrears (“DMA”) advisers, MABS will be able to direct an eligible borrower for specialised advice and assistance, to be provided by participants from one of the three professional panels, described in 2.4 below, operating under the Scheme.
- 2.3 The advice and assistance which can be provided under the Scheme has 3 components, and a borrower may be eligible for any or all of these:

(a) *Financial advice and assistance – home mortgage arrears*

Following an appropriate assessment by a MABS adviser, MABS may direct an eligible borrower for financial advice and assistance to a panel accountant or a panel PIP, as appropriate. MABS will carry out a triage assessment where a borrower is being referred to a PIP, or seeks to engage a PIP directly. A comprehensive assessment will be completed by MABS where a borrower is being referred to a panel accountant, or seeks to engage the services of an accountant. In such cases, and on receipt of a completed application, MABS will issue the borrower with a Scheme voucher for financial advice and assistance (see part 5) and will direct the borrower to a list of panel practitioners and their contact details. The borrower selects a panel practitioner and presents the financial advice voucher to the practitioner. The payment for services provided under the financial advice voucher will be administered directly to the practitioner concerned against proof of provision of the specified services (see part 7) – by ISI in the case of a panel PIP and by Money Advice and Budgeting Service National Development (“MABS National Development”) in the case of a panel accountant.

Should a borrower approach a panel accountant directly for advice and assistance under the Scheme, s/he should be directed to MABS in the first instance to apply for a voucher.

- (b) *Legal advice and assistance – home mortgage arrears* Borrowers will normally be provided in the first instance with financial advice and assistance, either by a MABS adviser, a panel PIP or a panel Accountant. Where a legal issue is identified, or where the borrower is facing repossession proceedings, MABS will also be able, under the Scheme, to refer the borrower to a panel consultation solicitor for legal advice and assistance. In such cases, and following completion of application and client consent, MABS will apply on behalf of the borrower, who will be issued with a Scheme voucher for legal advice and assistance (see part 5) and will be directed to a list of panel solicitors and their contact details. The borrower selects a panel solicitor and presents him or her with the legal advice and assistance voucher, together with

a copy of the written financial analysis and advice already provided under the Scheme. In return for the voucher, the solicitor will provide the borrower with a face-to-face consultation and legal advice on the issue identified, which will also be confirmed in writing (the ‘consultation solicitor’ service). Payment under the legal advice and assistance voucher will be administered directly by the LAB to the consultation solicitor, against proof of provision of the specified services.

Panel solicitors will also provide a ‘duty solicitor’ service at Circuit Court repossession lists, under a roster system organised by the LAB. If an eligible borrower is subject to repossession proceedings against their home, the duty solicitor will be present at court and may be able to speak for them.

The duty solicitor service is a limited service to assist borrowers, and does not include defending repossession proceedings on their behalf: see the Terms and Conditions for the Solicitors Panel at [www.legalaidboard.ie](http://www.legalaidboard.ie) or the Scheme’s information booklet for borrowers.

(c) *Legal Aid – new Court review of rejected PIA*

A panel solicitor may also provide legal services under this component of the Scheme, which provides for legal aid for insolvent borrowers seeking the new Court review under section 115A of the Personal Insolvency Act 2012 as amended (the “**PI Act**”), where a borrower’s proposal for a Personal Insolvency Arrangement (“**PIA**”) which includes mortgage arrears on his or her home is refused by the creditor(s).

2.4 The Scheme provides for the establishment of three panels:

- a panel of personal insolvency practitioners (“panel PIPs”), established and maintained by the ISI,
- a panel of solicitors (‘panel solicitors’), established and maintained by the Legal Aid Board, and
- a panel of accountants (‘panel accountants’), established and maintained by the CIB.

2.5 Panel participants will have appropriate expert knowledge of mortgages, insolvency, bankruptcy and/or repossession.

2.6 An accountant, personal insolvency practitioner or solicitor will participate in the panel based on his or her agreement to provide specified advice and assistance services to an insolvent borrower, at fixed fees which will be paid by the Scheme, and without charge to the borrower, in accordance with the Scheme and with the relevant panel’s Terms and Conditions.

3. **Borrower Eligibility for the Scheme**

3.1 Subject to part 3.3, a borrower will be eligible for advice and assistance under components (a) and (b) of the Scheme (*Financial advice and assistance - home*

*mortgage arrears*) and (*Legal advice and assistance - home mortgage arrears*) if he or she is:

- insolvent (as defined in section 2 of the Personal Insolvency Act 2012 as amended (“PI Act”), i.e. ‘is unable to pay his or her debts in full as they fall due’);
- in mortgage arrears on his or her principal private residence (as defined in section 2 of the PI Act<sup>1</sup>), and
- at risk of losing their principal private residence (PPR) : for example, if s/he has received from the mortgage lender repossession proceedings, a letter indicating that such proceedings will issue, a letter indicating that s/he is deemed non-cooperating, or an invitation to consider sale, surrender or other loss of all or part of the home.

3.2 Subject to point 3.3, an insolvent borrower will be eligible for legal aid under component (c) of the Scheme (*new Court review of rejected PIA*) if:

- The PIP on behalf of the borrower has made a proposal for a PIA,
- that proposal includes a debt secured on his or her principal private residence in respect of which the borrower was in arrears on 1 January 2015 (or, having been in such arrears before that date, the borrower entered into an alternative repayment arrangement with the secured creditor concerned, but remains insolvent),
- that proposal has been rejected by the creditor(s); and
- the PIP concerned certifies that there are reasonable grounds for making an application on behalf of the borrower to the appropriate court for an order under section 115A(9) of the PI Act.

3.3 Notwithstanding that a borrower might otherwise be eligible, a borrower will not be eligible for any component of the Scheme if, taking account of the matters referred to in section 104(2) of the PI Act, the costs of continuing to reside in the borrower’s principal private residence are disproportionately high .

#### 4. **Data Processing and Sharing**

In addition to meeting the eligibility criteria above, a borrower who wishes to access any advice or assistance under the Scheme must first sign the Scheme’s data processing and sharing consent (‘client consent’). This client consent will permit the borrower’s information (including ‘personal data’ and any relevant ‘sensitive personal data’ for the purposes of data protection law) to be collected and processed for the purposes of the Scheme by MABS, LAB and/or the ISI. The client consent will also

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<sup>1</sup> Section 2 of PI Act: ‘*principal private residence*’ means a dwelling in which the debtor ordinarily resides and includes – (a) any building or structure , or (b) any vehicle or vessel, whether mobile or not, together with any garden or portion of ground attached to and occupied with the dwelling or otherwise required for the amenity or convenience of the dwelling’.

permit that information, together with financial and legal analysis or advice provided to the borrower by MABS or by a panel adviser, to be shared with any other such adviser assisting the borrower under the Scheme.

## **5. Borrower Application for Accountant financial advice and assistance**

**In order to access any advice or assistance under the Scheme, the borrower must first be assessed as eligible for the Scheme, and obtain a Scheme reference number (and a corresponding Voucher) from MABS. The borrower can do this by applying to his or her local MABS Office or by ringing the MABS Helpline**

Where in the course of completing a MARP SFS, it appears that a borrower would benefit from the services of an Accountant, the MABS advisor will arrange for the borrower to be issued (on completion of an application form and client consent) with a Voucher for financial advice and assistance, in the borrower's name, and will direct them to the Accountant panel.

## **6. The Accountant panel**

The Citizens Information Board (CIB), is responsible for establishing and maintaining the panel of Accountants willing to provide services to borrowers under component (a) of the Scheme as set out under these Terms and Conditions.

The Scheme is open to any practising Accountant who:

- agrees to comply with the Scheme and with these Terms and Conditions, and
- operates under a regulatory regime which ensures sufficient oversight of their conduct and performance by their professional body for the purposes of this Scheme.
- is a member of a recognised accountancy body and holds a valid practicing certificate from that body

The Accountant panel, including the contact details provided by participating accountants, will be publicly available, so that borrowers can check whether or not an accountant is on the panel. It is envisaged that the Accountant panel will be published on the MABS websites and other relevant websites such as [www.keepingyourhome.ie](http://www.keepingyourhome.ie).

## **7. Accountant services to be provided under the scheme, and fees payable**

- 7.1 In all cases, on referral for the accountancy service, MABS will provide the borrower with a copy of their completed MARP SFS and the required industry standard supporting information, together with any additional relevant information as provided by the Borrower..

Where available, the borrower will be required to make available further relevant documentation or information to assist the accountant in the provision of advice

which may include relevant documentation regarding the borrower's assets, income, resources and liabilities and in particular, relating to the ownership, valuation or encumbrance of the borrower's PPR.

It is expected that the panel accountant will hold a minimum of one face-to-face meeting with the borrower. The service to be provided (independent financial advice on the borrower's best options for sustainable resolution of the mortgage arrears on their home) will be as set out in a request for advice prepared by MABS. Examples of the type of service(s) which may be required are set out in Appendix A.

- 7.2 Where in the course of carrying out the service requested by MABS on the borrower's behalf, it appears that the borrower would benefit from legal advice, provide a letter of circumstance and direct the borrower back to MABS to secure a voucher for same.
- 7.3 If the MARP SFS was prepared or amended, as part of engagement with the borrower under this Scheme, upon completion of their work, the panel accountant shall provide the borrower with an updated copy of their SFS.
- 7.4 In all cases, a written summary of advice given to borrower, in response to the MABS request, together with any other advice which may have been given, is to be provided to the borrower.
- 7.5 The Accountant should maintain a record of borrower engagements in order to complete the summary of the financial advice outputs, as set out in the claim form, and return to MABS National Development at voucher redemption stage.
- 7.6 Should any information or matter come to the Accountant's attention which directly or indirectly relates to the borrower and which casts doubt on the person's eligibility for the Scheme under Part 3 of these Terms and Conditions, the Accountant should notify the referring MABS office in writing. This will not affect payment to the Accountant in respect of any work already completed under a voucher, and such payment will be made in accordance with part 8 of these Terms and Conditions.
- 7.7 A payment in the fixed amount of €500 (five hundred euro) plus VAT where applicable, will be made under the Scheme to the accountant in respect of the provision of the services set out in para 7.1, subject to compliance with these Terms and Conditions and in particular with Part 8. It is a condition of making this payment that the services in question are provided by the accountant without charge to the borrower.
- 7.8 An accountant shall make all reasonable efforts to deal with cases assigned by MABS, excepting in cases where a conflict of interest or other professional impediment as set out in the applicable Code of Ethics arises, and must advise MABS if this occurs.

## **8. Application for Payment**

- 8.1 Application for payment under the Scheme in respect of services provided by an Accountant must be made by the Accountant (on behalf of the borrower). Payment will be made directly to the Accountant.

8.2 An Accountant may apply for this payment by submitting to MABS National Development a completed Application for Payment in the form set out in Appendix B to these Terms and Conditions. The accountant must retain a copy of that application on the file of the borrower, together with the following documents (which must be available for inspection by MABS National Development staff, or submitted to MABS National Development upon request):

- (a) a copy of the Standard Financial Statement completed for the borrower, if any, and
- (b) a copy of the written advice provided to the borrower.

8.3 An Accountant must submit an Application for Payment to MABS National Development, at Commercial House, Westend Commercial Village, Blanchardstown, Dublin 15 within one month of the end of the Quarter during which the written confirmation of advice was given to the borrower. Payment will issue directly to the Accountant in the following month.

8.4 Travel and subsistence expenses shall not be payable under these Terms and Conditions. Accountants must have regard to this provision when indicating their willingness to provide services to any particular borrower.

8.5 MABS National Development may request additional documentation or information from an accountant in relation to an application for payment, and the accountant shall provide any documentation or information so requested. Payment may be postponed pending receipt and consideration of such additional documentation or information by MABS National Development.

## **9. Withdrawal from the Panel**

An accountant who wishes to withdraw from the accountant panel established for the purposes of the Scheme must inform his / her professional body, in writing, of his / her intention to withdraw. The accountant shall give one month's notice of his or her intention to withdraw, but, in other than exceptional circumstances, shall complete all outstanding cases. Where the accountant has not completed a case, s/he will cooperate with the transfer of the case to another accountant, selected by the borrower or MABS from the panel. The professional body will notify CIB of any such withdrawals

## **10. Removal from Panel**

An accountant may be suspended from the panel, or removed from the panel, at any time if:

- the Terms and Conditions are not complied with

- his / her conduct when providing services within the scope of the Scheme, or his or her professional conduct generally, renders him or her unsuitable, in the opinion of their regulatory body, to provide such services
- s/he has not participated in the Scheme to a satisfactory level in keeping with the objectives of the Scheme.

## **11. Scheme Cancellation or Amendment**

The Scheme may be terminated or modified, and these Terms and Conditions may be amended, at any time, provided that this shall be without prejudice to any Application for Payment which has been received prior to the date of termination, modification or amendment.

Any queries in relation to these Terms and Conditions should be directed to:  
[susan.mcgowan@welfare.ie](mailto:susan.mcgowan@welfare.ie)

Editable, soft copies of all relevant appendices will be sent to all Accountancy bodies to be made available to panel lists.

**Department of Social Protection**  
**25 July 2017**

## Appendix A

### Examples of the type of financial service(s) which may be required of Accountants

MABS will endeavour to be specific in setting out the services required of the Accountant, in order to optimise use of the scheme. It is expected that one or more of the following service(s) may be requested, on behalf of the borrower, dependant on the nature of the individual case.

The work will include examination of the Standard Financial Statement (SFS) prepared by MABS to assess the borrowers overall financial situation and where relevant:-

- identify issues that may need to be addressed such as Revenue compliance requirements, company law requirements relating to accounts;
- advise and provide guidance to borrower on required procedures to address any outstanding issues identified;
- calculate straightforward personal tax liabilities or tax liabilities arising from his / her business;
- advise on issues which may arise due to reckless trading / illegal actions giving rise to personal liability of the director for the debts of a company;
- advise on orderly wind-up of a business concern; this will not extend to the preparation of accounts and income tax returns;
- estimate the cost of achieving compliance in more complex cases, where multi-annual accounts and tax returns are found to be outstanding;
- compile a statement of income for the relevant period, in straightforward cases;
- in the case of borrowers in receipt of self-employed income, review the calculation of any projected net income to assess future sustainable solutions for the mortgage arrears;
- in the case of borrowers in receipt of rental income, review the calculation of rent and expenses for sustainability;
- having considered the borrower's circumstances and outlook, propose an alternative arrangement which the lender may not have proposed, and which may be put to the lender for consideration
- verify level of arrears as asserted by the lender, including the application and treatment of interest;
- communicate with the lender on acceptance or rejection of the forbearance option on the borrower's behalf, if the borrower so requests ( bearing in mind that subsequent work is not covered by the voucher) and advising the borrower in writing as to how

any charges for such communication are to be levelled and collected; where such action is undertaken on behalf of the borrower, to advise the referring MABS that the accountant has assumed responsibility for representation of the borrower.

Where the financial impact of regularising compliance matters is such that overall liabilities are considered to be excessive and bankruptcy or other insolvency arrangements appear the most appropriate course of action, such cases to be referred back to MABS for consideration of referral to PIP service.

**Scheme of Aid and Advice for Borrowers in Home Mortgage Arrears**  
**Accountant Panel Members' Claim Form**

This form is to be used by accountants, who are members of the Accountant Panel under the Scheme of Aid and Advice for Borrowers in Home Mortgage Arrears.

- Payment will only be made on submission of this form, fully completed, mailed to.....
- Payment will be made quarterly in arrears
- Payment will be made by bank transfer
- Payment is made only to members of the Accountant Panel, who have provided valid bank details and evidence of tax clearance

Accountant Name: \_\_\_\_\_

Panel Number: \_\_\_\_\_

Email address: \_\_\_\_\_

Vat number: \_\_\_\_\_

**Bank Details**

Account Name: \_\_\_\_\_

IBAN: \_\_\_\_\_

## Claim Period

From: \_\_\_\_\_

To: \_\_\_\_\_

In respect of each borrower for whom payment is now sought, please indicate voucher number, date of meeting with borrower, and nature of engagement, selecting from the list below:

- a. Advice on lender-proposed ARA
- b. Creation of alternative / new ARA proposal
- c. Advice on financial situation
- d. Advice on cross-securitised mortgage debt / property portfolio related debt
- e. Advice on business debt
- f. Advice on calculation of arrears and interest
- g. Other advice – please specify

Voucher Number	Date of Engagement	Nature of Engagement
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I confirm that in the case of each borrower, I have provided the service as set out, I have provided the borrower with a copy of the advice in writing, and I have retained same on file, available for inspection.

Date of Claim: \_\_\_\_\_

Signed by: \_\_\_\_\_

Print Name: \_\_\_\_\_