

CP118 Response
Jordan Estates Limited
Westgate, Drogheda

Review of The Consumer Protection Code for Moneylenders

This response to CP118 is submitted on behalf of Jordan Estates Ltd (JE). A licensed moneylender operating since 1941. We are currently operating in three locations, North East, South West and Midlands.

We welcome the opportunity to present our views on the consultation. Our responses formalise the concerns we have expressed to the Central Bank in recent face to face meetings.

Summary of responses:

- Our overall view is that we fundamentally disagree with the proposals which appear punitive to one sector of the financial services market, are anti-competitive to business and infringe on consumer rights and choices.
- There is already existing legislation under GDPR which protects consumers from advertising and marketing.
- Evidence shows that consumers have information fatigue and will disregard 'health warning' style notices
- Moneylenders are not the cause of people requiring services of MABS. Referral processes are already in place where lenders identify financial difficulties.
- Regulation should not only protect consumers but empower them. They should have the right to exercise choices and this includes the amount they decide to allocate to loan repayments.
- Lenders do not want to provide loans, goods and services to people who cannot repay. Consumer protections are in place from Creditworthiness checks and Affordability assessments undertaken by JE.
- Regulation should encourage competition, innovation and growth in markets. Unless there is a level playing field across the financial services market the moneylending sector will be at a disadvantage.
- Consumer research supports our responses.

CP118 Response

4: Responsible lending & acting in the best interests of consumers

We can find no evidence which proves the overall proposals are necessary. The industry is already heavily regulated to protect consumers and ensure lenders act responsibly. Customer acquisition and retention are fundamental to the financial services market. To prohibit this in only one sector is anti-competitive and would remove consumer choice. The role of the Central Bank and purpose of regulation should be to enhance the financial services industry and ensure a level playing field.

4.1 Prohibiting targeted advertising

Question 1:

Do you agree with our proposal to prohibit moneylenders from engaging in targeted advertising?

No.

Jordan Estates does not agree with the proposals on targeted advertising. There is already existing legislation under **GDPR** and where consent is obtained from consumers to receive marketing material. Consumers are well protected by these regulations and have clearly defined rights allowing them to change their preferences at any time. The large penalties lenders will incur for non-compliance with these regulations are a deterrent to ensure consent is always in place. The consumer is therefore protected.

Question 2:

Do you have any views on our proposed definition for “targeted advertising” as set out in the draft Regulations?

YES.

The definition in the Statutory Instrument is unclear as it is based on a number of factors and does not explicitly state whether all or a combination apply. If the intention of the Central Bank is ‘principles based’ regulation (similar to FCA in the UK) then lenders can apply their own risk appetite and policies to the definitions. Otherwise the Central Bank needs to provide clear and unambiguous definitions of low income, consumer best interests and consumer circumstances.

We can see no additional benefits this prohibition will bring to the consumer that is not covered by **GDPR**

CP118 Response

4: Responsible lending & acting in the best interests of consumers

4.2 Prohibiting unsolicited contact on foot of referrals from consumers

Question 3:

Do you see any reason why unsolicited contact with a new customer, on foot of a referral from an existing consumer, should not be prohibited?

YES.

There is no evidence of abuse or customer dissatisfaction to suggest contact should be prohibited. The current referrals process is robust and protects consumers. There is a clear and unambiguous audit trail where referrals are recorded, the consumer is informed of the referral and gives their consent to proceed. **GDPR** legislation then provides clear consumer rights, choices and protections.

4.3 Prohibiting unsolicited contact for the purposes of sales and marketing

Question 4:

Do you foresee any practical difficulties with our proposal to prohibit unsolicited contact with existing consumers for the purposes of sales and marketing?

YES.

Within the moneylending market a large number of customers make their payments weekly, in cash, at their home. Contact with the customer cannot therefore be described as unsolicited. The customer will have also provided permission to call to discuss loans and in relation to sales and marketing. These consents and preferences may be amended by the customer at any time and the customer is protected by **GDPR** legislation.

The majority of lenders do not want to lend to people who cannot afford to repay and have policies and assessments in place to ensure this does not happen. If the Central Bank have evidence of lenders who are using unsolicited marketing practices then these should be dealt with on an individual basis rather than implementing a broad-brush approach.

4.4 Removing the exception to the unsolicited contact rules for non-cash credit

Question 5:

Do you have any views on the proposal to remove the existing exception from the unsolicited contact rules for moneylenders providing non-cash credit?

YES.

We can see no evidence why this exception should be changed.

CP118 Response

4: Responsible lending & acting in the best interests of consumers

4.5 Preventing catalogue firms providing discounts predicated on availing of credit

Question 6:

Do you agree with the proposal outlined above in relation to the additional rules specifically targeted at discounts which are predicated on availing of credit?

NO.

We do not see why licensed moneylenders or catalogue firms should be prohibited from offering discounts when the practice is commonplace across the financial services market, for example, car loans with free servicing, cash back, risk based pricing on credit cards, preferential rates for new customers on mortgages, loans etc.

Question 7:

Do you have any views on what, if any, unintended consequences may arise in implementing this proposal?

YES.

The purpose of regulation is to encourage competition, innovation and growth in markets whilst at the same time protecting consumers. We believe removing discounts achieves none of these and would clearly be an unintended consequence.

Customers in this sector are loyal to lenders. Removal of discounts to which they are accustomed could cause them to look to unregulated/illegal lenders and this is in nobody's best interest.

CP118 Response

5: Consumers availing of credit from a moneylender on a more informed and considered basis

5.1 Enhancing the existing high-cost credit warning statement

Question 8:

Do you see any reason why the existing warning statement should not be enhanced in the manner set out above?

YES.

We do not think the warning statement requires any enhancement. The high cost nature of the loan is already prominent where the APR is 23% or higher.

Consumers complain of information overload. It is a well-known and proven fact that most simply ignore warnings or read T&C's.

Moneylending customers consider the **value** for money and the **service** level they receive to be far more important than the cost. (See the Central Banks market research from 2007 and 2013).

It is unreasonable to direct moneylending customers to other forms of lending as an isolated exception to the rest of the Financial Services market. Indeed, in some cases a loan from a moneylender on a short-term basis may cost considerably less than an unauthorised overdraft from a bank.

Question 9:

Do you agree that the enhanced warning statement should be included in all moneylending advertisements?

NO.

See answers to Q8.

There are already clear and unambiguous rules on advertising credit which work across Financial Services. The Consumer Protection Code provides additional security.

Advertising will only improve choices where there is a level playing field and all regulated entities comply. The prioritisation of the moneylending sector to provide enhanced wording on advertisements is clearly not serving that purpose.

Moneylending products are less of a risk for consumers than some products and services offered and advertised far more widely by other regulated entities e.g. intermediaries for insurance and investments.

CP118 Response

5: Consumers availing of credit from a moneylender on a more informed and considered basis

5.2 Requiring moneylenders to prompt consumers to consider alternatives

Question 10:

Do you have any views on the proposal to require moneylenders to provide consumers with an Information Notice at pre-contract points?

YES.

We would refer you to our previous comments on consumer behaviours regarding warning notices. (Q8)

Consumers already receive sufficient pre-contact information including the SECCI. The most common practice for borrowing in this sector is that the customer completes and application, this is approved/refused by the lender, the contract and other paperwork is signed by the customer when the loan is given. This is normally seven days later. The consumer has sufficient time to shop around or re-consider should they wish to do so without prompting from the lender in information notices which will simply be ignored.

We would also refer you to previous comments on anti-competitiveness of singling out one sector on redirecting consumers.

Additionally, lenders already signpost customers in financial difficulty to MABS and unlike other lenders make no additional charges for missed payments or arrears.

Question 11:

Do you have any suggestions in relation to the format and content of the enhanced warning statement (referred to, at Section 5.1 above) or the Information Notice to enhance the quality, relevance or impact of the information provided?

YES.

The Central Banks own Market research, from 2007 and 2013, clearly shows the reasons customers borrow from moneylenders and the satisfaction levels with the services and products provided. We can see no reason why an enhanced statement is required.

CP118 Response

5: Consumers availing of credit from a moneylender on a more informed and considered basis

5.3 Heightened protection for consumers using moneylending loans to pay for immediate basic needs

Question 12:

A. Do you agree with these proposals?

B. Do you foresee any practical difficulties arising from the implementation of these proposals?

NO. We do not agree with these proposals.

Existing regulations ensure consumers are well protected and empower them to make responsible borrowing decisions. It is not the role of a lender to police consumer decisions and choices.

Credit is often the best solution to short term financial problems and access to credit from regulated entities ensures consumers can deal with peaks and troughs in their financial circumstances.

Lenders need to be objective and unbiased in their decision to offer products and services to customers. It is this which makes markets function effectively. Creditworthiness and affordability assessments ensure people do not borrow more than they can afford to repay. How the money is spent is the consumers choice.

Where lenders identify people in financial difficulty they are already referred to MABS.

We believe there will be unintended consequences from this proposal. It could easily drive people to illegal lenders/loan-sharks because they believe they will not get a loan from a regulated moneylender. Customers who do not wish to divulge the real reason for borrowing will provide false reasons for the loan.

Many people use other forms of credit, such as credit cards to pay for immediate basic needs. If the Central Bank view credit for essential items as an issue then they should place the same requirements across all lenders to protect consumers,

YES: We do foresee practical consequences

The practical consequences are that consumers will provide false reasons for requiring the loan in order to obtain the funds. To encourage this by imposing the requirements assists neither responsible lending or consumers making informed financial decisions.

CP118 Response

5: Consumers availing of credit from a moneylender on a more informed and considered basis

Question 13:

What do you suggest be included within the concept of “immediate basic needs” to which these proposals would apply?

The concept of basic needs will vary from consumer to consumer. Individuals prioritise spending more often on wants rather than needs.

It is not the Role of Jordan Estates as a lender to provide services or debt advice.

Jordan Estates provide customers with contact details for MABS on
Loan applications,
Loan Agreements,
Reaching six weeks arrears for the first time

In addition, Jordan Estates advises consumers about MABS services on all Statements and Arrears letters sent to the customer.

It is the responsibility of the State to ensure that individuals in receipt of social welfare are aware of their entitlements, including emergency funds.

5.4 Aggregate information to consumers with more than one moneylending agreement

Question 14:

A. Do you see any reason why the Central Bank should not prevent moneylenders from providing a second or further loan to a consumer unless the consumer is provided with the aggregate loan information set out above?

B. Is there any other information that a moneylender should provide to the consumer at the same time?

We have seen no evidence to show that additional loans to customers causes over-indebtedness. Or that money lending loans in general are a cause of financial difficulty.

In **2016** 4.5% of MABS clients (749 of 16,645) had moneylending loans. These loan balances accounted for less than 0.05% of the €1.14 billion dealt with by MABS. In **2017** this % had reduced to 4.3% (771 of 17,947)

Every customer of Jordan Estates is issued with a payment card as required by the 1995 Consumer Credit Act. These cards are marked up each week by the Agent. The customer has an accurate record of the amount/s they owe and the repayments required. There is therefore no requirement for additional aggregated information. Every loan application is assessed for Creditworthiness and Affordability which includes loans outstanding and payment performance as a key factor in the lending decision. This is clearly explained to the customer. Robust policies and procedures are in place for all staff to comply with.

CP118 Response

6: Reducing the possibility of consumers over-extending themselves in respect of their borrowing from licensed moneylenders

Question 15:

Are you in favour of the introduction of a debt servicing ratio restriction as outlined above?

NO.

We are not in favour of a debt servicing ratio that would apply exclusively to one sector of the Financial Services market regulated by the Central Bank. The moneylending sector accounts for only 1.2% of the non-mortgage personal credit market.

There is no evidence to support moneylending loans and products being the cause of over-indebtedness. According to statistics produced by MABS there was a reduction of 0.55% in cases from 2009-17.

The Central Bank has based its statistical evidence on a sample of debts written off by licensed money lenders. These write-off debts account for less than 4% of the total debts outstanding to moneylenders and will be comparably lower than other regulated entities.

We do not believe this is a representative sample on which to base further Consumer Protection Codes.

A debt servicing ratio will most likely make the sector unable to compete with non-restricted players in the financial market, restrict choices for consumers, stifle competition and market growth.

The Bank says it has observed debt ratio levels of between 6-15%, yet proposes a restriction of 10-20%. If the Bank has evidence of unreasonable practices in individual lenders then those lenders should be dealt with accordingly without the requirement for a blanket approach.

Question 16:

Do you have any views on what percentage of income the restriction should be set at and whether it should be based on gross or net income (gross income meaning the income, before tax or other deductions, of the consumer and net income meaning the income, after tax or other deductions, of the consumer)? Please provide any data or analysis you have to support your response.

There should be no restrictions.

We do not agree with the proposal on restrictions.

We believe the consequences of a restriction will encourage customers into the unlicensed/illegal loans market to obtain the amounts they require.

See answers to **Q15**.

CP118 Response

6: Reducing the possibility of consumers over-extending themselves in respect of their borrowing from licensed moneylenders

Question 17:

Should such a restriction also apply to forbearance arrangements for moneylending consumers in arrears? Do you have any views on how it should apply in an arrears case (e.g., do you consider that different factors also need to be taken into account in such a case)?

There should be no restrictions.

We have expressed our views in previous answers on restrictions.

For clarification forbearance arrangements by licensed moneylenders do not result in additional debts accruing as there are no penalty charges or additional interest charges.

Question 18:

Do you have views on the potential impact the introduction of a debt servicing ratio restriction, as outlined above, might have on consumers and the licensed moneylending sector?

YES.

See answers to Q15-17 which are also relevant to this question.

Our main concern is that long standing customers of licensed moneylenders will turn to borrowing from non-regulated/illegal lenders and this will not benefit them in any way.

There is also an argument around consumer choice and how much individuals are prepared to pay towards their personal borrowing. Lenders do not want to provide finance to people who cannot repay and there are already rules and regulations in place to prevent that. Consumers should be empowered to make their own financial decisions without sanctions from regulators.

Question 19:

Are there any circumstances which you consider should be exempted from such a debt servicing ratio restriction?

There should be no restrictions.

Question 20:

How would such a restriction operate in the case of “running account” credit provided by moneylenders? For example, should it operate on the basis of the consumer’s credit limit on that account?

Not applicable to Jordan Estates.

CP118 Response

7: Enhancing the professionalism of the sector

7.1 Training of staff and agents

Question 21:

Do you agree with the proposal to introduce an explicit requirement that moneylenders provide on-going training to staff and agents in respect of the firm's lending policies and procedures?

YES.

Jordan Estates already complies with fitness and probity requirements and provides induction and annual ongoing training to staff and agents.

7.2 Lending policies and procedures

Question 22:

A. Do you agree with the proposal to require moneylenders to have written lending policies and procedures in place?

B. If you agree with the proposal, should moneylenders be required to address any other matters within their lending policies and procedures?

YES.

A: Jordan Estates already has documented policies and procedures in place to meet existing business needs and statutory / regulatory requirements including AML, Data Protection (GDPR), Health & Safety, Fitness and Probity and others. Apart from reflecting statutory / regulatory requirements, the directors make decisions on other business matters for inclusion in the firm's policies and procedures.

B: The lending Policies and Procedures should reflect the ethos of Jordan Estates and should not be prescribed by the Central Bank. The Central Bank should set proportionate regulations and not micromanage lenders by prescribing the contents of policy and procedure manuals

Question 23:

Do you have any comments on the proposal to require moneylenders to retain records of income and expenditure relied upon to assess a consumer's creditworthiness?

YES.

Jordan Estates captures details of income and expenditure in support of all loan applications, these details are retained including the signature of the prospective borrower verifying the details to be true and accurate.

To try to capture Proof of expenditure, for all items of expenditure, from a customer would be very onerous and futile, as these "proofs" would never match the evidenced Expenditure Details captured and signed for by the customer.

CP118 Response

7: Enhancing the professionalism of the sector

7.3 Engagement with third parties who are acting on behalf of borrowers

Question 24:

Do you have any comments on the proposal to introduce explicit obligations on moneylenders to engage with third parties who are acting on behalf of borrowers?

YES.

Jordan Estates always engages third parties acting on behalf of the borrower, if the third party has the customers authorisation. Such engagement should require the written consent of the borrower who should also explicitly agree that consumer records may be passed to the nominated third party. We would contend that a single third party would act on behalf of the consumer (i.e. not multiple parties). Contact with the third-party and availability of documentation should be on the same basis as if dealing with the consumer.

7.4 Repayment books and collections

Question 25:

Do you agree with the proposals outlined above in relation to the additional rules specifically targeted at tightening the rules in place around repayment books and collections?

YES:

- a) Jordan Estates do not remove payments cards from their customers.
- b) Current legislation requires that if a customer's payment card is removed that a receipt is given to the customer.
- c) The customer's payment card details are kept up to date on a weekly basis by the agent and the customer's payment card is audited on loan renewal by way of photograph.
- d) Jordan Estates agents (and any agent) will only conduct business in a secure location and these locations are always prearranged.
- e) If there are lenders not complying with the existing requirements then these lenders should be sanctioned.

CP118 Response

8: Additional enhancements to the Moneylenders Code of Conduct

Question 26:

Do you have any comments on the changes proposed above, that is:

- A. Applying relevant requirements under the 2010 Regulations to loan amounts below €200;***
- B. Introducing a specific protection for vulnerable consumers;***
- C. Introducing strengthened requirements for communicating with consumers;***
- D. Requiring that consumers in arrears are signposted to MABS earlier; and***
- E. Aligning the wording of requirements with the wording of similar provisions in the CPC 2012, where appropriate.***

8.A Applying relevant requirements under the 2010 Regulations to loan amounts below €200

YES:

The application of the 2010 regulations to loan amounts below €200 would mean a divergence from maximum harmonisation and a unique requirement for moneylenders that does not apply to other lenders providing loans amounts below €200.

8.B Introducing a specific protection for vulnerable consumers

YES:

Jordan Estates has no issue with the introduction of protections of vulnerable customers as define in the statutory instrument. We already deal with vulnerable customers (as defined in the SI) in a sensitive manner.

8.C Introducing strengthened requirements for communicating with consumers

YES:

There is no evidence through complaints or otherwise that the level of contact and communications between licensed moneylenders and consumers, or a third party acting on their behalf is anything other than proportionate. The sector is happy to adhere to requirements that are consistent with Central Bank codes and regulations.

CP118 Response

8: Additional enhancements to the Moneylenders Code of Conduct

8.D Requiring that consumers in arrears are signposted to MABS earlier

NO: We do not agree with these proposals

Jordan Estates complies with the current requirement to advise consumers about MABS services upon:

Loan Application,

Loan Agreement,

When the customer reaches six weeks arrears for the first time

In addition, Jordan Estates advises consumers about MABS services on all Statements and arrears letters sent to the customer.

Jordan Estates customers will, on average, miss 5 payments during a 31-week loan and 8 payments during a 52-week loan but, will on average, clear the loan on time. (see attached statistics)

The idea of sending a MABS notice to customer who is not in financial difficulties does not make sense.

Jordan Estates proposes to print MABS contact details on the customer's Payment cards. In this way the customer will always have MABS details at hand.

For clarification; Missed payments do not equate to arrears

8.E Aligning the wording of requirements with the wording of similar provisions in the CPC 2012, where appropriate

YES:

We welcome the alignment of requirements to the provisions in the CPC 2012 as outlined.

CP118 Response

8: Additional enhancements to the Moneylenders Code of Conduct

Question 27:

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.

YES:

The proposed regulations are based on flawed statistical analysis.

The attitude of customers, that have been shown CP118, has been that the Central Bank is very condescending in thinking that they, the customer, cannot make up their own mind in relation small personal loans.

The best interest of the consumer is taken care of by having the flexible lending regime currently offered by licensed moneylenders. The proposals outlined in CP118 will limit this flexibility and have a negative impact on the consumer.

The proposals outlined in CP118 will lead to more illegal lending. Having carried out a small survey of JE customers 20% of the 100 customers who responded knew of illegal lenders operating in their area. This should give the Central Bank cause for concern as it proves consumers, should they choose, are already aware that other unregulated options are readily available to provide funds. The Central Bank could be perceived as encouraging this by placing restrictions on regulated lenders. (Because of the time scale we have not been able to extend this survey to a more reasonable sample size).

Question 28:

Do you have any suggestions for further reform in the moneylending sector, e.g., are there any gaps or areas omitted from the protections proposed in this Consultation Paper?

YES:

The moneylending sector in Ireland is overregulated compared to its size in the economy, and its limited contribution to the over-indebtedness of consumers as reflected in the MABS statistics. (attached)

We understand that the Central Bank is to carry out Market Research with regard to the proposals in CP118. We look forward to meeting with the Central Bank after the results of this research is complete.

Question 29:

Do you have any other views on the overall function and risks of the licensed moneylending sector in Ireland?

YES:

Existing Market Research from 2007 and 2013 has shown that licensed moneylenders have an 87% satisfaction rating. We do not believe this has changed in recent years. The market functions well with no need for further changes.