Submission on the Review of the Consumer Protection Code for Licensed Moneylenders CP118

R&P Credit Ltd

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1 Introduction

R&P Credit Ltd is a licensed moneylender operating in Ireland since 1975. We offer home credit products which are straightforward and transparent, fixed-sum, fixed-term loans, with a fixed, all-in charge. The fixed charge covers funding costs, the costs of arrears, the costs of documenting and processing the loan and the costs of the weekly agent visit. There are no hidden or extra charges.

R&P Credit Ltd operates under our Customer Charter:

- Offer simple, easy to understand and transparent products to consumers.
- Treat each individual customer respectfully and fairly in all our transactions with them.
- Act in the best interest of the customer, when giving advice or making decisions.
- To act with forbearance and compassion to customers who find themselves in financial difficulty.

R&P Credit Ltd is a member of the Consumer Credit Association (Republic of Ireland) which represents the majority of the home credit sector in Ireland, comprising of 25 firms which range from single person units, family businesses, a few mid-sized firms and a single dominant large firm. This Association represents the interests of firms that currently provide services to an estimated 150,000 home credit customers.

R&P Credit Ltd makes this submission regarding the proposals contained within the Consultation Paper CP118, the review of the Consumer Protection Code for Licenced Moneylenders (the CP118 Review) on its own behalf.

2 Executive Summary

It is our submission and opinion that the proposals contained within CP118 have been written with the intention to enhance protection for the consumers. We welcome the overall goals of CP118 to advance a culture of responsible lending and acting in the best interest of the consumer. However we are very concerned about the unintended consequences that some of the proposals will have and the detrimental effects on consumers and the marketplace.

Looking at the practical application of the CP118 proposals and real life transactions with consumers it is found that:

- The real and perceived obstacles faced by the consumer from proposals in CP118 when trying to access home collected credit may lead them to reassess their current risk aversion to using an illegal lender and in extreme cases leave them with no other option.
- The balance between enhancing transparency and avoiding overloading consumers with information, that will simply be ignored, will become a genuine issue.
- The extra complication may lead many companies to reassessing their policy regarding smaller loan amounts, which will become completely uneconomical to offer. This is in direct opposition to the stated goal of the new regulations General Requirements 6(i) that access to basic financial services is not prevented.
- It will discriminate against specific sectors of society and those who are not technically proficient who cannot provide for the requirements under CP118 to assess credit.
- On top of a 33% reduction in licensed moneylenders since 2003, the number of licensed moneylenders will fall further as smaller firms are forced out of the market because they cannot absorb the ever increasing overheads without the economy of scale needed. Note

that in 2018 alone firms have the added overhead of complying with the Central Credit Register and the new GDPR regulations. CP118 will introduce further significant costs leading to even fewer options for consumers.

The CP118 review does not appear to recognise the specific nature of the licenced moneylending sector as it obviously ignores:

- The short-term nature of our loans results in more documentation & administration overheads and compares very significantly higher than those overheads for other lenders who may only complete and administer an application once over many years for a typical customer.
- The continuing inappropriate use of APR as a comparator for short-term loans by the Central Bank of Ireland.
- The lack of any attempt to pursue or protect consumers from illegal moneylenders.
- The very high satisfaction levels reported by Central Bank of Ireland in their most recent survey of moneylending customers (83%). This satisfaction level should be compared to the consumer satisfaction levels of other credit providers.

We would also have concerns that CP118 gives the impression that consumers of Licensed Moneylenders have in some way less capacity to understand the products offered to them. However statistics from the CBI's own survey in 2013 state that "84% of customers reported that they understand the cost of credit and 72% indicated that they understand the APR on their loan". This clearly shows that most consumers have a very good understanding of the products and does not indicate that further regulation is required in this area.

There is a view advanced by some "that why would anyone choose a high cost home credit product over other less expensive lending solutions", leading to a belief that a consumer choosing that product must not be able to make a rational decision.

However that viewpoint ignores the very important real world reasons that a consumer chooses a home credit provider:

- Certainty over the total cost of the agreement
- Built in (no-cost) forbearance on missed payments
- Better control over weekly payments

There is certainly a role for regulation to protect the most vulnerable consumers, but regulation should always take into account the impact that it has on the market as a whole, a balance must be struck or a majority may suffer.

It is submitted that in most circumstances the statutory restrictions and regulations including voluntary codes of practice placed on licensed moneylenders under the supervision of the Central Bank of Ireland far exceed those placed on other lenders regulated by the said Central Bank of Ireland. We fail to see how these said regulations would or could bring licensed moneylenders in line with other credit providers. We are of the opinion that many of the proposals contained within the consultation paper are either anti-competitive, commercially discriminatory against licensed moneylenders or discriminate directly against consumers who use licenced moneylenders. We have highlighted these in our responses throughout this document. It is our belief and opinion that if adopted in their current form, some of the proposals in the CP118 review could be legitimately challenged by Judicial Review as being restrictive, discriminatory and anti-competitive.

3 Areas of Concern

In this section we identify areas of concern raised by the CP118 Review and explain the reasons for our concerns.

3.1 Competition

We are concerned that many of the proposals in this document are anti-competitive. Many of the proposed regulations place obligations on licensed moneylenders to perform specific tasks, provide specific information to consumers and/or record specific information about consumers that are not applied to other providers of credit, leading to a significant competitive disadvantage to licensed moneylenders. We believe these proposed obligations are contrary to the Competition Act of 2002.

For example, should all licenced credit providers be required to do the following?

- Question a consumer on what they intend to spend credit on prior to approving it?
- Provide the consumer with warnings and suggested alternatives every time they want to borrow or use their credit card?
- Complete a form and get it signed every time a consumer attempts to use their credit card?
- Obtain copies of proof of income documents and expenditure receipts every time they want to borrow or use their credit card?
- Limit accruing interest and additional charges for late or non-payment?
- Excluding mortgages, limit how much a person can borrow or spend on their credit card based on their gross income?
- Tell potential customers to consider going to alternative lenders who provide cheaper alternative products every time they want to borrow or use their credit card?
- Tell potential customers to check their social welfare entitlements?
- Tell potential customers to contact charities?
- Tell potential customers, who are not in financial difficulty, to contact MABS for financial advice?

We don't believe any credit provider licensed by the Central Bank of Ireland should have to do these things however CP118 is proposing that licensed moneylenders alone would have to do them.

3.2 Discrimination

We believe some of the proposals in this document are discriminatory, or could lead to discrimination against some customers of licensed moneylenders.

Debt servicing ratios are not in effect for any financial product excluding mortgages. The CP118 Review is proposing to introduce a debt servicing ratio for consumers who use moneylenders. We submit this would discriminate against our customers.

Where a homemaker receives a contribution to their household budget from a spouse, partner or working children it is not possible to obtain proof of income documentation. Is it appropriate to restrict access to credit to a homemaker because of this, even though they can afford to borrow? This is potentially discriminatory.

3.3 Proportionality

The Central Bank Supervision and Enforcement Act 2013 (section 50)[1] requires that "the Bank shall have regard to the need to ensure that the requirements imposed by the regulations concerned are effective and proportionate having regard to the nature, scale and complexity of the activities of regulated financial service providers or the class or classes of regulated financial service provider to whom the regulations apply."

It is our reasonable belief that the CP118 Review document displays a disproportionate, continued and unrelenting focus on licenced moneylenders. The products we provide are small scale, simple and transparent. Other licensed providers of credit are, in our opinion, not being pursued and potentially penalised in a similar fashion and yet the nature of their products is often much more complex and less transparent due to additional charges and penalties.

We believe the drivers for the CP118 Review are unclear and based on this the entire review could be disproportionate, as it is unnecessary.

- No evidence or statistical information has been provided within the CP118 review to justify it being needed.
- There are practically no complaints from consumers relating to moneylenders and the satisfaction rating for the sector, based on the Central Bank's own research[2], is at 83%, compared to lower levels for all other sectors. Complaints from customers of moneylenders are the lowest in the financial sector.
- Data from MABS over the last number of years consistently shows that moneylending clients account for only 4% of the consumers being helped by MABS[3]. Note there is no distinction in the MABS report between licensed and unlicensed moneylenders so the figures above may even be an overstating of the cases involving licensed moneylenders.
- The home collected credit market value of €153M equates to 1.1% of the total market. This is a very small part of the overall market.
- There are no additional financial risks to consumers due to moneylender debt as there are no penalties or additional interest for missed payments.
- The size of loans outstanding to licensed moneylenders is much smaller than to other high street lending institutions. Write offs are much smaller than other regulated lending institutions. Additional financial top ups are not provided, as they are by other regulated lending institutions.

Many of the proposals in the CP118 Review will require licensed moneylenders, who are generally single person operators or small firms, to record, administer, provide and secure ever increasing amounts of information and documentation. Considering the small nature of the firms and sums being lent the cost of administration will be even more disproportionate than at present.

Some of the proposals in the CP118 Review will require consumers who use licensed moneylenders to provide a disproportionate amount of information to obtain a loan compared to what is needed from other providers and especially considering the small sums being borrowed.

[1] Central Bank (Supervision and Enforcement) Act 2013, Section 50, page 44
[2] Report on the Licensed Moneylending Industry, 2013, Central Bank of Ireland.
[3] MABS National Stats Reports 2013 to 2017.

3.4 Responsible Lending

We completely agree that it is not in the interests of consumers for irresponsible lending to take place however it is submitted that the narrative advanced in the goals of the CP118 Review, that moneylenders do not lend responsibly, is a false one.

It is in the borrowers and lenders best interest that all licensed moneylenders lend responsibly. Therefore, we perform affordability and creditworthiness checks prior to entering into any agreement, regardless of the value of the loan.

We do not add charges for late payment and if a consumer fails to repay the loan it is generally the moneylender that loses financially.

3.5 Annual Percentage Rate (APR)

APR is used by some critics of home credit to show home credit products are too expensive. Many of these critics form their views on relative cost by simply comparing the APRs for home credit with those for mainstream credit. When it comes to relative cost (and relative value for money) this approach may not be valid. This is because a true economic comparison must factor for relative average loan size and relative product service levels. APR conveys no information on either aspect. APR therefore cannot signal that, relative to mainstream credit, home credit loans are very small, often below the minimum amount a mainstream lender would lend, and service levels (which include weekly home collection) are very high.

APR sends no signals on default charges either, since these are excluded from the calculation. Most mainstream lenders charge for missed payments; home credit does not.

The UK Competition Commission was aware of the shortcomings of APR and had this to say:

> *'…They require the use in advertisements of APR, which appears high for many home credit products, but is a poor measure of the cost of a home credit loan…'*

It is submitted that the CP118 Review continues to push APR as an acceptable way (and the only way) to highlight the alleged high cost of credit from moneylenders. Unfortunately the lack of understanding in the general public about how APR is calculated, included with the high level of misinformation associated with APR and moneylenders reported in the media, highlights this to be a poor choice to reference the alleged high cost of credit.

Even though the moneylending loan is considered to be extremely high cost, due to the high APR, it is not as expensive as a credit card can be. As a real comparison consider the following.

- A moneylending loan of €1000, borrowed over 21 weeks would have charges (including collection costs) of €250. This is a cost of credit of 25% but an APR of 195.67. If the customer did not make any repayment on the loan after 1 year the amount owed would be €1250. It would still be €1250 after 2 years.
- If €1000 was borrowed on a credit card[4], and no payments made for 1 year, the amount owed after 1 year would be a minimum of €1,290 using an APR of 22.9. If late fees of €15 per missed monthly payment are added this goes up to €1,470. After 2 years the amount owed would be €1,655 (or €2,015 including late fees).

[4] Credit card calculations based on https://www.usbank.com/calculators/jsp/PayoffCC.jsp.

3.6 High Cost Credit

Lower-income credit markets work differently from mainstream credit markets. This is because less well-off consumers have very different priorities and preferences. The 2012 UK DTI[5] report "Credit and low-income consumers: a demand side perspective" states:

> *"The credit choices of those on low incomes are made in the context of a balance of costs and risks that differs fundamentally from that of the more affluent. Low-cost products that are appropriate for the better off can, for some low-income credit users, prove to be both high-cost and high-risk.*
>
> *Policy approaches need to work with the reality of widespread credit use among those on low incomes. Policy thinking needs to be grounded in a holistic and multi-dimension view of the market and the costs and risks faced by low-income consumers.*
>
> *The narrow focus of policy thinking on the price of credit, which has characterised the public debate, is misconceived; a more nuanced appreciation of how the various costs and risks interact and play out for consumers is essential".*

As can be seen this mentions a holistic approach and a multi-dimensional view which is very obviously not the case with the CP118 Review discussed within.

Some critics say that, because of its cost, home credit can never be part of the solution and that this is why it should not be used long term.

This thinking does not delve sufficiently deeply. A fully-developed analysis would consider why less well-off consumers place a higher priority on security of supply than on cost of supply.

The interests of consumers are not served by pushing them towards low-APR products (in the name of saving them money) if, because of the way those products are structured and operated, they quickly fall into default.

A 2011 UK Consumer Focus report 'Making Ends Meet'[6] described the policy analysis dilemma between affluent and lower-income consumers in this way:

> *'Unlike more affluent consumers, they cannot afford to take the risk of the fees and penalty charges for missed payments that come with more mainstream products. Instead, many low-income consumers rely on more expensive payment methods and financial products, such as cash, certain types of credit (e.g. home-collected credit…) and prepayment meters …which are better suited to their priorities for day-to-day money management.'*

Commentators often assume that low-cost, viable alternatives do already exist and that it is simply a matter of home credit users moving across to those products.

The UK Financial Inclusion Taskforce was more circumspect. The Taskforce had been studying these issues for five years when it reported[7] in 2010:

> *'…care should be taken to learn from past experiences of what [has] and has not worked. In particular, attempts to create sustainable lending initiatives without taking into account the*

[5] Credit and low-income consumers: a demand side perspective, 2012, UK DTI POLICIS Report.
[6] Making End Meet, 2011, UK Consumer Focus Report.
[7] Mainstreaming Financial Inclusion, 2010, UK Financial Inclusion Taskforce Report.

> *well-evidenced costs of serving this market, or the product features that are important to the target borrowers should be viewed with caution…'*

Home credit has drawn criticism over the years for what many see as its unacceptably high charges.

The costs of small-sum credit are, however, not dictated by profiteering. Instead, they are largely driven by simple economics, as these remarks by Professor Phelps in 'The social control of consumer credit costs: a case study'[8] explain:

> *'…The social agencies which took the initiative in developing the Uniform Small Loan Law, as well as the legislators who enacted it into state legislation, realized the unavoidable cause and effect relationship between size of loan and percentage rate of charge. Now, as then, very small loans and very high rates inevitably go together. So do small loans and moderate rates. And so do large loans and low rates.*
>
> *This relationship is inescapably true no matter who is the lender - whether commercial bank, industrial or Morris Plan bank, industrial loan company, credit union, or consumer finance company. The smaller the average loan made, the higher must be the percentage rate charged to cover expenses because many of these expenses are the same in dollar amount regardless of the size of the loan...'*

Most lower-income 'high-cost' credit is sold in small quantities because that is the unit size that customers demand and can handle.

Since credit is essentially about deferring payment, some further complications do also apply. For instance, repayment frequency and method of repayment affect price because they have an impact on the lender's costs.

So, for instance, a weekly-repaid loan carries a higher processing cost than a monthly-repaid one. A home-collected loan carries higher costs than a remotely-repaid credit. However, in both instances, the higher cost delivers the customer a higher measure of control and manageability, which feeds through into lower risk. Weekly repayment and home collection both make the loan easier for the consumer to handle, combining smaller instalments with a regular routine and discipline imposed by the weekly call.

The important economic point is that these are all relatively small-sum products. The comparative cost of any product sold in small quantities will always be higher because fixed costs do not vary.

3.7 Other Jurisdictions

The CP118 Review identifies that the proposed measures have been informed by an *"analysis of approaches adopted by legislative and regulatory bodies in other jurisdictions"*. However only one other legislative and regulatory body, Australia, is mentioned in the document and in our opinion the information presented is sparse.

The CP118 Review document does not discuss or explore the charges currently applied in other jurisdictions by licensed moneylenders. In the closest comparator to this State, the UK, it is submitted that the charges for licensed moneylending loans are approximately twice that currently applied by this industry in Ireland. It is simply unreasonable to conduct a review of a legitimate business sector

[8] The social control of consumer credit costs: a case study, 1951, Clyde William Phelps University of Southern California.

and not take cognisance of the regulatory and legislative regime that applies to customers of a similar business sector in Northern Ireland or the UK.

Recent publications from the UK Financial Conduct Authority, based on a detailed review of home credit that commenced in 2016, identify that they are not planning to implement a rate cap for home credit and that they believe repeat borrowing and multiple borrowing of home credit is not harmful and that they can be useful in managing cyclical income shortfalls[9].

3.8 Consumer View

The CP118 Review does not appear to have taken any account of the wishes and feelings of consumers who use licensed moneylenders. A review such as this should not have been initiated without first getting input from consumers on their concerns and preferences.

There is a large body of research available across the UK, Ireland, EU and US that identifies why such consumers choose to use licensed moneylenders. These generally concur with the results identified in the Report on the Licensed Moneylending Industry published by the Central Bank of Ireland in 2013[10].

The Central Bank appears to have chosen to ignore the requirements of consumers for a convenient and efficient service by introducing a number of additional requirements in the CP118 Review which will slow down the entire lending process and make it generally much less convenient to the consumer.

3.9 Illegal Moneylenders

It is submitted that the number of Licensed moneylenders in Ireland has reduced from 52 to 39 (25%) in the past 15 years. It is our belief that the proposals in this review, as they currently stand, will lead to a further significant decrease of licensed (and regulated) moneylenders and a corresponding increase in the numbers of consumers turning to illegal moneylenders, thereby further eroding the protection that consumers have from their use of licenced moneylenders.

Failures at licenced moneylender service provider level should not involve intervention at sector level. It is submitted that if one or more licenced service providers are not complying with the existing stringent consumer protection code then the regulatory authority is not fulfilling its role by not engaging and possibly prosecuting the said licenced lenders who are failing in their duties. Simply put, they should be taken to task for it by the Regulator – and not by pursuing the whole licenced lender sector who are applying and abiding by the letter and spirit of the Codes of practice.

Simply adding more layers of red tape and bureaucracy will make the illegal moneylender appear accessible and therefore more attractive to the consumer.

The CP118 Review recognises that by introducing interest rate ceilings "there could be a risk that consumers would not view other regulated lenders as an alternative form of finance, but instead seek to avail of credit from unlicensed moneylenders."[11] We agree with this view but cannot understand why the CP118 Review persists to propose introducing such measures when the risks are so high yet the possible improvement for consumer protection are so tenuous.

[9] CP18-12, 2018, UK FCA sections 3.6 and 3.13.
[10] Report on Licensed Moneylending Industry, 2013, Central Bank of Ireland
[11] CP118, page 7.

3.10 Misuse of the term "vulnerable"

Section 1 of the CP118 Review states "In developing these additional measures, the Central Bank is mindful of the potentially vulnerable consumer base who typically engage with moneylenders and the high-cost nature of moneylending loans." In fact the term "vulnerable" is used throughout the document.

The Consumer Protection Code 2012 defines a *"vulnerable consumer"* as a natural person who:

a) *has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example, hearing impaired or visually impaired persons); and/or*
b) *has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties).*

We assume the CP118 Review has not intended to suggest that all customers of licensed moneylenders are potentially physically impaired and/or have limited intellectual capacity although this is what the document actually says. We submit that this should be corrected when the results of the CP118 Review are presented.

We agree that protections should be in place for truly vulnerable consumers (based on the definition above) but we submit that the statements relating to the potential vulnerability of consumers used throughout the CP118 Review (that do not relate to the definition) require proper clarification.

- What exactly makes a person "potentially vulnerable"?
- How do you measure this?
- What research data do you have to support your assertion that customers of licensed moneylenders are vulnerable?
- Is this just opinion?

The Central Bank's own report[12] of the Licenced Moneylending Industry in 2013 supports the view that customers of licensed moneylenders are capable and informed rather than the picture of vulnerable people painted by CP118. Its conclusions included:

- Most customers believe they would be approved for credit elsewhere if they choose to apply.
- Customer's level of understanding of the interest rate has increased and understanding of cost of credit and APR is high.
- Most customers are largely satisfied with the service provided by moneylenders and will use them again.

These conclusions suggests customers understand the charges involved in moneylending credit, and are not limited to using licensed moneylending credit but choose to do so.

These conclusions are supported by wider academic research in this area that identifies the customers of licensed moneylender as being well aware of their situation, and capable of making rational financial decisions that meet their needs. The criticism of consumers who use licensed moneylenders has been that their credit choices are so expensive that their behaviour must be irrational. It is submitted that the CP118 Review continues with this misconception by implying that the customers of licensed moneylenders are not capable of making sound financial decisions.

[12] Report on the Licensed Moneylending Industry, 2013, Central Bank of Ireland.

A steadily-growing body of comment suggests that, in fact, those choices are probably more rational and more informed than most commentators have tended to assume.

For example a 2006 UK Competition Commission report on home credit notes[13]:

> *3.27. In our Emerging Thinking we said that 'the price of home credit, whether expressed by APR or TCC, appears to be high in comparison to other forms of credit'. None of the evidence we have seen has significantly altered that view. We therefore continue to believe that home credit is more expensive than other credit products.*
>
> *3.28. However, this does not mean that where the customer has the choice of other products it would always be rational to take the lower-priced product. The characteristics of home credit (notably home collection, the facility to miss payments without penalty and the absence of hidden charges) are very different from those of any other credit product, and may be of considerable value to some customers. For example, we consider that it would be rational for a customer who expects to have an uneven repayment record not to choose a product which imposes charges for missed or irregular payments. A customer who does so and suffers unexpected penalty charges is unlikely to do so more than once, given alternative options.*

[13] Home credit Market Investigation - Final Report, November 2006, UK Competition Commission.

4 Responses to specific questions

In this section we address the specific questions raised in the CP118 Review.

Section 4 of CP118 poses questions related to responsible lending and acting in the best interests of consumers. Section 4.1 addresses prohibiting targeted advertising

Q1: Do you agree with our proposal to prohibit moneylenders from engaging in targeted advertising?

Answer for Q1: We agree with the idea of not targeting consumers with products that are not suitable for them due to their circumstances. However, we believe the proposal on prohibiting targeted advertising is over-restrictive. We deal with the specific concerns relating to the definition of targeted advertising in our answer to question 2.

The existing code of practice for licensed moneylenders allows existing customers to be informed of products and services provided by the company. It also specifically allows for unsolicited contact for non-cash credit to consumers. We believe the existing code is sufficient as it allows a consumer to decide what is in their own best interest.

When a consumer has all of the available information they can make an informed decision. If the consumer is not allowed to receive information from some providers they cannot make an informed decision. We submit that this is discriminating against the consumer on the basis of their income or circumstances.

If the consumer is interested in a product their suitability for that product will be assessed if they apply for it. The assessment is based on affordability and creditworthiness.

Targeted advertising is common practice in a competitive business environment. We are not aware of other sectors being required to know a person's circumstances when sending targeted advertisements. To impose such a prohibition is a restrictive one and could be in breach of competition legislation.

Q2: Do you have any views on our proposed definition for "targeted advertising" as set out in the draft Regulations?

Answer to Q2: We have a number of concerns relating to the proposed definition in the draft regulation:

- It is not clear from the definition whether one or all of the conditions must apply.
- For a consumer who is not an existing customer:
  - It is not possible for us to know if a consumer has recently completed a moneylending agreement with another lender.
  - It is not possible for us to know if a consumer has a low income (especially as low income is not defined).
  - It is not possible for us to know a consumer's circumstances and how availing of credit would be not in their best interests before engaging with them and obtaining appropriate affordability information.
- The wording could restrict us from telling an existing customer about our products or services.

Section 4.2 of CP118 addresses prohibiting unsolicited contact on foot of referrals from consumers.

Q3: 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?

Answer to Q3: Yes.

The existing code of conduct allows an existing consumer to refer someone. This provides protections for the consumer. If a consumer is referred to us and does not want to proceed when we contact them we simply walk away. The reason this was put in the code of conduct was because we operate on a face to face basis with customers. This has not changed.

When an existing customer refers someone to us it is because they receive a good service from us. There is no evidence of complaints in respect of the existing referrals process.

Section 4.3 addresses prohibiting unsolicited contact for the purposes of sales and marketing.

Q4: Do you foresee any practical difficulties with our proposal to prohibit unsolicited contact with existing consumers for the purposes of sales and marketing?

Answer to Q4: Yes.

All goods and service providers are allowed to market their services to existing customers. Informed customers can decide whether or not to avail of the services. Licensed moneylenders should not be the exception to this as it would be anti-competitive.

Section 4.4 addresses removing the exception to the unsolicited contact rules for non-cash credit.

Q5: Do you have any views on the proposal to remove the existing exception from the unsolicited contact rules for moneylenders providing non-cash credit?

Answer to Q5: Yes.

All goods and service providers are allowed to market their services to existing customers. These customers can decide whether or not to avail of the services. Licensed moneylenders should not be the exception to this.

In all cases the cost of credit for non-cash agreements is less than the equivalent cash product. By removing the exception for non-cash credit the consumer will not be aware of this and will not be able to make an informed decision to avail of a more cost-effective product. This is contrary to the goals of consumer protection.

Section 4.5 addresses preventing catalogue firms providing discounts predicated on availing of credit.

Q6: 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?

Answer to Q6: R&P Credit has no opinion on this.

Q7: Do you have any views on what, if any, unintended consequences may arise in implementing this proposal?

Answer to Q7: R&P Credit has no opinion on this.

Section 5 of CP118 poses questions related to consumers availing of credit from a moneylender on a more informed and considered basis. Section 5.1 addresses enhancing the existing high-cost credit warning statement.

Q8: Do you see any reason why the existing warning statement should not be enhanced in the manner set out above?

Answer to Q8: Yes.

While it is reasonable to warn that a loan is at high cost (i.e. greater than 23% APR) and that a borrower should consider alternatives, there may be unintended consequences to directing consumers to other lenders solely on the basis of "cheaper alternatives".

This advice could potentially result in a consumer getting into significant financial difficulties by using products that add significant charges for late or missed payments, such as credit cards, even though the initial cost appears less than home credit.

Research has shown that home credit customers generally miss one or more payments during the life of the agreement and they use the service because they like the predictable weekly payments and the forbearance of home credit, which adds no extra charges. The Central Bank of Ireland's 2013 report on the Licensed Moneylending Industry[14] highlights that 90% of customers of licensed moneylenders who missed a payment were satisfied with how they were treated by their lender. If this was any other credit product it would result in additional charges and penalties.

Q9: Do you agree that the enhanced warning statement should be included in all moneylending advertisements?

Answer to Q9: No.

Refer to the answer to Q8 above.

[14] Report on the Licensed Moneylending Industry, 2013, Central Bank of Ireland.

Section 5.2 addresses requiring moneylenders to prompt consumers to consider alternatives.

Q10: Do you have any views on the proposal to require moneylenders to provide consumers with an Information Notice at pre-contract points?

Answer to Q10: Yes. We believe the notices are not appropriate.

- Moneylending debt accounts for only 4% of MABS clients[15]. It is not appropriate for us to direct a potential customer to contact MABS or Citizens Advice before they become a customer. It is potentially discriminatory to assume that a consumer is in financial difficulties solely because they are applying for a home credit loan. Information on how to contact MABS is provided to customers if they encounter financial difficulties.
- We already identify the high cost of credit in pre-contract forms, agreements and online.
- It is inappropriate for us to provide advice relating to social welfare entitlements.
- The unintended consequence of advising a consumer to obtain credit at "significantly cheaper interest rates" could be that they, due to late payment, end up paying much more than they would with a fixed charge home credit loan.
- We believe this is anti-competitive. In the Consumer Protection code (2012) none of the warning notices for other credit providers require them to tell potential customers to consider alternatives on their website or their application forms, or to provide advice to consumers.
- The APR and the Cost of Credit of the specific agreement is already stated in the pre-contract credit information form and on the agreement itself. This is simply a duplication.

Q11: 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?

Answer to Q11: We strive to make our forms simple and informative however the proposals included in this document in conjunction with those from Central Credit Register, the EU, and GDPR will likely deliver a counterproductive result. Research has shown that consumers ignore complicated warnings and over-warning (where multiple warnings are presented together): "When warnings become ubiquitous, they soon recede into the background of the constant informational noise with which the modern consumer is bombarded."[16]

In addition, one of the findings of a detailed meta-analysis of message-related research has identified that "in those cases where consumers do perceive hazards with a product, these perceptions are more likely to be associated with products that are purchased less frequently."[17] This implies the types of warnings being proposed may be suitable for a mortgage or other longer term products but are less suitable for products that have a higher frequency, for example short term home credit.

We propose these statements should be replaced with "This is a high cost loan. Make sure you can afford the repayments before proceeding." on all advertisements, forms and media.

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[15] MABS National Stats Reports 2013 to 2017.

[16] Product warnings and the involuntary capture of attention, Robert Rauschenberger, Joseph B. Sala, Christine T. Wood, *Proceedings of the Human Factors and Ergonomics Society Annual Meeting*, Los Angeles, CA, October 26-30, 2015

[17] Argo, Jennifer J. and Kelley J. Main (2004), "Meta-Analyses of the Effectiveness of Warning Labels," *Journal of Public Policy & Marketing*, 23(2), 193-208.

Section 5.3 addresses heightened protection for consumers using moneylending loans to pay for immediate basic needs.

Q12A: Do you agree with these proposals?

Answer to Q12A: No. We have a number of concerns relating to this:

- We believe this will not provide heightened protection for consumers because:
  - The focus for credit decisions should be on creditworthiness and affordability alone. Knowing the reason for the credit application could influence the credit risk decision, potentially to the detriment of the consumer. For example when a consumer says they need money to pay for a funeral or medical bill it is possible that a compassionate decision to provide the credit would be made, when the facts presented regarding affordability would normally suggest not to provide the credit.
  - We strongly believe that consumers will assume that if they answer "yes" to this question their credit application will be refused, so the answer will always be "No". This makes it a pointless exercise.
  - The text proposed will take up half a page of the application form. We strive to keep these forms simple and readable. Research, mentioned earlier, has shown that over-warning and more complicated warnings are ignored by consumers.
- We believe this is anti-competitive. No other regulated credit provider in Ireland is required to ask such a question and provide such information to a potential customer. Credit Card providers in Ireland are not required to ask this question, either when the credit card account is opened or each time credit is advanced. The Central Bank of Ireland's Credit & Debit Card Statistics for 2017 show that 22.0% of credit card transactions fall directly into the area of immediate basic needs[18] (11.5% groceries, 8.2% accommodation, 2.3% utilities).
- Customers may well take such a question as intrusive and prefer to deal with illegal moneylenders who do not ask such questions.

Q12B: Do you foresee any practical difficulties arising from the implementation of these proposals?

Answer to Q12B: Yes.

Based on the open-ended nature of the notices, any time a charity contacts a moneylender they will be forced to change their software or documents to facilitate adding that charity's name and contact information to the list. This is completely impractical and would be very expensive to implement.

Q13: What do you suggest be included within the concept of "immediate basic needs" to which these proposals would apply?

Answer to Q13: We do not agree with asking the customer this question.

[18] https://www.centralbank.ie/statistics/data-and-analysis/credit-and-banking-statistics/credit-and-debit-card-statistics, Central Bank of Ireland, retrieved 21 June 2018.

Section 5.4 addresses aggregate information to consumers with more than one moneylending agreement.

Q14A: 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?

Answer to Q14A: Yes.

We understand the goal of the proposal is to ensure the consumer is fully informed and aware of their financial obligations.

Unlike other credit providers, we call to the customer each week and update their payment receipt book. Due to the recurring and physical nature of these transactions the customer is completely aware of their existing moneylending loans and repayments. The repayment book contains all the information you mention. Our customers can use this information to make informed decisions that best fit their needs.

If a customer requests further information we would be happy to provide it.

We are concerned that this proposal is potentially anti-competitive. For example, Credit Card providers are not required to provide a customer with aggregate information every time the customer increases their credit.

The UK Financial Conduct Authority, which is the regulator for home credit there, recently stated, based on their own review of the sector[19]: "Repeat borrowing and multiple borrowing is clearly a prevalent feature of home-collected credit use. We do not consider that this in itself is harmful. Providing creditworthiness assessments are carried out effectively, weekly repayments should be affordable and sustainable. Repeat borrowing can be a useful means of managing cyclical income shortfalls."

Q14B: Is there any other information that a moneylender should provide to the consumer at the same time?

Answer to Q14B: If a customer requests further information we would be happy to provide it but we do not believe it is appropriate for this information to be prescribed by regulation.

[19] CP18-12, 2018, UK FCA, Section 3.13.

Section 6 of CP118 poses questions related to reducing the possibility of consumers over-extending themselves in respect of their borrowing from licensed moneylenders.

Q15: Are you in favour of the introduction of a debt servicing ratio restriction as outlined above?

Answer to Q15: No.

We believe the research on which this proposal is based is flawed.

- Section 6 of CP118 states "As part of its on-going regulatory oversight of the sector, the Central Bank has seen evidence of consumers with multiple moneylending loans encountering problems in repaying their loans."
- In relation to loans written off by moneylenders it states "We have also observed that the percentage of the consumers' income devoted to making repayments tended to increase as the monetary amount of the credit written-off by the moneylender increased. This would appear to indicate that there is a connection between the level of a consumer's income devoted to paying off moneylending loans and the likelihood that the loan would ultimately fall into arrears and be written-off by the firm."
- These observations were based solely on loans that were written off and not on an acceptable statistical sample of performing and non-performing moneylending agreements. To base legislation on such an invalid sample is fundamentally flawed, especially when the sample represents the exceptions.
- In addition, the reasons for default are not identified or examined in these observations (or the data on which they are based). Has the bank considered that many of these defaults are due to the customers deciding not to pay their loans, even when they are in a position to do so, and not due to financial distress? Has the bank also considered the number of loans refused by the licensed moneylending sector, or the number of loans provided for a lesser amount than was requested? These factors should be taken into consideration when discussing how responsible lending can reduce over-indebtedness.

We believe the proposal is disproportionate. The Central Bank Supervision and Enforcement Act 2013 (section 50) requires the bank to make regulation that are proportionate. This is because:

- The level of debt default compared to functioning moneylending loans is very low.
- The concept of debt servicing ratios applies to mortgages and large loans, not small loans which are not the cause of over-indebtedness. There is no evidence to suggest moneylending debt is the cause of over-indebtedness. In fact MABS statistics clearly show that moneylending debt accounts for only 4% of MABS clients and the number of MABS clients with utility debt is on average 3 times those associated with moneylending[20].
- If a customer defaults on a moneylending debt the most likely outcome is the debt is written off. It is the lender and not the borrower who suffers financially as a result. To penalise consumers who represent functioning loans because of a small number of defaults is not proportionate.
- To apply such a cap to a single sector that amounts to 1.2% of the non-mortgage personal credit market (i.e. €159m / €13.2bn) is disproportionate and potentially anti-competitive.

[20] MABS National Stats Reports 2013 to 2017.

We believe the proposal is potentially discriminatory.

- Should it not be up to the consumer to decide what they want to do with their income?
- This cap will discriminate against lower income consumers in a disproportionate way, whether they are working or not, by limiting their access to credit.

The CP118 Review states that the proposed measures have been informed by "analysis of approaches adopted by legislative and regulatory bodies in other jurisdictions". Unfortunately the only other jurisdiction mentioned in Australia. The regulator for home credit in the UK, our nearest neighbour, both physically and culturally, has stated recently[21] that they are "not currently planning to develop proposals for a price cap for home-collected credit based on current market conditions." This conclusion was based on a review launched in November 2016 to "identify patterns and sources of harm to consumers across high-cost credit products, and identify whether specific products or types of credit needed deeper investigation."

Q16: 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.

Answer to Q16: We do not agree with the proposal to introduce a debt servicing ratio.

The idea of using gross income for such a calculation is ill-conceived. For example, compare the situations of two fictional people:

- Person A earns €500 gross income per week with net income of €350 per week. This person is married with 3 children and rents a house. Their weekly outgoings amount to €320 per week. Their discretionary income is therefore €30 per week.
- Person B earns €250 gross income per week with net income of €175 per week. This person is single, lives at home and contributes €50 to the household budget leaving €125 per week discretionary income.

The proposal as written would apply the same debt servicing ratio to both people even though Person B is in a position to pay significantly more to service a debt. Income alone cannot be used to inform a lender as to whether the consumer can afford to repay a loan. The moneylending sector already uses an analysis of income and expenditure when calculating the affordability of loan. This is used in conjunction with knowing the customer and their creditworthiness.

[21] CP18-12, 2018, FCA UK, Section 3.6.

Q17: 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)?

Answer to Q17: When a customer has financial difficulties we agree forbearance arrangements based on their individual circumstances and what they can afford to pay.

Q18: 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?

Answer to Q18: There are a number of impacts to be considered:

For consumers:

- It is expected that consumers will potentially bypass the cap by using different legal streams of credit in parallel e.g. multiple moneylenders, or non-moneylenders such as credit unions.
- Consumers will also very likely turn to illegal moneylenders because these lenders will not be asking for any information, will provide a very streamlined service, and will not report anything about the customer to the Central Bank. The current proposals will make the use of illegal moneylenders a much more attractive prospect for consumers.

The moneylending sector will be hit with:

- Increased administrative overhead and cost.
- Increased technical complexity and system changes leading to more cost.
- Increased delay in processing agreements, delaying agents and customers.
- A reducing customer base due to the amount of information being requested from customers as well as regulation stopping customers making decisions for themselves.

Q19: Are there any circumstances which you consider should be exempted from such a debt servicing ratio restriction?

Answer to Q19: The ratio proposal should not be implemented in any form. Limits are already placed on licensed moneylenders based on the ratios approved in their licenses.

Q20: 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?

Answer to Q20: We do not provide running accounts so this question is not applicable.

Section 7 of CP118 poses questions related to enhancing the professionalism of the sector. Section 7.1 addresses training of staff and agents

Q21: 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?

Answer to Q21: Yes. We already provide training but we have no problem with this being an explicit requirement.

Section 7.2: Lending policies and procedures

Q22A: Do you agree with the proposal to require moneylenders to have written lending policies and procedures in place?

Answer to Q22A: There should be no problem with having written policies and procedures in place. However, any policy must acknowledge that moneylenders deal with individuals and assess their ability to pay based on the information before them and on the relationship they have with the customer. Licensed moneylenders do actually know their customers because they see them on a weekly (or at least regular) basis. It is worthwhile to have guidelines in place to ensure credit reviewers are all checking the same things but detailed decision formulae would not be acceptable and as they remove the personal nature of the service. They could also lead to exclusion due to inflexibility.

Q22B: If you agree with the proposal, should moneylenders be required to address any other matters within their lending policies and procedures?

Answer to Q22B: No.

Q23: 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?

Answer to Q23:

The CP118 text appears to request copies of documentation be retained. This differs from the SI text which looks for "all documents evidencing a consumer's income and expenditure which is relied upon by the moneylender for the purpose of assessing the consumer's creditworthiness".

Evidencing of income and expenditure is already an industry norm as it is necessary to perform a proper affordability check. It must be highlighted that the legal requirement for evidencing is a declaration from the consumer and does not require copies of documents to be retained.

The following identifies unintended consequences and major difficulties that would be encountered should the regulation require copies of documents to be retained.

- Validation: It is not possible to fully validate income and expenditure.
  - Income: There are many circumstances where a person's income will not be supported by documentation. For example when a partner provides some of their income to the customer as part of their household budget or where a relative living in the same house pays their contribution to the household budget. We cannot validate that income even though it is part of the customer's stated income and it would not be possible to retain copies of proof of income.
  - Expenditure: You are suggesting retaining receipts from shopping for groceries and other daily/weekly expenses, as well as other expenses that generally do not come with a receipt such as travel expenses. It is unrealistic and impractical to expect any customer to provide such documentation. In many cases people pay by tapping debit cards and receipts are not provided by default.
- Discrimination: We believe this will introduce discrimination against our customers.
  - For example where a customer's income is made up in part from a contribution to the household budget from their partner, Data Protection Legislation would require the customer to obtain permission from their partner for us to process their personal data (their income). This would in effect require the homemaker to seek permission to borrow which would discriminate against them, simply because they were the homemaker.
  - Another aspect of this scenario would be when the homemaker is not in receipt of their partner's full income, the information presented as proof would not accurately reflect the amount of money the homemaker received and no record of the actual amount received would be available to provide proof. This would discriminate against the homemaker as the requested documentation does not exist and cannot be verified.
  - Data Protection legislation (GDPR) requires that only relevant personal information be processed. We submit that many of the documents that consumers may rely on to provide income (e.g. bank statements) and expenditure (till receipts) will contain other personal information that is not relevant (such as what the consumer buys, where they shop, etc.). We should not be retaining such information as it is not relevant.
- Consumer Dissatisfaction: We believe this proposal would cause so much annoyance that it would drive customers to illegal moneylenders who would not have to adhere to these regulations, but nevertheless are free to offer loans to customers without hindrance.
- Administrative Overhead: The administrative overhead for agents to collect or copy this information, transfer it securely, and for administrative staff to store it in a way that is retrievable yet secure would be very onerous on a small business, making it prohibitive.
- Disproportionate: The Central Bank Supervision and Enforcement Act 2013 (section 50) requires the bank to make regulation that are proportionate. Directive 2008/48/EU on credit agreements for consumers, article 8, requires "before the conclusion of the credit agreement, the creditor assesses the consumer's creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer". The proposal for evidencing is proportionate and meets the requirements of both sets of legislation however we contend that the requirement to retain copies of documents is not proportionate.

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

Q24: 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?

Answer to Q24: Yes. We agree with the proposal but would request

- A standardised format for such requests, that includes confirmation from the customer, be introduced.
- That a single third party be nominated by a borrower as it is unreasonable to expect any firm to deal with multiple third parties for such small sums.
- That 3rd party firms who charge the consumer for their services, or who refinance consumer loans, are specifically excluded from this proposal. This is because using such firms increases the costs to the consumer whereas dealing directly with a licensed moneylender would not increase their costs.

Section 7.4: Repayment books and collections

Q25: 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?

Answer to Q25: Yes we agree with the proposals.

- Customer receipt books are only removed in two circumstances – 1) to be audited to ensure the agents are completing them properly and 2) when a customer is applying for a loan to ensure the new loan is filled in properly. The receipt books are returned generally within 1 week when the next payment is due.
- The details stored in the customer receipt book are the customer's name and address and account number. These generally do not change. Should the customer's name or address change they will be required to provide proof of ID and/or proof of address, and the information will be changed in their receipt book or a new book will be issued, while the existing book remains with the customer.
- Collections are made at the home of the customer or at another location the customer requests. We do not ask customers to meet us in other places but we do facilitate requests from our customers. We will always avoid inappropriate and insecure places to meet our customers as it is not in either party's interests to meet in such places.

Section 8 of CP118 poses questions related to additional enhancements to the Moneylenders Code of Conduct

Q26: Do you have any comments on the changes proposed above, that is:

Q26A: Applying relevant requirements under the 2010 Regulations to loan amounts below €200.

Answer to Q26A: Although we can see the reason for this simplification it must be noted that it may make these smaller amounts uneconomical to process. An unintended consequence may be that many companies may decide to stop advancing these amounts.

Q26B: Introducing a specific protection for vulnerable consumers.

Answer to Q26B: We agree that reasonable arrangements and assistance to facilitate vulnerable customers should be brought in line with CPC 2012.

Q26C: Introducing strengthened requirements for communicating with consumers.

Answer to Q26C: We agree with this proposal.

Q26D: Requiring that consumers in arrears are signposted to MABS earlier.

Answer to Q26D: We do not agree with this proposal.

- There is no evidence through complaints or otherwise that customers want to be informed of MABS after missing 3 payments.
- Many customers will miss payments yet still pay off the loan within or close to the original terms agreed by increasing payments on other weeks. The missed payments are not a problem either for the customer or the licensed moneylender. The Financial Conduct Authority, which regulates UK home credit providers stated recently[22] "Our data shows that many consumers miss repayments with around 30% of consumers missing a month's payments according to our most recent CRA data."
- Flexibility in repayments is a unique feature of licensed moneylending. We do not unduly penalise any customer due to a small number of missed payments because we know our customers and can take individual circumstances into account.
- The existing period for sending letters (6 weeks in arrears) is fair and proportionate as the customer would not even show up as having missed a payment in the Central Credit Register when they are 6 weeks in arrears.
- Information about MABS is already available in the documentation and is communicated to each customer during pre-contract and contract phases, as well as the letter sent after 6 weeks in arrears.
- The proposal appears to be contradicting general principle 6(g) of the draft regulation (page 48) to "not exert undue pressure or undue influence on a consumer". It also appears to contradict section 21 (1) of the draft regulation (page 57) "A moneylender shall ensure that the level of contact and communications from the moneylender to a consumer is proportionate and not excessive". Having to send a letter after 3 missed payments will be considered by many customers as excessive, bordering on harassment.
- This will also introduce further unnecessary cost to our business which is under huge administrative pressure due to the level of regulation.
- This appears to be inconsistent with other lenders as it does not bring moneylending into line with any other sector.
- The proposal also appears to be disproportionate considering the small sums involved.

[22] CP18-12, 2018, UK FCA, section 3.5.

Q27: 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.

Answer to Q27: We highlight a number of concerns with the draft regulations below.

Concern 1: Definition of "arrears". [Part 1: 2. (1), page 43]

The definition of arrears provided in the regulation is: "arrears" in relation to a moneylending agreement means where a consumer has not made a repayment, or only makes a partial repayment, as set out in the original moneylending agreement, by the scheduled due date;

We believe this definition of arrears is flawed. In some cases a consumer may make a double payment in week X and no payment in week X+1 meaning the agreement would not be in arrears even though a miss was recorded on the agreement. Similarly, a missed payment in week X could be followed by a double payment in week X+1 meaning the agreement is not in arrears.

When dealing with arrears we suggest you must look at it from a cumulative perspective to take into account all activity on the agreement. To identify an agreement which is 6 weeks in arrears you must identify cumulative misses totalling 6 weekly payments.

Concern 2: Definition of a "complaint". [Part 1: 2. (1), page 44]

The definition of complaint provided in the regulation is: *"complaint" refers to an expression of grievance or dissatisfaction by a consumer, either orally or in writing, in connection with:*

(a) the provision or the offer of the provision of a product or service to a consumer by a moneylender;

(b) the failure or refusal of a moneylender to provide a product or service to a consumer;

As a licensed moneylender we must make informed decisions whether to provide credit to a consumer. In some cases we will refuse to provide credit to a consumer – either from a responsible lending perspective where we do not believe this would be in the best interests of the consumer, or based on our risk assessment that the consumer will not repay the loan. Either way this is a business decision and it should not be considered something that a complaint can be raised against.

We suggest part (b) be removed from the definition.

Concern 3: Definition of "unsolicited contact". [Part 1: 2. (1), page 46]

The definition of unsolicited contact in the regulation is: *"unsolicited contact" means contact with a consumer without prior written agreement by way of personal visit or telephone call, but not including written contact with the consumer;*

Dictionary.com defines "unsolicited" as "given or supplied without being requested or asked for" Merriam-Webster defines it as "not asked for or requested". There is no mention of prior written agreement. If a consumer contacts our office by phone and asks for credit we will send an agent to their house. There is no written agreement. We submit the definition of unsolicited contact above is flawed.

Concern 4: Provision of information to "certain consumers". [Part 3: 10, page 50]

The heading of this section references "certain consumers". What does this mean and how are we to know which consumers are included in this?

Concern 5: Use of the term "similar costs". [Part 3: 10, page 50]

The question shown in the regulation is "Do you require this credit to pay for accommodation, food, electricity, heating or other similar costs?"

The term "similar costs" is undefined. How can we know what should be included in this?

Concern 6: Vague requirements of Annex I. [Annex I, page 67]

Annex I requires the insertion of "information about the debt counselling services of the Money Advice and Budgeting Service" and "information on any relevant charities".

It is not clear what information should be provided in these cases.

It is also not clear how to recognise a charity as "relevant".

Concern 7: signed statement timeframe for unsolicited contact. [Part 3: 20. (1)(a), page 56]

The regulation requires the consumer to sign a statement within the previous 6 months to allow unsolicited contact however 12 months is the industry norm.

Concern 8: suppliers are not considered. [Part 3: 20. (1)(b), page 56]

The list of exceptions does not allow for normal business operation. Consider the following:

- A consumer asks a supplier of goods or services to provide credit
- The supplier tells the consumer the credit is provided by a named moneylender
- The consumer asks the supplier to arrange contact with the credit provider
- The credit provider contacts the consumer

We do not consider this to be unsolicited contact as the consumer requested it. For completeness, suppliers should be included in the list of exceptions above.

Concern 9: impractical regulation related to missed payments. [Part 3: 34 (4, 5 & 6), page 65]

The regulation states:

(4) A moneylender shall advise consumers upon the third default or missed payment under a moneylending agreement, whether consecutive or otherwise, during the currency of a moneylending agreement, of relevant debt counselling services, and the contact details for such services including the name and address of a local Money Advice and Budgeting Service office.

(5) This Regulation shall not apply to circumstances where –

(a) a consumer is unable to make one or more repayments in accordance with a moneylending agreement under which repayments are paid by the consumer to the moneylender or his representative at any place other than the business premises of the moneylender or the business premises of the supplier of goods or services under the agreement, due to the consumer being unavailable to make the repayment at the usual time and location, and

(b) the moneylender has agreed to this variation of the repayment schedule with the consumer in advance of the repayment falling due.

(6) A moneylender shall maintain a record of such agreement to vary a repayment schedule as referred to in paragraph (5).

We have dealt with our concerns regarding the practicality of (4) in answering question 26 (D) above.

Regarding (5)(a), this does not seem to make any practical sense. It appears to state:

- When a customer fails to inform the collector that they will not pay, then the miss should not be counted for the purposes of (4). This will happen frequently when a customer does not answer the door, or is not at their premises when the collector calls.
- When a customer does inform the collector that they will not pay (either at the time they call or some time in advance), then the miss should be counted for the purposes of (4). This will also happen frequently and is part of the informal nature of moneylending.

Regarding (5)(b), the customer tells the collector that they will not be paying. There is no agreement made. It is a statement from the customer and the collector acknowledges it.

Regarding (6), it is absolutely impractical to maintain records of the customer telling you they will not pay due to the frequency of such activity.

Q28: 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?

Answer to Q28: Yes. We have two suggestions.

1) Address the problem of illegal moneylenders

Existing regulations and some of the proposals in CP118 protect the consumer, but only if they are adhered to and enforced. Illegal moneylenders ignore all regulation so none of these regulations will protect consumers from them. Unfortunately CP118 focuses on ever-more stringent and constraining regulation on licensed moneylenders and their customers without addressing the illegal sector in any way.

We have seen the impact that regulators, working closely with law enforcement, can have on illegal moneylenders and the lives of consumers. For example, David Benbow, Illegal Money Lending Team, National Trading Standards UK, provided some stark information at the 2018 UK Consumer Credit Association Annual Conference. These included details of no permission, no paperwork, no receipts, violence and intimidation if repayments are missed, customers being forced into criminal activity, loans to under 18s, taking cash cards and other securities and repayments of at least twice the original amount with higher charges for defaulting. In the UK, example charges for missed payments were £40-£80 per day with an estimated 310,000 households using illegal moneylenders.

The UK illegal moneylending team has had significant success since its inception including more than 380 prosecutions for illegal money lending and related activity, nearly 328 years' worth of custodial sentences, write offs of illegal debt worth £72.5 million, helping over 27,000 people.

We suggest that any examination of consumer protection should include plans to address illegal moneylending. It is without doubt that some of the proposals in CP118, if enacted, will drive existing home-credit customers to use illegal moneylenders which cannot be good for the customers, the licensed moneylenders, or the economy.

2) Deal with Refinancing that is dressed up as consumer protection

One of the strongest protections for consumers when using a licensed moneylender is that no additional charges can be applied to an agreement, even if payments are late or missed. We have seen increasing instances of consumers being advised to obtain a loan, or to consolidate loans from another credit provider (not a licensed moneylender) to pay off a moneylending loan. This is a form of refinancing which costs the customer more than forbearance arrangements that could be made with the moneylender (which is no cost). We believe this should be strongly discouraged as it is not in the best interests of the consumer, even though the moneylender will be paid more quickly.

Q29: Do you have any other views on the overall function and risks of the licensed moneylending sector in Ireland?

A29: No.

5 Conclusions

Although we welcome some proposals within the CP118 review, we submit that significant parts of the proposals are flawed.

We respectfully suggest that when all of the responses are examined a further round of discussion takes place to agree to implement the proposals that will really improve consumer protection and to examine the drivers behind other proposals to try to identify proportionate and fair proposals that are workable in practice.