Feedback to the Central Bank of Ireland

CP158 Consultation Paper on the Consumer Protection Code

07 **July 2024**

Table of Contents

1. Introduction

Seniors Money Mortgages (Ireland) DAC trading as Spry Finance welcomes the publication of CP158 and the supporting documentation relating to a revised Consumer Protection Code (CPC). We agree that an updated and modernised CPC is timely and will better reflect recent developments in the financial services landscape and in the financial services and delivery channels being accessed by consumers today. We support the consolidation of the existing range of consumer protection regulatory requirements into the new Regulations and believe that this will provide a clearer regulatory framework with improved transparency of obligations, including towards acting in the customers' best interests.

As an active member of the Banking and Payments Federation (BPFI) we have input our feedback in relation to the the questions raised in CP158, the Principal Policy Proposals[1] and Additional Policy Proposals[2] to the '*BPFI's Industry Feedback to the Central Bank of Ireland CP158 Consultation Paper on the Consumer Protection Code'*. We have also actively fed into the industry feedback arising from its line-by-line review of the two Guidance documents[3] and the two draft Regulations[4] attached to the consultation.

It is not the intention of this separate submission to replicate the feedback already provided to the CBI through this channel. We are satisfied that all feedback provided by us to the BPFI has been effectively reflected in its response. Rather, as the sole provider of lifetime mortgages in the Irish market, we welcome the opportunity to provide feedback in relation to the regulations and specific obligations as they pertain to lifetime mortgages.

Given Ireland's aging demographic, lifetime mortgages are an increasingly popular and trusted way for many older people to access their wealth, by releasing the equity in their home. They empower older people to access credit to meet a variety of financial needs in later life, such as supplementing day-to-day living expenses, upgrading the family home, or refinancing debt including refinancing an existing mortgage. The ability to release equity via a lifetime loan is a valuable option for many, providing a real choice in how to manage the demands of later life living.

We believe that the revised CPC should reflect the added protections offered to consumers through modern lifetime mortgages, such as the ability to make optional repayments to reduce the overall cost of the loan, and the 'no negative equity guarantee', which protects consumers from ever owing more than the value of their home. Efforts should also be made to increase consumers' awareness of the lifetime mortgage product, in particular, in circumstances where a lifetime mortgage provides a suitable solution for older consumers in financial difficulty. We also believe that the definition of lifetime mortgage should be broad enough to support future product innovation and to enable the development of products that are as flexible, accessible, and inclusive as possible.

We set out our feedback in relation to the Specific Regulations of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Conduct of Business) Regulations as they related to lifetime mortgages for consideration below.

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1 Securing customers interests, Digitalisation, Informing effectively, Mortgage credit and switching, Unregulated activities, Frauds and scams, Protecting customers in vulnerable circumstances and Climate risk.

2 Consumer credit, SME protections, Insurance, Investments and pensions and miscellaneous enhancements.

3 Guidance on securing customers interests' and Guidance on protecting customers in vulnerable circumstances.

4 Central Bank Reform Act 2010 (Section 17a) (Standards for Business) Regulations and Specific Regulations of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Conduct of Business) Regulations.

2. Feedback on Specific Regulations of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Conduct of Business) Regulations (S.48 Regulations)

Part 1: Preliminary and general

- **Interpretation** (Ref. to S. 2. (1) of the General Requirements Regulations)

"lifetime mortgage" means a loan secured on a borrower's home where –

> *(a) interest payments are rolled up on top of the capital throughout the term of the loan,*
>
> *(b) the capital is repaid on a specified event or events, or by repayments as detailed in the terms of the loan, and*
>
> *(c) the borrower retains ownership of their home whilst living in it.*

We welcome the proposed enhancements to the definition of lifetime mortgage as outlined above. We believe that this definition more effectively reflects today's lifetime mortgage product(s), which are designed to provide personal consumers with additional protections and choice, such as, the ability to make optional repayments to manage their loan balances. Where consumers make repayments, these are offset against both the interest and capital elements of the loan. For this reason we suggest the following change to point (b) in the definition of lifetime mortgage:

> *(b) the ~~**capital**~~ loan is repaid on a specified event or events, or by repayments as detailed in the terms of the loan,*

We believe in supporting everyone's right to access finance, and to make their own financial decisions in later life. We have received a number of queries from prospective customers querying whether they can secure a lifetime mortgage on a property other than their primary home. To facilitate product innovation and to ensure that personal consumers are offered modern lifetime mortgage products that are as flexible, accessible, and inclusive as possible, we believe that consumers should be able to avail of a lifetime mortgage on a property other than their primary home (i.e. a second home or buy-to-let property). Feedback from existing customers with multiple properties is that had the choice been available to them at the time they were taking out their lifetime mortgage, they would have considered securing the loan against a second property rather than their primary home. We suggest the below amendments to the proposed definition of a lifetime mortgage:

*"lifetime mortgage" means a loan secured on a borrower's ~~**home**~~ property where –*

> *(a) interest payments are rolled up on top of the capital throughout the term of the loan,*
>
> *(b) the ~~**capital**~~ loan is repaid on a specified event or events, or by repayments as detailed in the terms of the loan, and*
>
> *(c) the borrower retains ownership of the~~ir~~ mortgaged property. ~~**home whilst living in it**~~*

As '*a loan secured on a borrower's* home' we request clarification as to whether a lifetime mortgage also falls under the definition of a '*mortgage loan'* and, if so, for clarification to be provided in relation to which requirements applying to mortgage loans should also apply to lifetime mortgages. In particular, we would welcome clarification of the CBI's expectations with regard to which requirements included in *Part 3: Consumer banking, credit, arrears, and certain other financial arrangements – 'Chapter 6: Additional requirements specific to mortgage business',* and '*Chapter 9: Arrears - Mortgage debt secured by a mortgage borrower's primary residence'* pertaining to mortgage loans should also apply to lifetime mortgages**.**

Part 3: Consumer banking, credit, arrears, and certain other financial arrangements

Chapter 2: Additional information requirements

- **Information to be provided to personal consumers on lifetime mortgages** (Ref. to S. 141 of the General Requirements Regulations)

We query the requirement for financial service providers to inform personal customers of the '*legal*' consequences of entering into a lifetime mortgage. The provision of information to consumers in relation to legal consequences should be provided by suitably qualified legal professionals. We believe that this is appropriately captured in S.144 which requires financial service providers to '*inform consumers of the importance of obtaining independent legal advice regarding the proposed transaction'*. We request that the reference to informing customers of the '*legal*' consequences of entering into a lifetime mortgage is removed from S. 141.

In relation to the requirement to inform personal consumers of ''*the monetary amount required to repay the loan at maturity, based on the interest rate applicable to the loan at drawdown applying for the duration of the term of the loan*'' (S 141 (d)) it is noted that the '*duration of the term*' of a lifetime mortgage is unknown at the time of drawdown and will depend on the occurrence of a specified maturity event such as the date of death, or the permanent move to care of the consumer. Consumers may also choose to make optional repayments which may impact the overall term of their lifetime mortgage. We suggest that S. 141 (d) is amended as follows:

> *(d) the **<u>estimated</u>** monetary amount required to repay the loan at maturity, based on the interest rate applicable to the loan at drawdown* ***~~applying for the duration of the term of the loan~~*** *<u>on each of the following dates</u>:*
>
> > *<u>(i) 5 years from the date of the provision of the loan;</u>*
> >
> > *<u>(ii) 10 years from the date of the provision of the loan;</u>*
> >
> > *<u>(iii) 15 years from the date of the provision of the loan;</u>*
> >
> > *<u>(iv) 20 years from the date of the provision of the loan; and</u>*
> >
> > *<u>(v) 25 years from the date of the provision of the loan.</u>*

- **Information to be provided to personal consumers on home reversion agreements** (Ref. to S. 142 of the General Requirements Regulations)

Although it is our understanding that there are currently no regulated financial service providers offering home reversions in the Irish market, similar to above point, we query the requirement for financial service providers to inform personal customers of the '*legal*' consequences of entering into a home reversion agreement. The provision of information to consumers in relation to legal consequences should be provided by suitably qualified legal professionals. We request that the reference to informing customers of the '*legal*' consequences of entering into a home reversion is removed from S. 142.

- **Importance of obtaining independent legal advice to be notified with lifetime mortgages and home reversion agreements** (Ref. to S. 144 of the General Requirements Regulations)

We welcome the proposed inclusion in the regulations of the need to advise personal consumers of the importance of obtaining independent legal advice prior to taking out a lifetime mortgage or home reversion agreement. We suggest that this could be further strengthened by requiring consumers to obtain independent legal advice as follows:

> *144. Prior to offering, recommending, arranging or providing a lifetime mortgage or a home reversion agreement to a personal consumer, a regulated financial service provider shall* ***~~inform~~*** *require the personal consumer* ***~~of the importance of~~*** *to obtain****~~ing~~*** *independent legal advice regarding the proposed transaction.*

- **Warning statements to be included with information on lifetime mortgages and home reversion agreements** (Ref. to S. 145 (1) of the General Requirements Regulations)

We agree that it is important to provide clear and easy to understand information to personal consumers and to include appropriate details of product related risks and warnings. However, we would welcome clarification from the CBI in relation to what is meant by '*any other document provided to the personal customer*'. Is it intended that the warnings outlined are only included in the documents provided to consumers at the time of entering into a lifetime mortgage? Or is it intended that the warnings should be included in all future communications to consumers over the term of the lifetime mortgage (e.g. annual account statements, lifetime mortgage servicing letters etc.)? Given the age profile of lifetime mortgage customers, there is a concern that including such warnings in post-sale documents could result in distress for older customers. We request that the requirement is changed to:

> *145. (1) When giving information to a personal consumer regarding a lifetime mortgage or a home reversion agreement, a regulated financial service provider shall include warning statements on the following:*
>
> > *(a) an application form or any other document provided to the personal consumer prior to offering, recommending, arranging or providing a lifetime mortgage or a home reversion agreement; and*
> >
> > *(b) the regulated financial service provider's website.*

- **Warning statements to be included with information on lifetime mortgages and home reversion agreements** (Ref. to S. 145 (2) & (3) of the General Requirements Regulations)

The proposed warning statements for lifetime mortgages do not currently account for the following product features which are designed to provide added protections for consumers:

- penalty free optional repayments, which help consumers to manage their lifetime mortgage balance, and
- the 'no negative equity guarantee', which means that consumers will never owe more than the value of their home.

We also believe that the length of warning 145 (2) b may detract from its effectiveness and disengage rather than inform personal consumers in their financial decisions and planning. We suggest that the following changes are made to the proposed warning statements 145 (2) b & c:

> (b) "*Warning:* ~~**Unlike certain other mortgages where interest is charged on a sum that decreases with time, interest on lifetime mortgages is charged on an increasing sum (made up of the outstanding mortgage and added interest amounts), and therefore the total amount owed can increase quickly. As you do not make any repayments,**~~ *If you do not make repayments on your lifetime mortgage the interest on your mortgage is added to your mortgage balance on a continual basis and you are effectively charged interest on that interest. This is called 'compound interest'.*"

> (c) *"Warning: The longer a lifetime mortgage remains unpaid, the more money you will owe and the amount you owe could eventually come close to, equal, or where the lifetime mortgage does not have a no negative equity guarantee, exceed the value of your home."*;

We also suggest that the following changes are made to the proposed warning statement 145 (3):

> *"Warning: If interest rates rise, the interest payable on your lifetime mortgage loan will further increase. This means that the amount you owe will further increase and at a faster rate, leaving less (or no) proceeds from the sale of your home and a potential shortfall where the lifetime mortgage does not have a no negative equity guarantee."*

Chapter 6: Additional requirements specific to mortgage business

- **Warning statement for certain advertisements** (Ref. to S. 195 (6) of the General Requirements Regulations)

We welcome the proposed enhancement for regulated financial service providers to provide a recommendation to personal consumers to seek independent legal advice in an advertisement in which it advertises a lifetime mortgage. However, similar to our feedback with reference to S. 145 (2) & (3) we request that the following changes are made to the proposed warning statements 195 (6) b & c:

> (b) "*Warning:* ~~**Unlike certain other mortgages where interest is charged on a sum that decreases with time, interest on lifetime mortgages is charged on an increasing sum (made up of the outstanding mortgage and added interest amounts), and therefore the total amount owed can increase quickly. As you do not make any repayments**~~, *If you do not make repayments on your lifetime mortgage the interest on your mortgage is added to your mortgage balance on a continual basis and you are effectively charged interest on that interest. This is called 'compound interest'.*"

> (c) *"Warning: The longer a lifetime mortgage remains unpaid, the more money you will owe and the amount you owe could eventually come close to, equal, or where the lifetime mortgage does not have a no negative equity guarantee, exceed the value of your home."*;

Chapter 9: Arrears - Mortgage debt secured by a mortgage borrower's primary residence

- ***Interpretation*** (Ref. to S. 220 of the General Requirements Regulations)

With reference to the definition of "arrears", as arrears arising on a mortgage loan, we would welcome clarity from the CBI in relation to the interpretation of arrears with respect to lifetime mortgages, which do not have contractual ongoing repayment obligations or fixed duration terms.

- **Requirements for obtaining financial information from a mortgage borrower** (Ref. to S. 256 (2) of the General Requirements Regulations)

With reference to S. 256 (2), the requirement to provide options available to consumers other than alternative repayment arrangements should include all alternative current financial products which may support customers in refinancing their existing mortgage debt. We believe that this will help to improve the provision of timely information to consumers and increase their awareness, and consideration of all available options open to them.

It is our experience that many consumers over the age of 60 carrying burdensome debt, can refinance an existing mortgage by releasing the remaining equity in their home using a lifetime mortgage. However, while consumers are informed of options other than alternative repayment arrangements such as, '*voluntary surrender'* or '*trading down'* they are not made aware of alternative financial products, which may be suitable to meet their needs in addressing their financial difficulties. Where suitable, the option to release equity from their home using a lifetime mortgage provides security of tenure for older consumers who may otherwise have to sell or move out of their homes. Where they have the capacity to do so, eligible consumers may choose to make optional repayments to service the interest on their lifetime mortgage and to stop the loan balance from growing. Any amounts owing on the death, or permanent move to care of the consumer are repaid from the consumer's estate.

We suggest that S. 256 (2) is reworded as follows:

> *(a) options available to the mortgage borrower, other than alternative repayment arrangements, such as, where available, voluntary surrender, trading down, mortgage to rent, <u>lifetime mortgage, home reversion</u>, voluntary sale, or otherwise, and the implications of each option for the mortgage borrower and his or her mortgage loan account including -*