



Banc Ceannais na hÉireann
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Review of the Code of Conduct for Business Lending to Small and Medium Enterprises

Consultation Paper CP91

1. Introduction

The Code of Conduct for Business Lending to Small and Medium Enterprises (SME Code) was originally introduced in 2009, setting out important protections for SMEs when accessing credit or in financial difficulties. A limited review was carried out in 2011 focussing on the 'Financial Difficulties' provisions, with new and amended provisions introduced with effect from 1 January 2012. In the Central Bank's Strategic Plan 2013-2015, we set out our intention to "strengthen the consumer protection framework by completing a review of the ... Code of Conduct for Lending to Small and Medium Sized Enterprises (SME Code)".

The SME Code provides protections for SMEs across a range of areas, including applications for credit facilities, declining/withdrawing credit facilities, financial difficulties, the provision of information, and handling complaints. While there is no obligation on regulated entities to lend, the SME Code supports the process around the supply of credit to SMEs. It applies to regulated entities when providing credit products to SMEs and smaller enterprises.

SMEs are defined as "enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding €50 million, and/or an annual balance sheet total not exceeding €43 million and includes smaller enterprises".

The SME Code offers additional protections to 'smaller enterprises', which are a subset of SME. These additional protections relate to the provision of information and advertisements, and apply in the case of credit facilities other than leasing, hire purchase and invoice discounting.

This paper discusses the proposed changes to the existing regime for SMEs.

2. Review of SME Code

In order to inform this review, consideration has been given to a number of factors, including:

- the results of a recent themed review of bank practices on certain provisions of the current SME Code;
- issues that have been brought to our attention by SME stakeholders;
- issues highlighted by the various lenders and their representative bodies;
- provisions of the Consumer Protection Code 2012 that apply to personal consumers but are also relevant for lending to SMEs;
- the recommendations of the Oireachtas Joint Committee on Jobs, Enterprise and Innovation: Report on Access to Finance for SMEs; and

- issues highlighted in other reports and surveys relating to the SME market, such as the *Red C Credit Demand Survey* carried out on behalf of the Department of Finance, the *ISME Bank Watch Survey* and the *InterTradeIreland Report on Access to Finance for Growth for SMEs on the Island of Ireland*.

2.1 Themed review

In order to obtain information on the operation of the SME Code in practice, we undertook a themed review on certain provisions relating to the declining of credit facilities and the appeal of decisions on alternative repayment arrangements.

2.1.1 Credit Application Declines

In the case of credit application declines, the review showed that:

- where SME credit applications are declined in writing, lenders typically use standard letters that provide limited information on the reason for declining the application; and
- where it was presented to the Central Bank that more detailed information was provided to applicants verbally, in a number of cases SME lenders did not have a record of these discussions.

The Central Bank wrote to the lenders inspected requiring them to take the steps necessary to ensure that letters issued to SMEs set out sufficient details on the reasons for the decline and also to ensure that adequate records of the reasons for the decline provided verbally to the SME are maintained. This feedback was also provided to other SME lenders in order to improve practices across the industry.

2.1.2 Appeals

The themed review showed that for appeals:

- the SME lenders reviewed apply their internal appeals mechanism to all credit applications, withdrawals or restructures/alternative repayment arrangements. This approach is to be welcomed and goes beyond the minimum requirements of the SME Code which provides for an appeal of an alternative repayment arrangement in a financial difficulties case only; and
- there were good practices in the appeals model being applied by some lenders. These good practices include having a dedicated appeals unit, with dedicated, experienced appeals panel members, oversight by a Steering Committee and the use of management information to provide feedback and to improve the process.

2.2 Issues raised by stakeholders

In order to obtain information about the main issues of concern, we spoke to a number of stakeholders, including SME representative bodies, advisers to the SME sector, Government departments and Government agencies. These stakeholders raised a number of issues, including:

- better communication from the lenders regarding their application process and timelines;
- clarity from the start of the credit application process about what information is required in order to avoid issuing further requests for information;
- more transparency around how 'ability to repay' is determined;
- reliance on the use of personal guarantees;
- insufficient clarity on the reasons for the refusal of credit facilities; and
- SMEs need to be made more aware of their right to an internal appeal or a review by the Credit Review Office (CRO).

We also spoke to a number of lenders and their representative bodies, who highlighted the following concerns:

- any improvements or changes to the SME Code should support efficiency in the credit process and avoid further complexity;
- specific timeframes for the assessment of applications for credit may not be appropriate, in particular in the case of complex applications and in the case of credit unions to allow for consideration at credit union board meetings;
- longer timelines are also needed for the assessment of complex restructure cases;
- difficulty in determining when a customer is no longer in financial difficulty; and
- lack of clarity regarding joint commercial borrowings that fall into financial difficulty where one party is co-operating and the other is not.

2.3 Consumer Protection Code 2012

The Consumer Protection Code 2012 contains protections for personal consumers relating to the provision of credit. We believe that some of these provisions would also be relevant for the SME sector and have included them, amended as appropriate, in Regulations 7, 9, 10, 11, and 12 at Appendix 1.

2.4 Oireachtas Joint Committee on Jobs, Enterprise and Innovation: Report on Access to Finance for SMEs

The Oireachtas Joint Committee on Jobs, Enterprise and Innovation published its *Report on Access to Finance for SMEs* on 16 July 2014. The Report contains a number of recommendations which aim to ensure that accessing finance does not prove to

be unduly problematic for SMEs. We have reviewed these recommendations and taken account of those that are relevant to the SME Code:

- *Recommendation 7*

The Committee considers that new businesses need to be made aware of all the charges that a bank will impose on them before a bank account is opened or a loan is drawn down so that they can budget for them.

- *Recommendation 10*

The Committee considers that it should be mandatory for banks to provide detailed written explanations as to why a particular application for credit has been turned down.

- *Recommendation 11*

The Committee considers that loan applications should be dealt with by banks within a specific timeframe and a response should be provided within 2 weeks at the latest.

2.5 Other reports/surveys

We have also considered the issues highlighted in other reports and surveys relating to the SME market, such as the *Red C Credit Demand Survey* carried out on behalf of the Department of Finance, the *ISME Bank Watch Survey* and the *InterTradeIreland Report on Access to Finance for Growth for SMEs on the Island of Ireland*.

The *Red C Credit Demand Surveys*, covering the periods October 2013 – March 2014 and April – September 2014, which were carried out on behalf of the Department of Finance, highlighted issues relating to lack of clarity and transparency regarding the reasons for credit refusals, the length of turnaround times for decisions on applications for credit, lack of knowledge about Government support options, and lack of information about the right to an internal review or a review by the Credit Review Office.

The *ISME Quarterly Bank Watch Survey Q4 2014* highlighted a reduction in the number of SMEs that were refused credit and a reduction in average decision times to four weeks. It also indicated that 69% of SMEs are aware of the Credit Review Office, while 57% are aware of the Credit Guarantee Scheme.

The recommendations of the *InterTradeIreland Report on Access to Finance for Growth for SMEs on the Island of Ireland* relate to:

- clear and written reasons as to why an application for credit has not been accepted;
- quicker turnaround on decisions;

- making SMEs aware that a rejected application does not result in a negative credit rating; and
- putting in place a dedicated team to review rejected applications for appropriateness and consistency of decline decisions, explore the use of government backed schemes, and review informal applications and enquiries.

3. Statutory basis

While the current SME Code is issued under Section 117 of the Central Bank Act 1989, the Central Bank intends to make regulations under Section 48 of Central Bank (Supervision and Enforcement) Act 2013 to both replace the existing Code and introduce the reforms described above.

4. Your views

Having reviewed the items highlighted above and the provisions of the current SME Code, it is now proposed to strengthen the protections available to SMEs in a number of areas. We would welcome your views on these proposals. In addition, we would like your views on certain issues relating to scope, specifically the inclusion of credit unions and business credit cards, the extension of the protections contained in the Smaller Enterprises section to all SMEs, and the continued exclusion of syndicated, club or multi-lender transactions and special purpose vehicles. These issues are discussed in more detail below.

4.1 Strengthened protections

The content of the proposed new regulations is more detailed than the existing SME Code. During the drafting process, a number of amendments have been made to existing provisions, with some existing provisions omitted from the proposed regulations as they lack legal substance, are deemed unnecessary or are adequately covered elsewhere, and some provisions replaced by more detailed requirements. For example, the General Principles have been omitted as they are already included in the Consumer Protection Code 2012 and apply to a regulated entity's dealings with all customers, including SME borrowers. There are a number of enhanced and additional provisions throughout the regulations that set out a more detailed process and aim to be more supportive of borrowers and require lenders to be more interactive.

We propose strengthening the protections available to SMEs in a number of areas, including:

- requiring lenders to provide information on the application process and associated timelines;

- introducing requirements to assess affordability;
- requiring lenders to provide reasons in writing for declining credit that are specific to the application (or part thereof) that was declined;
- expanding the appeals provisions to include decisions on declining or withdrawing credit and decisions regarding terms and conditions; and
- requiring lenders to provide information to the customer about:
 - Government supports available from or through the lender,
 - the lender's appeals process and the role of the Credit Review Office (where relevant), and
 - the complaints process including, where relevant, to the Financial Services Ombudsman (FSO).

Draft regulations are attached to this Consultation Paper at Appendix 1 to replace the existing SME Code and give effect to the above reforms, and we would welcome your views on the proposed provisions.

Question 1:

Do you have comments on the attached draft regulations? In your response, please quote the number of the specific provision(s) which give rise to your concerns and, if possible, suggest alternative drafting or solutions.

Question 2

Are there specific areas that you feel should be expanded on? If so, please provide details and, if possible, drafting suggestions or proposed solutions.

Question 3

Do you have any suggestions for further reform, e.g., are there any gaps or areas omitted from the protections proposed? If so, please set out your proposals.

4.2 Credit unions

While the SME Code applies to business lending by regulated entities, such as credit institutions, it does not apply to credit unions at present. However, with the introduction of the Central Bank (Supervision and Enforcement) Act 2013, the Central Bank now has enhanced powers to impose requirements on all regulated financial service providers, including credit unions. We believe that SME borrowers should have the same protections available regardless of the type of regulated entity from which they obtain credit facilities. For this reason, where credit unions provide credit to SMEs, it is now proposed to include them in the scope of the draft regulations.

Question 4:

Do you agree that SMEs dealing with credit unions should have the same level of protection as when dealing with other lenders? If you do not agree, please outline the reasons why.

4.3 Smaller enterprises

A partial review of the SME Code was carried out during 2011, which mainly focussed on the Financial Difficulties section. At that time, and in addition to the amendments to the Financial Difficulties section, some requirements relating to the provision of information and advertising were transferred from the Consumer Protection Code into the SME Code. These provisions apply only to 'smaller enterprises' and the definition of 'smaller enterprises' is aligned with the definition of 'consumer' as set out in the Consumer Protection Code, i.e.,

- a) a natural or legal person or group of natural or legal persons, but not an incorporated body with an annual turnover in excess of €3 million in the previous financial year, acting within their business, trade or profession (for the avoidance of doubt a group of persons includes partnerships and other unincorporated bodies such as clubs, charities and trusts, not consisting entirely of bodies corporate); or
- b) incorporated bodies having an annual turnover of €3 million or less in the previous financial year (provided that such body shall not be a member of a group of companies having a combined turnover greater than the said €3 million),

The application of these provisions to consumer SMEs was a temporary measure pending a full review of the SME Code. As a result of this temporary measure, the scope of the Smaller Enterprises section is out of line with the other sections of the SME Code, as follows:

- the Smaller Enterprises section applies to credit facilities **other than** leasing, hire purchase and invoice discounting, **including** business credit cards, and
- the remainder of the SME Code applies to credit facilities **including** leasing, hire purchase and invoice discounting but **excluding** business credit cards.

The provisions in the Smaller Enterprises section (provisions 46 to 53 of the current SME Code) relate to advertising requirements, a prohibition on offering unsolicited pre-approved credit, notification to a guarantor if the terms of a loan agreement change, and the provision of a cost comparison where a mortgage is offered for the purpose of consolidating other credit facilities.

We believe there is merit in applying the ‘Smaller Enterprises’ provisions to all SMEs as they appear to be equally applicable regardless of the size of the SME. Mere size alone would not suggest that these protections would be inappropriate for the larger SMEs. We are seeking views on this proposed approach.

Question 5:

Do you agree that the ‘Smaller Enterprises’ provisions in the current SME Code should be extended to all SMEs? If not, please set out the reasons why.

4.4 Business credit cards

Business credit cards do not fall within the scope of the current SME Code, with the exception of the ‘Smaller Enterprises’ section. We understand from our discussions with stakeholders that business credit cards have not traditionally been used as a source of credit for SMEs but are generally used as a payment method and are typically paid in full each month by means of a direct debit from the SME’s current account. However, they may be seen as a potential or exceptional source of credit in straitened times. It would seem likely that circumstances could arise where the SME may not have sufficient funds available in its current account to pay the credit card in full each month. This could lead to the firm exceeding its maximum credit limit and/or being unable to meet the minimum payment due, with the potential that the SME could ultimately find itself in financial difficulties.

The provisions in the ‘Smaller Enterprises’ section were copied from the Consumer Protection Code with the intention that they would apply in the same way as they had in that Code. Therefore, as business credit cards would have fallen within the scope of the Consumer Protection Code, they also fall within the scope of the ‘Smaller Enterprises’ section of the SME Code.

We are considering including business credit cards in the scope of the regulations that are proposed to replace the SME Code for all SMEs and we are seeking stakeholder views on this approach. In particular, we would welcome your views on whether arrears or financial difficulties are now arising as a result of the inability of borrowers to meet the minimum payments due on their business credit cards.

Question 6:

Do you agree that business credit cards should be included in the scope of the regulations that are proposed to replace the SME Code for all SMEs? Please explain

why you think this approach is appropriate. If you do not agree, please set out the reasons why.

4.5 Multi-lender credit and special purpose vehicles

Multi-lender credit includes syndicated, club and other multi-lender transactions. These transactions and lending to special purpose vehicles (including vehicles established for the purposes of a particular transaction) are specifically excluded from the scope of the current SME Code. We believe that these types of borrower, while they may technically fall within the definition of an SME, are more likely to be sophisticated borrowers with access to their own professional advice and therefore the protections of the SME Code would not be necessary in these circumstances. We propose that these borrowers should continue to be excluded from scope.

Question 7:

Do you agree that multi-lender credit, including syndicated, club or other multi-lender transactions, and special purpose vehicles should continue to be excluded from the scope of the regulations? If so, please provide the reasons for your view. If you do not agree, please set out the types of multi-lender credit or special purpose vehicles you think should be included and explain why the protections proposed would be appropriate or necessary for these borrowers.

4.6 Classifying SME borrowers in financial difficulties as 'not co-operating'

In the Code of Conduct on Mortgage Arrears 2013 (the CCMA) certain additional protections were introduced for borrowers prior to being classified as 'not co-operating'. We are considering whether there is merit in having a similar concept of 'not co-operating' in the proposed new SME regulations and we have included draft provisions in Regulations 2, 15 and 16 at Appendix 1.

Question 8:

Do you agree that the introduction of a concept of 'not co-operating' is useful in an SME context? If so, do you have any comments on the proposed provisions?

5. Making your submission

The closing date for submissions is 13 April 2015. Comments and views are welcome from all interested parties on the issues highlighted in this paper and on the provisions proposed in the draft regulations. In addition, views are welcome on any other issues that may be relevant to the review of the SME Code.

The Central Bank requests that submissions which put forward arguments for changes to the proposals be supported, where possible, by evidence which will aid its consideration of the issues.

Please make your submissions in writing and, if possible, by e-mail (see details below). When addressing any issue raised in this paper, please use the headings in this paper to identify the section you are referring to. If you are raising an issue that is not referred to in this paper, please indicate this in your submission.

The Central Bank intends to make submissions available on its 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 reasonable steps may be taken to avoid publishing that material. This may involve 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. So be aware that, unless you identify any commercially sensitive information, you are making a submission on the basis that you consent to it being published in full.

Please clearly mark your submission 'SME Business Lending Regulations' and send it to:

Consumer Protection
Banking Insurance Investments and Policy
Central Bank of Ireland
PO Box 9138
6 - 8 College Green
Dublin 2
E-mail: code@centralbank.ie

Appendix 1

S.I. No. of 201[5]

**CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013 (SECTION 48(1))
LENDING TO SMALL AND MEDIUM ENTERPRISES REGULATIONS 201[5]¹**

DRAFT

¹ These Regulations are in draft form for the purposes of consultation. The Central Bank of Ireland reserves the right to make amendments as it deems appropriate.

PART 1 – PRELIMINARY

In exercise of the powers conferred on the Central Bank of Ireland (the Bank) by section 48 of the Central Bank (Supervision and Enforcement) Act 2013 (the Act), the Bank, having consulted with [] in accordance with section 49(1) of the Act, hereby makes the following Regulations:

1. These Regulations may be cited as the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1) Lending to Small and Medium Enterprises) Regulations 201[5].

2. In these Regulations:

‘advertisement’ means any communication the purpose of which is to advertise a product, service or lender the subject of these Regulations, excluding name plaques, sponsorship material and a prospectus drawn up in accordance with the Prospectus Directive (2003/71/EC);

‘alternative arrangement’ means an agreement to discharge the borrower’s debt obligations to the lender which is entered into in order to address arrears or financial difficulties and which is a variation or alternative to the terms and conditions of the credit facility agreement;

‘Appeals Panel’ means an appeals panel established under Regulation 21;

‘arrears’ means where a borrower has not made a payment or part of a payment in accordance with a credit facility agreement by the scheduled due date for payment and in the case of an overdraft where the borrower’s overdraft limit is exceeded for 30 consecutive days;

‘borrower’ means a micro, small or medium-sized enterprise, in the State that is availing or proposing to avail of credit;

‘cash’ includes money in any form;

‘complaint’ means an expression of grievance or dissatisfaction by a borrower, either orally or in writing, in connection with -

- (a) the provision of credit or an alternative arrangement, or
- (b) the refusal of a lender to provide credit or an alternative arrangement to a borrower,

and complainant shall be construed accordingly;

‘credit’ means a deferred payment, cash loan or other similar financial accommodation, including hire purchase, invoice discounting and the letting of goods;

‘credit facility agreement’ means an agreement whereby a lender grants or promises to grant credit;

‘Credit Review Office’ means the office established under guidelines made by the Minister for Finance under Section 210(1) of the National Asset Management Agency Act 2009;

‘durable medium’ means any instrument which:

- (a) enables the borrower to store information addressed to that borrower in a way accessible for future reference and for a period of time adequate for the purpose, and
- (b) allows the unchanged reproduction of the information stored;

‘financial difficulties’ means a credit facility agreement to which one or more of the following apply:

- (a) the borrower is in arrears under the credit facility agreement for three consecutive months;
- (b) where the credit facility agreement is an overdraft, the approved limit on the overdraft is exceeded for 90 consecutive days;
- (c) where an alternative arrangement is agreed, the borrower is in arrears in respect of that alternative arrangement;

and financial difficulties cases shall be construed accordingly;

‘guarantee’ means a contract by which a person becomes bound to another for the fulfilment of a promise or engagement or other duty of a third party;

‘invoice discounting’ means the provision of credit based on the unpaid sales invoices of a borrower;

‘lender’ means a regulated financial service provider providing or offering to provide credit facility agreements;

‘micro, small or medium enterprise’ means a micro, small or medium enterprise, within the meaning of Article 2 of the Annex to the Commission Recommendation 2003/361/EC of 6 May 2003;

‘multi-lender credit’ means credit offered or granted by two or more lenders working together to provide funds to one or more borrowers as part of the same arrangement;

‘not co-operating’ means when:

- (a) the borrower has failed to make a full and truthful disclosure to the lender of the information required by the lender to assess the borrower’s financial situation, within the timeframe specified by the lender, and
- (b) the warning letter, required in accordance with Regulation 15(3), has been issued to the borrower and the borrower has not carried out the action(s) specified in that letter.

‘overdraft’ means a credit facility agreement effected by permitting a borrower’s

current account to go into debit;

'record' means any document, file or information (whether stored electronically or otherwise) and which is capable of being reproduced in a legible form;

'security' means assets, undertakings, indemnities, guarantees or charges over assets offered to a lender to secure a credit facility;

'special purpose vehicle' means a corporation, trust or other entity, established for, and the activities of which are limited to, accomplishing a specific objective.

3. These Regulations come into force on the [].

4. Application of these Regulations

(1) These Regulations apply to:

- (a) a lender providing or offering to provide a credit facility agreement, to which a borrower is a party or will be a party, and
- (b) any activity by a lender involved in proposing or undertaking preparatory work for entering into a credit facility agreement with a borrower.

(2) These Regulations shall not apply:

- (a) where the borrower is a regulated financial service provider authorised to provide credit;
- (b) to multi-lender credit, and
- (c) to credit offered or granted to special purpose vehicles.

PART 2 - GENERAL

5. Unsolicited Credit

A lender shall not offer unsolicited credit to a borrower which has been approved by the lender in advance of the credit being offered to the borrower.

6. Expertise for Business Lending

(1) In each office of the lender which is concerned with lending activity subject to these Regulations, the lender shall appoint at least one individual with responsibility for:

- (a) the provision of credit to borrowers,
- (b) borrowers in arrears, and
- (c) borrowers in financial difficulties.

(2) A lender shall provide appropriate training for staff concerned with lending activity subject to these Regulations which shall include, at a minimum, training on:

- (a) the requirements of these Regulations, and
- (b) the lender's policies and procedures for:

<ul style="list-style-type: none"> (i) the assessment of applications for credit, and (ii) for dealing with borrowers in financial difficulties.
<p>(3) A lender shall offer its borrowers an option of an annual meeting which shall, at a minimum, include a review of:</p> <ul style="list-style-type: none"> (a) all credit facility agreements, (b) security held in respect of credit facility agreements, and (c) alternative arrangements, if applicable.
<p>(4) Where a borrower accepts the offer of an annual meeting referred to in paragraph (3) the lender shall arrange the meeting and meet with the borrower.</p>
<p>(5) Where a borrower requests a lender to perform a review of the borrower's credit facility agreements or alternative arrangements, the lender shall, having regard to the borrower's specific circumstances:</p> <ul style="list-style-type: none"> (a) advise the borrower of any information that may be required from the borrower, (b) complete the review within a reasonable timeframe, (c) inform the borrower of the timeframe for completion of the review, and (d) complete the requested review within the timeframes notified to the borrower.
<p>(6) The lender shall record the results of the review referred to in paragraphs (3) and (5) in a durable medium and inform the borrower of the results.</p>
<h2>PART 3 - ADVERTISING</h2>
<h3>7. Advertising</h3> <p>A lender shall ensure that:</p> <ul style="list-style-type: none"> (a) an advertisement for variable-rate credit shall contain the following warning statement: Warning: The cost of your monthly repayments may increase.
<ul style="list-style-type: none"> (b) an advertisement for fixed-rate credit shall contain the following warning statement: Warning: You may have to pay charges if you repay early, in full or in part, a fixed-rate credit facility.
<ul style="list-style-type: none"> (c) an advertisement for interest-only credit shall contain the following warning statement: Warning: The entire amount that you have borrowed will still be outstanding at the end of the interest-only period.
<ul style="list-style-type: none"> (d) an advertisement for a debt consolidation facility shall contain the following warning: Warning: This new credit facility may take longer to repay than your previous credit facilities. You may pay more than if you paid over a shorter term.

(e)	where an advertisement includes an interest rate, the advertisement shall clearly state if the rate is fixed or variable.
(f)	an advertisement for a loan shall, if displaying an interest rate and the term, display the total cost of credit.
(g)	advertisements for the consolidation of two or more debts shall, where sample figures are offered in the advertisement, indicate the difference between the total cost of credit of the consolidated credit and the total cost of credit of the individual debts that are the subject of consolidation.

PART 4 - PROVISION OF INFORMATION

8. Provision of Information - General

- (1) A lender shall ensure that information provided to borrowers is clear and comprehensible, and that information of material importance is specifically brought to the attention of the borrower.
- (2) A lender shall not present information in a way which disguises, diminishes or obscures information of material importance.
- (3) A lender shall ensure that all warning statements required under these Regulations are prominent. They shall be in a box, in bold type and of a font size that is at least equal to the predominant font size used throughout the document or advertisement.

9. Pre-Contract Information

- (1) Where a borrower engages with a lender prior to submitting an application for credit, the lender shall:
- (a) provide the borrower with the information specified in Regulation 11(1),
 - (b) inform the borrower of the information referred to in Regulation 11(1)(c) that is relevant to that borrower's proposed application, and
 - (c) provide information specific to the borrower on the steps that the borrower can take to improve the prospect of a successful credit application.
- (2) In good time before the borrower is bound by a credit facility agreement, the lender shall provide the borrower with the following information:
- (a) the type of credit facility agreement,
 - (b) the name and the geographical address of the lender,
 - (c) the total amount of credit,
 - (d) the duration of the credit facility agreement,
 - (e) an explanation of the terms of material importance in the credit facility agreement,
 - (f) terms and conditions applying to the credit facility agreement together with the relevant fees, charges and interest rates which will apply to the credit facility agreement including an explanation of the basis for calculation of the interest

- charge,
- (g) an outline of the steps to be completed to facilitate drawdown of the credit granted under the credit facility agreement,
 - (h) the amount, number and frequency of payments to be made by the borrower and, where applicable, the order in which payments will be allocated to different outstanding balances charged at different interest rates,
 - (i) if a lender intends to impose a charge in respect of the provision of credit, and there is an option whereby the borrower can incorporate the charge into the amount advanced to the borrower, the lender shall inform the borrower of the option of paying the charge separately, and the overall cost to the borrower of paying the charge over the term of the credit facility agreement,
 - (j) where applicable:
 - (i) the charges for maintaining an account or accounts recording payment transactions and drawdowns (unless the opening of any such account is optional),
 - (ii) any charges for using a means of payment for both payment transactions and drawdowns,
 - (iii) any other charges deriving from the credit facility agreement, and
 - (iv) the conditions under which those charges may be changed,
 - (k) where the conclusion of an ancillary service contract (in particular, an insurance policy) is compulsory to obtain the credit or to obtain it on the terms and conditions marketed, a statement of the obligation to enter into such a contract,
 - (l) the interest rate applicable in the case of late payments and the arrangements for its adjustment, and any charges payable for default or any unauthorised overdraft balance,
 - (m) a warning of the consequences of missing payments due under the credit facility agreement, as follows:

Warning: If you do not meet the repayments on your credit facility agreement, your account will go into arrears. This may affect your credit rating, which may limit your ability to access credit in the future.
 - (n) where applicable, the security sought,
 - (o) a statement that there is a right of withdrawal from the credit facility agreement or that there is no such right, as the case may be, and the terms applying to that right of withdrawal,
 - (p) a statement of the right of early repayment, and, where applicable, information concerning the lender's right to compensation and the way in which that compensation will be determined. For this purpose, the lender shall provide a worked example of an early redemption charge specific to the borrowers case,
 - (q) a statement of the borrower's right to be supplied, on request and free of charge, with a copy of the draft credit facility agreement,
 - (r) where a credit facility is offered to a borrower for the purpose of consolidating other credit facilities, the lender shall provide the borrower with a written indicative comparison of the total cost of continuing with the existing facilities

<p>and the total cost of the consolidated credit facility on offer,</p> <p>(s) where applicable, a statement that the collection of payments under the credit facility agreement may be passed to another organisation or debt-collection agency, or that the lender may sell the debt, and</p> <p>(t) the length of time for which the credit offer is valid.</p>
<p>10. Post-Sale Information requirements</p> <p>(1) A lender shall, provide a borrower with a statement of account at least once a year, which shall include:</p> <p>(a) the period to which the statement of account relates,</p> <p>(b) the amounts and dates of drawdowns,</p> <p>(c) the balance from the previous statement and the date of that balance,</p> <p>(d) the current balance,</p> <p>(e) the dates and amounts of payments made by the borrower,</p> <p>(f) the interest rate(s) applied,</p> <p>(g) all interest charged,</p> <p>(h) all charges that have been applied, and</p> <p>(i) for credit card accounts and, where applicable, the minimum amount to be paid.</p>
<p>(2) Where applicable, a lender shall inform a borrower of any change in fees or charges, before the change enters into force.</p>
<p>(3) A lender shall give notice to the borrower of any change in the interest rate before the change enters into force. The notice shall state:</p> <p>(a) the date the change in interest rate comes into effect,</p> <p>(b) the payments amount after the entry into force of the new interest rate and, if the number or frequency of the payments changes, particulars of the changes,</p> <p>(c) that the borrower should contact the lender if he or she anticipates difficulties meeting the change in repayments prompted by the change in the interest rate, and</p> <p>(d) where the change in interest rate arises as a result of a change in the interest margin on a credit facility, the details of that change.</p>
<p>(4) Paragraph (3) shall not apply where:</p> <p>(a) the change in the interest rate is caused by a change in a reference rate which changes on a daily or weekly basis,</p> <p>(b) the new reference rate is made publicly available, and</p> <p>(c) information concerning the new reference rate is kept available on the premises of the lender or on its website.</p>
<p>(5) Before applying a full or partial early repayment to a credit facility, a lender shall promptly provide the borrower with a worked calculation of the early redemption</p>

charge applicable.
(6) A lender shall notify a guarantor promptly if the terms of a credit facility agreement have changed. The notification shall include an explanation of the impact which that change will have on the guarantor's obligations under the guarantee.
(7) Subject to Regulation 23(1), a lender shall provide the borrower, on request and free of charge, with a copy of any credit facility agreement between the borrower and the lender.
(8) The lender shall inform the borrower that it has appointed a third party to engage with the borrower in relation to its credit facility agreement and the lender shall explain the role of the third party and the extent of its authority to act on behalf of the lender prior to a third party engaging with a borrower.
PART 5 – APPLICATIONS FOR CREDIT
11. Applications for Credit
(1) The lender shall publish on its website, and otherwise make available to borrowers in any office of the lender dealing with lending subject to these Regulations, the following information: <ul style="list-style-type: none"> (a) that the borrower is entitled to request a meeting with the lender to discuss any proposed application for credit, (b) the timelines which apply to the assessment of an application for credit as set out in the lender's policies and procedures, (c) a comprehensive list of the information that may be required from a borrower in support of a borrower's application for credit, (d) that the lender may require submission of a business plan in support of an application for credit, (e) a description of the information that may be required in a business plan, including information on the structure and content of the business plan, (f) information about Government support schemes available from or through the lender, and (g) a description of the lender's policies on security.
(2) Prior to entering into a credit facility agreement, a lender shall gather and record sufficient information from the borrower to assess whether that credit is suitable to that borrower. The level of information gathered should be appropriate to the nature and complexity of the credit facility agreement being sought by the borrower and at a minimum shall be to a level that allows the lender to assess the borrower's likely ability to repay the debt over the duration of the agreement.
(3) The lender shall offer a credit facility agreement to a borrower only where it has satisfied itself on reasonable grounds that the credit is appropriate to the borrower.

(4) A lender shall gather and record information and carry out a further affordability assessment in accordance with paragraph (2) prior to advancing additional credit to a borrower, whether by way of a top-up on an existing loan or by a new agreement to provide credit.

(5) If a lender cannot make a decision within 15 working days of receipt of a completed application on whether it will grant or refuse an application for credit it shall inform the borrower that the lender's assessment of the application will take longer than 15 working days, the reason(s) why and the expected timeframe within which a decision will be made.

12. Security

(1) A lender shall ensure that any security which the lender is seeking in support of the application for credit is reasonable and proportionate having due regard to the nature, liquidity and value of the security offered and to the value of the credit offered.

(2) A lender shall ensure that any guarantee which the lender is seeking in support of the application for credit is reasonable and proportionate having due regard to the nature, liquidity and value of the other security offered and to the value of the credit offered.

(3) Where a lender seeks security or a guarantee in support of the borrower's application, it shall provide the borrower and, where applicable, the guarantor with a clear explanation of why the security or guarantee is required, together with an explanation of the potential consequences for the borrower or guarantor of providing such security or guarantee.

(4) Where a lender seeks security or a guarantee which exceeds the value of the credit sought, it shall notify the borrower and, where applicable, the guarantor of that fact and provide a detailed explanation of the reasons why that level of security or guarantee is considered reasonable and proportionate to support the application for credit.

(5) Where credit is offered to a borrower by a lender subject to a guarantee, the guarantee documentation shall outline the obligations of the guarantor and shall, where relevant, contain the following warning statements:

Warning: As a guarantor of this credit, you will have to repay the debt amount, any interest and all associated charges if the borrower(s) do(es) not. Before you sign this guarantee you should get independent legal advice.

Warning: As a guarantor of this credit, you may be at risk of losing your home if the borrower does not keep up repayments on this credit facility agreement.

(6) A lender shall promptly return any security held by the lender to the borrower when all

credit for which the security is pledged has been repaid, unless the borrower requests the lender to retain the security.

- (7) Where security on a credit facility has been realised, a lender shall immediately inform the borrower of the borrower's liability for:
- (a) the balance of any residual debt,
 - (b) the interest rate on the residual debt, and
 - (c) any costs for the realisation of the security which have been added to the debt.

PART 6 – DECLINING / WITHDRAWING CREDIT

13. Refusing or Withdrawing Credit

- (1) If a lender is refusing a credit application, the lender shall provide the borrower with at least the following information:
- (a) an explanation of the reason(s) why the application for credit was refused. The explanation provided shall:
 - (i) be clear and comprehensible,
 - (ii) identify the application (or part thereof) that was refused, and
 - (iii) be specific to the borrower's application (or part thereof),
 - (b) information on the lender's internal appeals procedure established pursuant to Regulation 21 and information on how to appeal a decision by the lender to refuse an application for credit,
 - (c) where the lender's decisions are subject to review by the Credit Review Office, information about the role of the Credit Review Office and the contact details for the Credit Review Office,
 - (d) information about any other supports available from or through the lender, which may include relevant Government support schemes, and
 - (e) information about the borrower's right to make a complaint under the lender's complaints procedure established pursuant to Regulation 22.

- (2) Where a lender decides to withdraw or amend a credit facility agreement it shall promptly notify the borrower of the proposed withdrawal or amendment and of the reason(s) for the withdrawal or amendment.

PART 7 – ARREARS

14. Arrears

- (1) Where a borrower notifies a lender that the borrower may be at risk of going into arrears or a borrower in arrears is concerned about going into financial difficulties, the lender shall:
- (a) offer the borrower the option of an immediate review of the borrower's credit facility agreements, alternative arrangements and security, as appropriate,
 - (b) where the borrower agrees to the review referred to in sub-paragraph (a), the lender shall perform the review and identify what options are available to the

<p>borrower to address the borrower's anticipated arrears, having regard to the particular circumstances of the borrower,</p> <p>(c) assess if the borrower's circumstances are such that Part 8 of these Regulations should be applied to the borrower's case, and</p> <p>(d) where a review referred to in sub-paragraph (a) is performed, the lender shall inform the borrower of the outcome of the review and any recommended course of action which the borrower should take on foot of the review.</p>
<p>(2) Where a borrower's account remains in arrears for ten working days after the arrears first arose the lender shall, within five working days:</p> <p>(a) inform the borrower that it is in arrears,</p> <p>(b) contact the borrower to identify the reason why the arrears have arisen, and</p> <p>(c) perform an assessment to establish whether the borrower's circumstances are such that Part 8 of these Regulations should be applied to the borrower's case.</p>
<p>(3) A lender shall promptly inform the borrower of the outcome of the assessment referred to in paragraph (2) and any recommended course of action which the borrower should take on foot of the lender's assessment.</p>

Part 8 – Financial Difficulties

15. Policy for Financial Difficulties cases

- (1) A lender shall establish, maintain and adhere to policies and procedures for dealing with borrowers in financial difficulties. The policies and procedures shall have the core objective of assisting the borrower to resolve the financial difficulties. These policies and procedures shall be in writing and shall at a minimum provide for the following matters:
- (a) the procedure that the lender will apply when dealing with borrowers in financial difficulties and how it will implement the procedure,
 - (b) the information to be sought from borrowers in financial difficulties,
 - (c) that the information sought from borrowers be relevant to assessing the financial situation of borrowers,
 - (d) that an alternative arrangement may be agreed with borrowers, where appropriate,
 - (e) a description of the types of alternative arrangements that may be offered to those borrowers in financial difficulties by the lender,
 - (f) the criteria which the lender will apply when considering which (if any) alternative arrangement is appropriate to the borrower in financial difficulties.
- The criteria shall at a minimum include the following:
- (i) the viability of the business,
 - (ii) any links with personal debt of the principals of the firm that impacts on the business,
 - (iii) any business debt related to property and other investments;
 - (iv) the information provided by the borrower,

<ul style="list-style-type: none"> (v) the borrower's current and future repayment capacity, (vi) the borrower's previous repayment history, and (vii) whether the borrower has any business debt other than the credit facility in financial difficulties, and if so the overall business indebtedness of the borrower, (g) identify the dedicated contact points to which the lender has assigned responsibility for dealing with borrowers in financial difficulties, (h) facilitate separate consideration of debt related to the business, debt related to property and other investments or personal debt of the principals of the firm that impact on the business, (i) provide for consideration of a financial difficulties case on the specific facts of that case, (j) set out that the lender shall consider all reasonable options available before suggesting that a borrower dispose of assets essential to the running of the business, trade or profession of the borrower, (k) include the following statement: A key objective of this policy is to assist borrowers to resolve the financial difficulties, and (l) if a lender cannot make a decision on whether it will facilitate an alternative arrangement within 15 working days from receipt of the information needed in order to allow it to consider the application, specify that the borrower shall be informed promptly about how long it will take to complete its consideration of whether to facilitate the alternative arrangement and the reasons why it will take longer than 15 working days.
<p>(2) A lender shall apply the policies and procedures established under paragraph (1) to all financial difficulties cases except where the borrower is not co-operating with a lender.</p>
<p>(3) Prior to classifying a borrower as not co-operating, a lender shall write to the borrower to:</p> <ul style="list-style-type: none"> (a) inform the borrower that it will be classified as not co-operating if it does not undertake specific actions, which shall be outlined in the letter, within at least 20 working days of the date of the letter to enable the lender to complete an assessment of the borrower's circumstances, and (b) outline to the borrower the implications of not co-operating, including that, where applicable, action may be taken to enforce security immediately after classifying the borrower as not co-operating and that the borrower will remain liable for any outstanding debt.
<p>(4) Where a lender has classified a borrower as not co-operating, following a period whereby the borrower has been given the opportunity to co-operate (in line with paragraph (3)), the lender shall notify the borrower that it has been classified as not co-operating and inform the borrower that, where applicable, action may be taken to enforce security immediately.</p>

16. Standard Information for Borrowers

- (1) A lender shall prepare and make available to borrowers an information booklet containing the following information:
- (a) a description of the lender's policies and procedures required under Regulation 15 for dealing with borrowers in financial difficulties,
 - (b) an explanation that the lender may offer the borrower an alternative arrangement to assist the borrower to resolve the financial difficulties, subject to the borrower meeting the lender's alternative arrangement assessment criteria and to an individual assessment of the borrower's situation,
 - (c) the criteria which shall be applied to the borrower's financial difficulties case to determine whether an alternative arrangement is suitable to resolve those financial difficulties,
 - (d) a statement emphasising that it is in the borrower's interest to engage with the lender about arrears or financial difficulties,
 - (e) an explanation of the meaning of not co-operating under these Regulations and the implications for the borrower of not co-operating, including that a lender may take action to enforce security immediately after classifying a borrower as not co-operating,
 - (f) an explanation that the lender may be entitled to impose additional fees or charges on borrowers in financial difficulties in accordance with the terms and conditions of the credit facility agreement,
 - (g) a list of the information which the lender may request from the borrower when assessing the borrower's case,
 - (h) a statement that the financial difficulties may impact on the borrower's credit rating,
 - (i) a link to these Regulations and a brief summary of the purpose of these Regulations,
 - (j) an explanation that the data relating to the borrower's arrears may be shared with relevant credit reference agency or credit register, where permitted by contract or required by law,
 - (k) confirmation that each office of the lender dealing with lending subject to these Regulations has a designated contact point for borrowers in financial difficulties,
 - (l) a statement advising borrowers of their right to employ third party advisors who may accompany the borrower during discussions with the lender whether these discussions are face to face or not,
 - (m) an explanation of the lender's internal appeals process in respect of a lender's decision on whether to grant an alternative arrangement and the timeframes involved, and
 - (n) information regarding the borrower's right to make a complaint in accordance with Regulation 22, including the procedure and timeframe for submitting a complaint.

- (2) A lender shall have a dedicated webpage on its website for borrowers in, or concerned

about, financial difficulties which shall contain or directly link to the information booklet referred to in paragraph (1).

- (3) The dedicated webpage referred to in paragraph (2) shall contain a statement highlighting the importance of the borrower engaging with the lender to address the financial difficulties. The dedicated webpage shall be prominently and directly linked on the lender's home page.

17. Communication with Borrowers in Financial Difficulties

- (1) When contacting a borrower in financial difficulties, a lender shall ensure that:
- (a) the level of contact and communications with the borrower, or any third party acting on its behalf, is proportionate and not excessive, taking into account the particular circumstances of the borrower,
 - (b) communications with the borrower are not aggressive, intimidating or harassing,
 - (c) the borrower is given sufficient time to complete an action to which it has committed before follow-up communication is attempted. In deciding what constitutes sufficient time, consideration shall be given to the action the borrower has committed to carry out, including whether it may require assistance or co-operation from a third party in carrying out the action, and
 - (d) the lender agrees a communication plan with the borrower.

- (2) Within ten working days of the borrower first entering financial difficulties, the lender shall contact the borrower to advise the borrower of the following:
- (a) the status of the account,
 - (b) the applicability of these Regulations,
 - (c) the availability of the information booklet required under Regulation 16, including details of where it can be located on the lender's website and information on how a borrower can receive a printed copy of the information booklet from the lender, if required,
 - (d) the type of information that may be requested from the borrower by the lender or a reference to where this information is available,
 - (e) if relevant, any impact of the financial difficulties on other credit facilities held by the borrower with that lender,
 - (f) that it is in the borrower's interest to engage with the lender about arrears or financial difficulties, and
 - (g) the option of an immediate review of the borrower's credit facilities, alternative arrangement(s) and security.

- (3) When the borrower enters financial difficulties, the lender shall appoint an individual in the lender as the borrower's point of contact and inform the borrower of the identity of that individual. The borrower shall be advised promptly if the individual who acts as that point of contact changes from time to time.

- (4) A lender shall respond to all written communications from a borrower regarding financial difficulties or arrears within 10 working days of the date of receipt of those communications.

18. Independent Reports

- (1) Where a lender requires an independent review by a third party of the borrower's business in order to assess the future viability of the business, the lender shall:
- (a) explain to the borrower the reasons for the review,
 - (b) what will be covered by the review,
 - (c) the name of the person carrying out the review, and
 - (d) any costs to be borne by the borrower.

- (2) Where the borrower has borne any part of the cost of the independent review, the lender shall promptly provide the borrower with a copy of any report provided to the lender following the review under paragraph (1).

19. Alternative Arrangements

- (1) An alternative arrangement offered by a lender to a borrower shall include the following information in the offer documentation:
- (a) the timeframe for the borrower to avail of the offer of the alternative arrangement,
 - (b) the new repayment amount(s) on the credit facility under the proposed alternative arrangement, as applicable, and the number and frequency of those repayment amounts,
 - (c) the term of the alternative arrangement,
 - (d) the implications arising from an alternative arrangement including the impact on:
 - (i) the credit term(s),
 - (ii) the balance outstanding on the account, and
 - (iii) the monetary amount of the arrears on the account.
 - (e) the frequency with which the alternative arrangement will be reviewed and the criteria against which the borrower's financial difficulties will be assessed,
 - (f) details of any residual debt remaining at the end of an alternative arrangement and owed by the borrower,
 - (g) how interest and charges will be applied to the credit facility as a result of the alternative arrangement,
 - (h) how the alternative arrangement will be reported by the lender to the relevant credit reference agency or credit register and the anticipated impact of this on the borrower's credit rating, and
 - (i) a statement highlighting the borrower's right to seek independent legal and/or financial advice, and a recommendation that they should do so.

- (2) If a lender decides not to offer an alternative arrangement to a borrower, the lender

shall:

- (a) inform the borrower of the reasons, with reference to the specific criteria applied, for not offering an alternative arrangement,
- (b) advise the borrower of the next steps the lender will take,
- (c) explain the borrower's right to appeal the lender's decision, and
- (d) refer the borrower to the relevant section concerning appeals in the lender's information booklet required under Regulation 16 of these Regulations.

(3) If a borrower declines to accept an offer of an alternative arrangement made by the lender, the lender shall:

- (a) provide the borrower with clear information on the next steps the lender may take,
- (b) inform the borrower of its right to appeal the terms and conditions applying to the alternative arrangement proposed, and
- (c) refer the borrower to the relevant section concerning appeals in the lender's information booklet required under Regulation 16 of these Regulations.

20. Operation of an Alternative Arrangement

In good time before an alternative arrangement comes to an end, a lender shall review the borrower's situation to assess whether a further alternative arrangement is necessary.

PART 9 – APPEALS AND COMPLAINTS

21. Appeals

(1) A lender shall establish and implement an internal appeals procedure allowing a borrower to appeal at least the following decisions of the lender:

- (a) the refusal of a credit application,
- (b) a term or condition imposed by the lender on the granting of credit (including security and/or guarantees required by the lender),
- (c) the withdrawal or reduction of a credit facility,
- (d) a term or condition imposed by the lender on an alternative arrangement, and
- (e) the refusal to offer an alternative arrangement to a borrower under Regulation 19.

(2) A lender shall allow the borrower a reasonable period of time to consider submitting an appeal to the Appeals Panel, which shall be at least 20 working days from the date of notification of the decision of the lender.

(3) The procedure referred to in paragraph (1) shall provide that the appeal be conducted by an Appeals Panel as soon as is reasonably practicable after the borrower makes the appeal.

(4) The Appeals Panel shall be comprised of at least two decision makers who have not

<p>been involved in the borrower's case previously. These decision makers shall have sufficient knowledge and experience to conduct the appeal.</p>
<p>(5) Without prejudice to the generality of paragraph (3), the procedure referred to in paragraph (1) shall provide that if the lender cannot make a decision on the appeal within 15 working days, the lender shall promptly inform the borrower how long it will take to reach its decision and the reasons why it will take longer than 15 working days.</p>
<p>(6) The procedure referred to in paragraph (1) shall provide that the lender will notify the borrower, within five working days of the completion of the consideration of an appeal, of the decision of the Appeals Panel and explain the reasons for the decision and where the borrower's appeal is upheld, in whole or in part, the terms of any offer being made in a clear and comprehensible manner.</p>
<p>(7) The lender shall acknowledge on paper or on another durable medium the receipt of each appeal within five working days of receipt of the appeal.</p>
<p>(8) The lender shall provide the borrower with the name of one or more individuals appointed by the lender to be the borrower's point of contact in relation to the appeal, until the Appeals Panel adjudicates on the appeal.</p>
<p>(9) Where the lender's decisions are subject to review by the Credit Review Office, the lender shall:</p> <ul style="list-style-type: none"> (a) inform the borrower of its right to refer the matter to the Credit Review Office, (b) provide the borrower with information about the role of the Credit Review Office, and (c) provide the borrower with the contact details of the Credit Review Office.
<p>22. Handling Complaints</p>
<p>(1) A lender shall make all reasonable efforts to resolve any complaints made by a borrower.</p>
<p>(2) When a lender receives an oral complaint, it shall offer the borrower the opportunity to have this handled in accordance with the lender's complaint procedure.</p>
<p>(3) A lender shall have in place a written procedure for the proper handling of complaints. This procedure does not apply where the complaint has been resolved to the complainant's satisfaction within five working days, provided however that a record of this fact is maintained. At a minimum, this procedure shall provide that:</p> <ul style="list-style-type: none"> (a) the lender shall acknowledge each complaint within five working days of the complaint being received, (b) the lender shall provide the complainant with the name(s) of one or more individual(s) appointed by the lender to be the complainant's point of contact in

- relation to the complaint until the complaint is resolved or cannot be progressed any further,
- (c) the lender shall provide the complainant with a regular update, on the progress of the investigation of the complaint at intervals of not greater than 20 working days, starting from the date on which the complaint was made,
 - (d) the lender shall attempt to investigate and resolve a complaint within 40 working days of having received the complaint; where the 40 working days have elapsed and the complaint has not been resolved, the lender shall inform the complainant of the anticipated timeframe within which the lender hopes to resolve the complaint and shall inform the borrower that it can refer the matter to the Financial Services Ombudsman where applicable and shall provide the borrower with the contact details of the Financial Services Ombudsman, and
 - (e) within five working days of the completion of the investigation, the lender shall advise the borrower of:
 - (i) the outcome of the investigation,
 - (ii) where applicable, the terms of any offer or settlement being made, and
 - (iii) where applicable, the fact that the borrower can refer the matter to the Financial Services Ombudsman.

- (4) A lender shall establish and maintain a register of all complaints from borrowers subject to the complaints procedure required under paragraph (3). This register shall contain:
- (a) details of each complaint,
 - (b) the date the complaint was received,
 - (c) a summary of the lender's response(s) including dates,
 - (d) details of any other relevant correspondence or records,
 - (e) the action taken to resolve each complaint,
 - (f) the date the complaint was resolved, and
 - (g) where relevant, the current status of the complaint which has been referred to the Financial Services Ombudsman.

- (5) A lender shall maintain up to date and comprehensive records for each complaint received from a borrower.

- (6) A lender shall undertake an analysis of the complaints register required under paragraph (4) on a regular basis including investigating whether complaints indicate an isolated issue or a more widespread issue for borrowers. This analysis of complaints shall be reported to the lender's risk or audit committee and to the lender's management body.

PART 10 – RECORDS AND COMPLIANCE

23. Records and Compliance

- (1) A lender shall retain all records for six years from the date on which the lender ceased to provide the credit facility or alternative arrangement to the borrower concerned.

(2) A lender shall prepare and maintain records to demonstrate compliance with these Regulations.

(3) A lender shall maintain records of all applications for credit and the decision on those applications.

(4) A lender shall maintain all documents relating to a credit application which has been refused for at least 12 months or if the decision to refuse the credit application is appealed under Regulation 21, for at least 12 months after the conclusion of the appeal.

(5) A lender shall ensure that in all its dealings with borrowers it has and employs effectively the resources, systems and control checks that are necessary for compliance with these Regulations.

Part 11 - Miscellaneous

24. Information and Explanations in a Durable Medium

The lender shall provide any information or explanation required to be made to a borrower or a person providing security pursuant to these Regulations in a durable medium.

25. Outsourced Activity

A lender shall ensure that any outsourced activity complies with these Regulations.

26. Code of Conduct on Business Lending to Small and Medium Enterprises

The revocation of any Code of Conduct on Business Lending to Small and Medium Enterprises, or part of Code of Conduct on Business Lending to Small and Medium Enterprises, by these Regulations:

- (a) does not affect any investigation undertaken, or disciplinary or enforcement action undertaken by the Bank or any other person, in respect of any matter in existence at, or before, the time of the revocation, and
- (b) does not preclude the taking of any legal proceedings, or the undertaking of any investigation, or disciplinary or enforcement action by the Bank or any other person, in respect of any contravention of an enactment (including anything revoked by these Regulations) or any misconduct which may have been committed before the time of the revocation.



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