OXENDALE & CO. LIMITED

CBI Consultation Paper CP118 – March 2018

Oxendales Response – Private and Confidential

6/7/2018

Oxendale & Co. Limited

Dear Sirs

Oxendale & Co. Limited response to the CBI Consultation Paper CP118 dated March 2018 – Moneylending – Review of the Consumer Protection Code for licensed Moneylenders (the "Consultation")

Firstly, thank you for meeting with us on 21 June and for listening to our views on the Consultation. This letter is in response to your request that we follow up on that meeting in writing. Accordingly, we set out below

- an introduction to our business;
- our response to the Consultation in general;
- answers to each of the questions contained in the Consultation; and
- additional comments on how the proposed new Code could properly accommodate the catalogue retail market in Ireland.

Introduction to Oxendales

We are an online and catalogue retailer, based in Santry, Dublin and a subsidiary of N Brown Group Plc, a multi–national retailer and fit specialist whose headquarters are in Manchester, England. Although the technology platforms on which our retail and credit product sit are based in England. We employ a dedicated team of 53 staff in Ireland covering Sales, Marketing, Finance and Customer Service.

Oxendales offers fashion that fits in sizes 10 to 32. Customers can pay for their purchases in a number of ways, including debit or credit card, or by opening an account. Customers with an account may either pay in full when they receive their statement (thereby incurring no interest), or they can spread the cost, using our rolling credit account facility and making monthly payments. We do not provide cash loans or allow our credit account to be used for purchased other than for goods sold by Oxendales.

Where customers choose to open a credit account and spread the cost of their purchases, initial credit limits are set at between €150 - €300. Credit limits can only be increased at the customer's request and after appropriate checks have been undertaken. Typically, around 40% of customers pay their balance in full each month by or before the due date and do not incur any interest.

Oxendales is a well established and recognised brand in Ireland and we pride ourselves on always putting the customer at the heart of everything we do. We recognise that being a responsible lender is beneficial to our customers and to our business. We do not operate doorstep sales or collections. The majority of our business is transacted online with the remainder carried out through our call centre. We have robust and sympathetic policies and procedures in place to ensure responsible lending and to protect vulnerable customers. We use our own call centre to contact customers about arrears payments, aiming to help and support where possible by agreeing sensible and affordable payment plans and rehabilitation steps rather than debt collectors or enforcement action.

Main areas of concern with the Consultation

1. <u>Targeted Advertising/Unsolicited Contact</u>

Whilst the proposals are entirely appropriate in the context of Financial Services advertising, we seek confirmation they do not apply to consumer product advertising where the primary purpose of the advertising is the sale of merchandise products and not the sale of credit. Please also refer to our answers to Questions 1, 2, 4 and 5 below.

2. The "Enhanced Warning Notice"
   In our view any enhanced warnings should feature only at the point(s) at which either credit is advertised or the customer is required to make a credit decision. We are concerned that a warning in relation to credit where no credit advertisement appears may be misleading (see our answers to Questions 9-11 below).

3. Aggregated Information
   Oxendales has two existing retail brands, in relation to which separate credit agreements may apply. Aggregating borrowing information across brands could be confusing to a customer and is likely to be of little value from a practical sense given that we send clear statements for each credit account (please also see answers to Question 14 below).

4. Debt Servicing Ratio (DSR) / Proof on income/verification/records
   Oxendales believe that the DSR is disproportionate in the context of low value retail credit and is not practical for a distance selling retailer, operating a rolling credit account. We believe that this could create significant hurdles for customers (particularly those whose other sources of credit may be limited). We are concerned that this could result in responsible lenders such as Oxendales being unable to serve this cohort of customers whose only remaining option may be more expensive or unregulated credit (see also answers to Questions 15/16 and 17-20).

5. Vulnerable Consumers
   Oxendales wholeheartedly supports the protection of Vulnerable Consumers but we are concerned about the proposed definition which, as currently drafted is somewhat broad and subjective. We would welcome further guidance so as to ensure both our own compliance with the new requirements and the protection of such customers

6. Basic Needs
   We do not sell these types of goods (and do not lend cash which may be used for their purchase) and therefore believe that this warning notice is irrelevant in the context of a catalogue retailer such as Oxendales. Oxendales believe there should be an explicit exception to the requirement to provide such a warning where lending cannot be used for basic need products/services.

Conclusion

We are overall supportive of the principles and proposals set out in the Consultation. And welcome the opportunity to contribute to the Consultation. In summary our main concern is to ensure that the Code applies only to the Financial Services revenue streams of retailers such as Oxendales who are not pure play credit businesses, to ensure that measures are proportionate to low value credit and practical for a distance selling credit relationship. We are concerned that where measures are not proportionate or practical this may adversely limit consumer choice

Finally, we believe that our current designation as a moneylender is not a good fit for "catalogue retailers" selling non-financial services products via both cash and credit sales. We understand that this designation is driven by the APR applied rather than the business model employed or amount of credit advanced. Our preference would be for some means of differentiation for online/distance selling retailers who provide low levels of credit, thereby recognising the lower risk of our business model.

Oxendales' Responses to Questions contained in the Consultation

Question 1 – Prohibiting Targeted Advertising
Oxendales agree with the principle behind this proposal but we are concerned that the prohibition needs to be clear and specific to Financial Services products being advertised. The prohibition on targeted advertising in principle will we believe help to protect consumers from irresponsible lenders, however, as drafted, it might preclude distance retailers from sending offers and general marketing to named individuals where there may also be some reference to payment by cash, card or credit. Oxendales uses both tailored and untailored advertising and marketing for its product retail business. Oxendales recommend that consideration is given to either an exclusion for catalogue retailing or recognition that general marketing of non-Financial Services products be excluded or differentiated from any such prohibition.

Question 2 - The definition of "targeted advertising"
The proposed definition is wide and captures all marketing sent via channels that use the name and address of the customer. This would prevent general product advertising where credit is either mentioned or referred to (as opposed to credit alone being specifically advertised/targeted). It is unclear to us what is in or out of scope from the consultation. Oxendales do not "target" customer segments but we would welcome clarity on this. In particular we would welcome reassurance that customer who has a credit account or who is a prospective or former customer can be marketed to (taking into account GDPR restrictions), provided the following is precluded:- i) marketing designed to increase the credit limit without a request; or ii) marketing which actively advertises the credit facility as a stand alone product.

Question 3 – Referrals
We would welcome clarification that "recommend a friend" style schemes which results in marketing of general products and services (for example a catalogue in the post or an email) are excluded.

Question 4 – Unsolicited Contact
Further to Question 2 above, we note that the proposed prohibitions are, quite rightly designed to protect consumers from Financial Services, including cash lending, advertising. This doesn't however align to a distance selling retailer who also offers revolving credit facility as the new restrictions will, on the face of it, prevent the advertising of general products, the purchase of which is not predicated upon taking credit.
We believe this can be addressed if there was recognition of the characteristics of this business model by the regulator. For example, the proposed requirement to have obtained a "signed statement" within the previous 6 months from a customer is laudable in the context of a relationship which is based on a fixed term loan but does not accommodate a revolving credit account such as the one Oxendale offer which can properly remain open and utilised for many years. The requirement to obtain "written" agreement prior to any telephone contact is of concern because most of our accounts are opened and transacted at a distance i.e. online or by telephone. When accounts are opened customers will be told about how we will contact them, about our privacy policy and terms of engagement, and allowed to agree to or refuse certain types of telephone contact in relation to their account. However we need to reserve our right to contact them to service their accounts and to discuss their accounts etc. These customers will generally expect marketing across our channels and will be able to unsubscribe from all or some whenever they need to. We would request therefore that this is taken into account in the eventual requirements. In addition, simply from a directional point of view, as customers expect to be able to obtain more and more services and goods on line, a requirement to obtain written agreement seems anachronistic.

Question 5 – non cash credit
We would refer you to our points made above and ask that this is taken into account.

Question 6 – Prohibition of discounts

As all of our products and services may be obtained without using our credit facility our view is that, given the current protections in place and the new ones afforded under the Code then offering a discount would not be detrimental to prospective customers. In particular, we are seeking confirmation that discounting products and (non-financial) services should be permitted where it is not predicated upon the use of credit.

Question 7 – Unintended Consequences
We are concerned that our credit customers will be unable to take advantage of such offers (which would be available to cash customers) in future where it may be of value to them

Question 8 – Enhanced Credit Warning
We are fully supportive of the underlying principle but seek clarity that such enhanced warnings will not be required in advertising which does not advertise our credit services.

Question 9 – Use in "all moneylending adverts"
We ask for confirmation that the warning notice proposed is required in relation to all advertisements for moneylending services or products rather than all advertisements by moneylenders. For us this distinction is essential as to feature the warning in relation to the sale and promotion of non-Financial Services products would be inappropriate and confusing. Oxendales would therefore like clarity that "moneylending advertisements" only relates to advertising credit and does not encompass general or product advertising by retailers who are also moneylenders.

Question 10 – Information Notice
Oxendales' view is that information notices should only be required for example where credit options are advertised or where the customer is opening or extending a credit account. Whilst it may be appropriate to feature such warnings on the home page of a business where the sole business relates to financial services this does not work in the context of a company which is primarily a seller of fashion retail which may be bought with or without credit.

Question 11 – Suggestions
We recommend that Information notices should not be required where advertising consumer products where the customer has the option to choose their preferred payment method.

Question 12 – Basic Needs – Heightened Protection
We suggest that this requirement is not applicable to businesses like Oxendales. We provide credit to purchase our own goods, none of which relate to basic needs such as food or electricity. Our recommendation is to exclude sellers of products which are not "basic needs" products.

Question 13 – "Immediate basic needs"
Not applicable for Oxendales

Question 14 – Aggregated information
Oxendales only provide one type of credit facility - our customers can open the same facility with both our brands, subject to meeting the lending criteria. In that context we fail to see the purpose of aggregating the details which could confuse the customer. Customers receive clear and compliant regular statements for each account. We also take into consideration any existing accounts before making any new lending decisions.

As currently drafted, it is possible that this could prevent Oxendales from continuing to offer two or more separate brand accounts to customers. We recognise and support the intent to protect consumers from the risk of having multiple cash loans. The guidance does reference "the special case of "running account credit" but does not then exclude it or reference it as being treated differently. The listed information requirements do not make sense in the context of running credit accounts (for example ..."the time frame for the final loan repayment").

<u>Question</u> 15 – Debt Servicing Ratio (DSR)

Oxendales do not believe that the concept of the DSR i) provides enhanced protection for consumers above the existing and new affordability related regulations ii) works for a distance selling retail (catalogue) credit model, and iii) is practical where there is a no face to face relationship or in a rolling credit account situation. Indeed, Oxendales believes the proposal is likely to increase hurdles for customers accessing low value credit, particularly those with the fewest other options and could significantly increase complexity and costs for lenders which is disproportionate to the low values of credit extended. This may influence which parts of the market those lenders service. Furthermore, we note that it is not clear what value the DSR would be when applied to the case of rolling credit. A credit limit, which may never be fully utilised, does not reflect the obligations for repayment in any given period.

Oxendales understand the principles set out in the new guidance in trying to prevent over extension of borrowing. Oxendales is concerned about the feasibility of the proposals for its own distance selling retail business. Oxendales would question how this will work in practice for a distance selling fashion retailer that typically offers low levels of credit and has no face to face contact with its customers. Oxendales is also concerned that in order to comply it requires a total reliance on the information provided by the applicant. Oxendales has no realistic way of verifying the information or records provided on expenditure or on indebtedness to other lenders. The credit bureau for example will not be sufficient as it only holds data for certain levels of borrowing - many of Oxendales customers do not qualify to be on the register. It is not realistic or proportionate to expect consumers purchasing low value products by opening a credit account with us to have to provide the level of information or records set out in the consultation. This would be feasible in the scenario where a borrower was borrowing large amounts from one lender either face to face or at distance (the obvious example being a bank or building society). A consumer would expect the level of financial information expected and this would be proportionate to the risk. However customers of Oxendales would not expect to do this. We are concerned that this requirement may prevent Oxendales providing any credit in the future. Our current average balance is €220 and our opening credit limit is never more than €300. We are also concerned if we would be required, under this regulation, to contact our existing customers to ask for sensitive and personal data. We feel this would have a detrimental impact on our business and be a burden to our account holders

Oxendales operates purely as a distance selling retailer. Consumers will not expect a predominantly online retailers providing low levels of credit to require this sort of sensitive and personal data and are likely to refuse to provide it (and may regard it as intrusive). Oxendales is concerned that the definition of "income" is too broad and, from a customer's perspective, they are likely to be confused by a simple question predicated on this definition. It is unclear what a consumer would need to be asked in order that we could collect the correct information or evidence the same.

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The regulations as drafted require lenders to take into account "the total repayments due" under the moneylending agreement. In the context of a running account this is impossible to do accurately. In addition, how will this be verified against "all moneylending agreements" that a consumer may have if they have not properly identified them all or provided incorrect data and without a central database?

<u>Question</u> 16 – Views on the proportion

Oxendales suggest that a definitive DSR for all moneylending businesses is limited to lending of a significant value and exempt low levels of lending for responsible lenders who comply with the other laws and codes which apply. Alternatively we would support its inclusion by way of guidance to be taken into account when assessing affordability and protecting vulnerable customers.

<u>Question</u> 17 – Forbearance arrangements

Oxendales already provides customers with payment plans where they fall into arrears through a sympathetic and robust procedure designed to rehabilitate rather than penalise customers... We are concerned that the overly prescriptive and administratively heavy burden on these requirements would could actually result in detriment to some customers as we may be prevented from entering into our existing and potentially more lenient forbearance arrangements because it won't be able to calculate the ratio accurately or collect sufficient evidence.

Question 18 – Potential Impact
We are concerned that customers may be forced to seek credit from unregulated (or less responsible or scrupulous) lenders if the prescriptive nature of these requirements means we are unable to assist customers who are in difficulty. Oxendales already provide support for vulnerable customers including those on benefits. The guidance points out there could be unintended consequences of imposing this limit on all lenders and Oxendales would agree. In particular we would point out that it could severely limit lenders from providing credit whether or not customer's circumstances met these sorts of limits thereby adversely affecting consumer choice.

Question 19 – Exemptions
Please see above.

Question 20 – Running Account credit
Our accounts can last for many years. Customers spending habits and balance change over time, as is the nature of a running credit account. Oxendales is confused about how this proposal would work even if it had collected income evidence on the date the account was opened or at intervals. How often would it need to check the data is accurate? Many of our customers never reach their credit limit. Repeated requests for income / evidence would frustrate customers and probably lead them to cease trading with us or stop ordering. There is also a concern that customers who ask for a (usually small) credit increase will not proceed or will not respond to all the documentary and other requirements. Our view is that this form of credit account is significantly different and needs to be treated differently in the context of the debt service ratio proposals.

Question 21 – Training
Agreed (Oxendales already focus on this).

Question 22 – Moneylending policies/procedures
Agreed (Oxendales already has these).

Question 23 – Record retention
Oxendales does not provide a home collection service as outlined in the guidance. Confirmation that it does not apply to us would be welcomed. If it does apply, we are concerned about how this could work in practice as decision making is largely automated. Oxendales records answers given online or in telephone applications but do not ask for written evidence or records of income.

Question 24 – Engagement with Third parties
Oxendales agree with this in principle but would welcome guidance and examples as to which third parties are within scope.

Question 25 –Repayment Books
Agreed in principle however this is largely not applicable to Oxendales as it is a distance retailer and not a home collection business.

Question 26 - Various
A –Under Euros 200 - Oxendales agree in respect of all loan amounts being included.
B- "vulnerable consumers" - the principle of protecting vulnerable consumers is of course agreed. However there is a concern about the broad definition of vulnerable customers and the difficulties in

identifying the same as a distance selling retailer. Oxendales is not a face to face business (see comments previously). The proposed definition of a "vulnerable customer" relates purely to "capacity", and is therefore difficult to verify. A customer may be regarded as "vulnerable" when borrowing a significant amount of money but they may not be so regarded if the borrowing relates to relatively small amounts and /or this is not in the form of cash. Verification of "capacity" presents a significant problem. There is for example no central register a lender can rely on. It can only rely on information given to it by its accountholders or relevant third parties such as health professionals. Oxendales is therefore reliant on its customers or representatives, (for example advisers or governmental bodies, MABs or other applicable health or other bodies) informing them of any specific "capacity" related difficulties. The credit bureau does not provide any data which can be relied on for this purpose. There is no other central register for vulnerable customers. The definition appears to relate to a consumers "capacity to make decisions" but it goes no further than that and we are unclear what it means or what specific categories are covered by this. This is of particular concern for online applications for an account or credit increase as we have no direct face to face contact with that applicant and are wholly reliant on the information provided. Oxendales would welcome more guidance about how it can identify such customers proactively. Examples of the type of assistance and arrangement the CBI expect it to take in the context of a distance selling revolving credit facility would also assist. Whilst Oxendales has policies and procedures, training and some technology to protect specific categories of customer for example those who are hard of hearing, visually impaired or with mental health difficulties, this definition widens the scope and makes the test unclear. For example what does the reference to "older customers" mean?
Oxendales is unclear what is meant by "providing reasonable arrangements and assistance to facilitate them". It is unclear how we could be sure we are compliant without explicit guidance. Oxendales is concerned to ensure that it is not inadvertently forced into breaching other laws for example discrimination laws or GDPR if it has ill-defined limitations on how it trades with different categories of customer.

C

We are in agreement

D

We are in agreement

E –

We are in agreement

Question 27 – General comments

See comments included above.

Regulation 14(1) a requirement to disclose our APR on the homepage (which does not advertise credit) may mislead customers into thinking it only accepts credit purchases.

Question 28/29 – Suggestions/other views

Much of the Code is applicable and relevant to pure financial services products and cash lenders who are lending sums which may put consumers at risk. Some of the requirements are impractical and unrealistic or confusing in the context of distance selling retailers who provide credit as only one payment option and whose main business is selling goods and not financial services products, particularly where average lending levels and credit limits are relatively low. The suggestion therefore is to apply a more principle based approach to this subset of lenders whose main business is not that of lending or to either i) exempt it where this does not produce any detriment or ii) provide separate and amended guidance to allow flexibility and ensure compliance is met.

Other Comments

Draft Regulations – Oxendales comments/suggestions

"arrears" – this definition does not easily align to what we regard as a customer in arrears and propose that it should be more flexible and relate to the lenders own contract terms

"**existing consumer**" should be "existing customer";
"**complaints**" – this needs to refer specifically to lending or financial services product related complaints so as to exclude customers with whom we have no credit relationship
"**Charge**" in a similar vein this should specifically relate to credit charges;
"**Income**" – as per our comments above this definition needs to be more explicit and more guidance given on what to include so that moneylenders can try to judge how this can be verified;
"**targeted advertising**" – our view is this should only relate explicitly to credit advertisements. Note our detailed comments above on how this does not work in the context of a revolving credit catalogue business;
"**unsolicited contact**" refers to the requirement for a "written agreement" – we don't think this is correct or realistic in the context of the growing transition to online lending. Permission or consent should be all that is required (to align it with GDPR) and this can be properly verified even where given verbally or online
Section entitled "unsolicited contact" – the proposed wording does not take into account distance sellers like ourselves who also offer non-financial services related goods and services nor does it appear to align with the requirement of GDPR.
Section 4 does not make sense as written in the context of Oxendales' retail business – Oxendales is unclear why it cannot advertise credit to its existing accountholders. In any event the wording should be limited to credit related sales or marketing
Section 18 – aggregation requirements – please see above our comments in relation to multiple brands
"**vulnerable customers**" – please see our comments above.

Yours faithfully,

Brenda O'Sullivan

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