

# MONEYLENDING AND THE LAW



Have you borrowed cash from a loan company?

Have you bought goods at your door?

Do you repay each week to a collector?

Do you know your legal rights?

This booklet outlines the protection provided by law for you, the borrower.

## INTRODUCTION

**I**f the answer to any of the questions on the cover of this booklet is yes, you may be involved in a moneylending agreement, also known as collected credit. The law around moneylending is dealt with by the Consumer Credit Act 1995. This Act gives you, the borrower, many rights as well as placing obligations on the moneylender. It also makes certain practices illegal.

*Do you know, for example:*

- You can object to a moneylender being granted a licence
- You are entitled to a proper written agreement when borrowing money from a licensed moneylender
- You are entitled to a properly filled-out repayment book
- There are a number of people that you can turn to for help, advice and information in this area

*Or do you know that:*

- It is illegal for a moneylender to charge interest on interest
- It is illegal for a moneylender to grant another loan to clear an existing loan
- It is illegal for a moneylender to contact you at your place of work without your permission
- It is illegal for a moneylender to trade without a licence.

These are just some of the points covered by the Consumer Credit Act 1995. This booklet aims to give detailed information on these and other issues. It will deal, section by section, with the following questions:

1. How are moneylenders licensed and controlled?
2. What is a moneylending agreement?
3. What are the different types of loan a moneylender offers?
4. What paperwork are you entitled to when taking out a loan from a moneylender?
5. What other obligations are placed on licensed moneylenders by the Act?
6. What practices are not allowed under the Act?
7. Besides moneylenders, what other options exist to borrow money?
8. Where should you make a complaint about a moneylender and who can be contacted for further information?

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# 1.

## How are moneylenders licensed and controlled?

The banks, building societies, hire purchase companies and credit unions, although they loan money to people, are **not** considered to be moneylenders and do **not** need a moneylender's licence. All others need a licence to engage in the business of moneylending legally.

This licence is issued by the Irish Financial Services Regulatory Authority (known as the Financial Regulator) and there is an application form for getting this licence. The person applying must also advertise their application in a national or local newspaper and anyone can object to the grant of the licence by contacting the Financial Regulator. Before granting a licence, the

Financial Regulator can check how much the moneylender is planning to charge for loans and collection of payments and may refuse to grant a licence if the charges proposed are too high. A licence may also be refused on any number of other grounds, including the applicant “not being a fit or proper person” to hold the licence.

If a licence is granted, it is valid for 12 months. The Financial Regulator keeps a public register of licensed moneylenders showing their names and addresses, their terms and conditions and other important information. The important thing to realise is that if you are unhappy with the way a licensed moneylender has dealt with you in the past, you may make a complaint or register an objection with the Financial Regulator’s office and this may affect that person’s right to have their licence renewed in the future. If you are unhappy with the suitability of a person proposing to become a licensed moneylender, you may also object to them.

### **Illegal Moneylending**

This booklet is aimed at people who borrow from a **licensed** moneylender. Someone who carries on the business of money-lending **without** a licence when one is required is engaging in a criminal act. The simplest suggestion here is to avoid borrowing altogether from a person who does not hold a licence as they are unlikely to carry out their business in accordance with the Act. One easy way of checking is to ask the person to show you their licence. As already mentioned, the Financial Regulator has a register of licence holders and this list is available on request.

A complaint about illegal moneylending may also be made to the Gardaí. The Consumer Credit Act 1995 gives the Gardaí improved powers to bring prosecutions against unlicensed operators.

# 2.

## What is a moneylending agreement?

The Consumer Credit Act defines moneylending agreements in legal language. In general terms, however, a moneylending agreement can be explained as a cash loan or a supply of goods or services with one or more of the following features:

- The agreement is usually made away from the moneylender's premises, generally at the borrower's home.
- The borrower usually pays a high level of interest over a short repayment period.
- The repayments are usually collected at the borrower's home by way of a collection agent.

# 3.

## What are the different types of loan a moneylender offers?

### Cash Loans

Here the moneylender loans you cash and you can spend it on whatever you wish. You repay the money, usually in weekly instalments at high interest rates over a short time. There is usually a collection charge built in if the money is collected at your door.

*Example:* You borrow €200 and repay the moneylender €260 over 26 weeks at €10 per week.

## Goods Loans

Here goods are supplied to you on credit and this can be done in different ways.

- **Direct Sales:** The moneylender sells you goods (toys, furniture or jewellery, for example) directly at a marked-up price and you repay the price of these goods in instalments.

Some people operating a goods-only business claim that they are not moneylenders as they do not charge interest and so the Act should not apply to them. However, since there is a mark-up on the goods, it can be argued that this is a form of interest. More information can be got from the Financial Regulator's office on this issue. Some operators are often involved in both cash and goods and will sometimes offer goods deals first to check your ability to pay back before loaning cash.

- **Credit Sales:** Here the sale is made in a retail store, for example selling electrical goods or furniture. The shop provides you with the goods, is paid for them by the moneylender and you pay the moneylender back in instalments, with interest, often over longer periods than for cash loans.
- **Vouchers:** Here the moneylender provides you with vouchers or cheques that can be used to buy goods in certain shops only. You repay in instalments, with interest, to the moneylender.
- **Catalogues:** Here you can order goods from a catalogue. They are usually sent by post and repayments, with interest, can also be made by post or collected at your door.

# 4.

## What paperwork is a borrower entitled to when taking out a loan?

### Essential information

A moneylending agreement must have the following four elements:

- It must be in writing and have the names and addresses of all parties to the agreement.
- It must be signed by the borrower and the moneylender.
- The borrower must receive a signed copy of the agreement at the time it was made or at the latest within 10 days of making it.
- The agreement must tell you of your right to cancel within 10 days of receiving a copy of it. This is called the cooling-off period. You can only cancel the agreement by giving notice in writing. However, the moneylender may ask you to sign away this right by a separate signature on the agreement before you will get the cash or goods involved. This is called a waiver and you are legally bound by it if you sign it.

The important point to note here is that if the agreement does not have these four points set out above, it is not enforceable in law.

### Loan details

The words “moneylending agreement” must be clearly stated in a prominent position and the agreement must then also set out the basic details of the loan, including the following information:

- Amount lent
- Date of loan
- Amount, number and timing of repayments
- Details of collection charges

- Rate of interest
- Total amount payable
- Date that the loan ends
- How to repay early and the rebate you are entitled to for doing so. A **rebate** here means that if you decide to repay the loan early, the moneylender is not entitled to charge you interest for the full length of the agreement. Contact the Financial Regulator for further information on your right to an interest rebate.

If you do not get this information in writing, it may also mean that the loan is not enforceable but if the moneylender takes any legal action against you, a court has the power to decide whether you should be forced to repay or not.

### **Customer's repayment book**

As well as the written agreement, you must also get a **repayment** book from the moneylender. The moneylender or his agent must record repayments and must sign for them in this book to let you know where you stand with the loan at any time. The book must also record the date of each repayment and how much of the loan amount is left after each payment has been made. The repayment book must also set out the basic details of the loan, names and addresses, the amount of the loan and rates of interest, in the same way as the copy of the loan agreement you have received.

If the moneylender wishes to take your repayment book away for any reason (for example to check accounts), you must be issued with a receipt showing the up-to-date balance of repayments.

### **Moneylender's record**

The moneylender must also keep a record of the agreement and this must contain the same type of information as your repay-



ment book. The moneylender must keep details of loans for up to five years after the last repayment has been made. A moneylender who fails to provide the repayment book or who fails to keep a copy of the agreement may be guilty of a serious criminal offence.

# 5.

## What other obligations are imposed on licensed moneylenders by the Act?

### Business premises

A moneylender **must** have a separate business premises that is not used as a residence by **any** other person. The moneylender **must** also display an authorised copy of his or her licence in an obvious position at his or her business premises.

### Authorisation

The moneylender **must** issue a written authorisation to any agent engaged in moneylending (or the collection of repayments) on his or her behalf. Most moneylenders do this in the form of an ID card with a photo of the agent, the licence number of the moneylender and the signatures of both the moneylender and the agent.

Note here that the authorisation only allows the agent to engage in moneylending or to collect repayments on the licence holder's behalf. It does not allow the agent to lend money him/herself.

### Collection charges

A moneylender **must** indicate that if charges are payable for calling to collect instalments at the borrower's home, the exact

amount of each collection charge is set out in writing. A statement must also be included that the borrower may make repayments at the business premises of the moneylender, in order to avoid collection charges.

The consumer may sign away the right to make repayments at the business premises of the moneylender, but only by signing for this matter **separately** from the original agreement – not by signing for both matters at the same time.

### Default

If a borrower fails to pay the instalments due under the agreement and the moneylender is planning to take legal action as a result, the moneylender **must** give the borrower a notice in writing explaining that they have failed to pay and that the moneylender is planning to take legal action against them. The important point here is that the borrower has 21 days from the receipt of the notice to pay the arrears of the instalments due. If a borrower consistently fails to pay instalments on time, the moneylender may ask a court to waive the need to give this notice.

In practice, it is rare for a moneylender to take legal action against a borrower but it is not something that can be ruled out.

### Legal costs

A moneylender planning to take legal action against a borrower **must** inform the borrower that legal costs may be payable and should provide the borrower with an estimate of these costs.

### Advertising

A moneylender advertising credit by way of a cash loan or for goods or services **must** provide certain details as to the conditions under which the credit will be granted. Advertising of credit under the legislation is also supervised by the Financial Regulator.

## State of the loan

A moneylender **must**, in response to a request by a borrower, provide details as to the current state of the loan including the amount that is left to pay. In practice, a borrower under a moneylending agreement is unlikely to seek this information because, as already noted, the repayment book to which they are entitled under a moneylending agreement should have all of this information.

# 6.

## What practices are not allowed under the Act?

All the practices listed below are potential criminal offences. The office of the Financial Regulator may be contacted for further information or a complaint may be made to the Gardaí.

### A. Trading without a licence

As already noted, a moneylender **must not** engage in the business of moneylending without a licence.

### B. Top-up loans

A moneylender **must not** offer another loan to clear an existing loan i.e. **top-up** loans, where the borrower gets deeper into debt, are not allowed. Although the Act does not say that a borrower is not bound by such a loan, it would in practice be difficult for a moneylender to recover money due under a top-up loan.

In addition, a moneylender **must not** take a payment off the top of the loan – i.e. you should get the full amount borrowed and not make the first repayment until the time set under the agreement.

### C. Charges

A moneylender **must not** charge for any amount except repayment of the sum borrowed, interest and collection charges (which must be set out clearly), so no hidden extra charges such as transaction or administrative costs are allowed.

### D. Penalty interest

A moneylender **must not** charge penalty interest against a borrower. If, for example, you delay making repayments the moneylender is not entitled to charge interest on interest as a punishment. However, the moneylender may charge you the normal interest on the amount borrowed to make up for the delay in repaying, but in practice they rarely do.

### E. Holding documents belonging to borrowers

A moneylender **must not** have in his/her possession or control, for the purposes of moneylending, documents belonging to the borrower. For example, the practice of holding child benefit books or other social welfare documents belonging to the borrower as security for repayment of instalments is prohibited.

### F. Times of collection

A moneylender or his or her agent **must not** collect repayments outside the times allowed by the Act. The times allowed are 10 am in the morning to 9 pm at night from Monday to Saturday. Collection is not allowed at all on Sundays or public holidays. You may, by signing a separate **form** from the agreement, give your consent to the collection of repayments between 8 am and 10 am Monday to Saturday.

### G. Visits/telephone calls to place of work/family

A moneylender **must not** visit or telephone you at your place of work without your consent unless he/she has consistently been unable to contact you at home.

He/she also must not visit or telephone either your employer or members of your family without your **written** consent in the form of a separate signature, except where your employer or the family member, as the case may be, is in some way part of the credit agreement, for example, as a guarantor for the loan.

These points do not apply where the moneylender is trying to serve a document in connection with a court case.

#### H. Sale of goods

A moneylender or his or her agent must not attempt to sell you goods at the time that a cash advance is being made to you under a loan agreement. However, there is nothing to prevent the moneylender or his or her agent from selling goods while collecting repayments. However, you should be careful if you are offered goods in these circumstances as they may be more expensive than if you bought them in a retail outlet.

#### I. Unenforceable agreements

A moneylender **must not** make demands for payment or threaten to bring legal action against a borrower in relation to an agreement which is unenforceable under the Act. For example, this might be an agreement that did not have the necessary information as explained above or a top-up loan or a loan agreement that provided for penalty interest. Whether or not you are bound by the loan is a legal question for which **further advice** should be sought from one of the agencies in Section 8 of this booklet.

# 7.

## Besides moneylenders, what other options exist to borrow money?

This booklet has tried to explain the law around moneylending so that you might know what your rights are. However, it is also important to note that moneylending agreements are usually quite costly and should be considered carefully before you agree them. Often a borrower will have little choice, especially in a crisis situation, but what alternatives there are should be looked at – in particular loans from credit unions.

A credit union is a financial co-op, often based in a local community, where members may save and borrow. You must be eligible to become a member and once you join you are encouraged to save regularly, even if only in small amounts. Any member may apply for a loan and his/her application will be assessed on their ability to repay, their need and their record with the credit union. To find out which credit union you may be eligible to join, check your local phone book or contact the Irish League of Credit Unions at 33-41 Lr Mount Street, Dublin 2 or by telephone at 01-614 6700.

It is also fair to say that people's credit options in general are now wider than in years gone by and there may be other affordable sources of credit available to you. In every case, make sure you compare the costs of borrowing from different credit providers before you make a final decision. It is also important to consider your ability to repay the money before you take out any loan or buy goods on credit and not to overstretch your commitments. Although top-up loans from moneylenders are

illegal, some borrowers take out more than one loan in their own or other people's names and so can have several agreements running at the same time. Ideally, the first loan should be cleared before taking out another.

The Money Advice and Budgeting Service (MABS) is a nationwide service and will be able to provide you with advice on the management of your money. See the next section for further details.

# 8.

Where should a consumer make a complaint and who can be contacted for further advice and information?

- COMPLAINTS

## **The Financial Regulator (or Irish Financial Services Regulatory Authority – IFSRA)**

The overall job of monitoring compliance with the Consumer Credit Act 1995 lies with the Financial Regulator. The Regulator also has the general power to check the practices of creditors (such as licensed moneylenders) and to provide information to the public on issues of consumer protection.

The Financial Regulator does **not** have the power to prosecute criminal offences under the Moneylending part of the Act. However, a consumer concerned about the practices of an existing moneylender can contact the Financial Regulator to make a complaint which can then be investigated. When it comes to the annual round of moneylenders' licence applications, the existence of complaints on file may influence the decision as to whether to renew a particular moneylender's licence. Any member of the public is also entitled to object to the granting or the renewal of any moneylender's licence. As an alternative, a person who has taken out a loan from a licensed moneylender and who is unhappy with how they have been treated may make a complaint to the Ombudsman for Financial Services (see below).

Should the complaint involve an alleged criminal offence by a licensed moneylender or moneylending without a licence (illegal moneylending), the matter must in the end be reported to the Gardaí



for any potential prosecution to take place. It may be advisable to contact the Financial Regulator first with a view to making such a complaint, as they have the power where appropriate to conduct enquiries and liaise with the Gardaí on these matters.

**Contact:** The Financial Regulator can be contacted by phone at lo-call 1890 777 777 or at 01-410 4000. The postal address is Irish Financial Services Regulatory Authority, PO Box No 9138, College Green, Dublin 2. There is also a drop-in information centre at 6-8 College Green, Dublin 2. The website is [www.ifsra.ie](http://www.ifsra.ie)

### **An Garda Síochána**

It is the sole responsibility of An Garda Síochána to investigate all alleged breaches of the criminal law. Complaints received, which are treated in confidence, are thoroughly investigated and where evidence in support of a criminal act is obtained, a prosecution may be taken by the Director of Public Prosecutions.

An Garda Síochána works closely with all statutory agencies, which in this case includes the Financial Regulator, and with many voluntary agencies in an effort to ensure that complaints are resolved to the satisfaction of those concerned.

**Contact:** Any person who feels they have evidence of a criminal act or who has a complaint to make in respect of a criminal offence, including the offences outlined in the Consumer Credit Act 1995, may contact their local Garda station in total confidence, where the matter will be fully investigated. Alternatively, the Garda Confidential Freefone is at 1800-666 111.

### **Ombudsman for Financial Services**

The Financial Services Ombudsman's office came into operation in April 2005. Its role is to investigate complaints made by

consumers of financial services in relation to the conduct of 'financial service providers'. This includes licensed moneylenders. The Ombudsman has the power to investigate your complaint and can also report his findings to the Financial Regulator where he believes it necessary.

**Contact:** The FSO can be contacted at 1890 88 20 90 or 01- 6620899. The postal address is Financial Services Ombudsman's Bureau, 3rd Floor, Lincoln House, Lincoln Place, Dublin 2. The email address is [enquiries@financialombudsman.ie](mailto:enquiries@financialombudsman.ie) and the website is at [www.financialombudsman.ie](http://www.financialombudsman.ie)

## ● MONEY ADVICE, LEGAL INFORMATION AND ASSISTANCE

### Money Advice and Budgeting Service

The Money Advice and Budgeting Service (MABS) is a free and confidential service for people with debt and money management problems. There are 62 MABS offices in Ireland with professional Money Advisers who can:

- help you deal with your debts and make out a budget
- examine your income to make sure you are not missing out on any of your entitlements
- contact your creditors on your behalf with offers of payment if you are not able to do it yourself

*(Examples of creditors are banks, credit unions, utility companies, licensed moneylenders, local authorities, credit card companies etc).*

- help you to decide on the best way to make the payments.

### *Why do people usually go to MABS?*

People often seek help when:

- there are extra bills to pay because something has happened, such as illness in the family, separation, bereavement or an accident

- there is no money left over to pay everyday bills
- the money coming into the household is less than it used to be and loan repayments have fallen behind
- they have been living on a low income for a long time and are getting further and further behind because of the cost of education, clothing and footwear, travel, childcare or rent
- they took out more loans than they are able to repay
- they go from welfare to work and find they haven't as much money as they thought they would have and need help with a new budget.

**Contact:** You will find the telephone number for your local MABS office in the telephone directory. Full contact details are also available on the MABS website at [www.mabs.ie](http://www.mabs.ie). The website also contains a useful step by step guide to help you deal with debt.



### Free Legal Advice Centres (FLAC)

FLAC is an independent human rights organisation campaigning for equal access to justice for all and providing a network of voluntary legal advice clinics throughout Ireland. Our work on credit and debt law mainly involves training, research and policy work. We also work closely with MABS and may be able to provide specific legal advice on a moneylending agreement, consumer credit or debt matter addressed through them.

**Contact:** For details of your nearest FLAC centre, write to us at 13 Lower Dorset Street, Dublin 1 or at [info@flac.ie](mailto:info@flac.ie) or phone our information and referral line at 01-8745690. You can also find information on FLAC's work and our centres on the website at [www.flac.ie](http://www.flac.ie)

### Northside Community Law Centre (NCLC)

NCLC is an independent, community-based law centre providing legal advice and representation to clients in the electoral areas of Dublin North Central and Dublin North East.

**Contact:** Northside Community Law Centre, Northside Civic Centre, Coolock, Dublin 17, or by telephone at 01- 8477804. You can e-mail them at [info@nclc.ie](mailto:info@nclc.ie) and the website is at [www.nclc.ie](http://www.nclc.ie)



### Ballymun Community Law Centre (BCLC)

BCLC is a voluntary non-profit making community law centre providing legal information, advice and representation in civil cases for people living in the Ballymun area.

**Contact:** Ballymun Community Law Centre, 34 Shangan Road, Ballymun, Dublin 9, or by telephone at 01-8625805. You can e-mail them at [info@bclc.ie](mailto:info@bclc.ie)



### Legal Aid Board Law Centres.

The Legal Aid Board is the State civil legal aid service and provides legal advice and/or representation to people who cannot afford a private solicitor. Legal aid is available subject to a means test and a merits test. If your legal rights have been infringed in the course of a moneylending agreement, a Legal Aid Board Law Centre may be able to represent or advise you in relation to court proceedings.

**Contact:** The Legal Aid Board operates a wide network of law centres throughout the country. For details of your local law centre, contact the Legal Aid Board Head Office, Quay St, Cahirciveen, Co.Kerry, by telephone at 066-947 1000 or check the website at: [www.legalaidboard.ie](http://www.legalaidboard.ie)

Whilst every effort has been made to ensure that the information contained in this booklet is accurate, no legal responsibility is accepted by FLAC for any errors or omissions.

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