

Consultative Consumer Panel: Response to Consultation Paper 32 (March 2008) on the Voluntary Consumer Protection Code for Credit Unions (in respect of their core services)

The Consumer Panel has examined the consultation paper on a Voluntary Consumer Protection Code for Credit Unions. We have commented on the consultation paper using the same chapter and paragraph headings as in the consultation paper.

SCOPE (page3)

We welcome the fact that consumer protection for members of credit unions is to be enhanced by the establishment of the code. However, we note that the proposed Consumer Protection Code for Credit Unions is merely "voluntary." By contrast, the Consumer Protection Code (the main code) for other financial services providers is on a statutory footing.

We feel therefore that members of credit unions will enjoy a lower standard of consumer protection than consumers who buy financial services from banks and other regulated financial entities. We believe that if credit unions are trying to be more like mainstream financial institutions, then they should be treated as such from a regulatory point of view as well.

We have concerns about what happens if some credit unions don't implement the code or just ignore it when something goes wrong. There is no commitment by credit unions contained in the code in relation to monitoring whether credit unions are abiding by its terms or in relation to enforcement of the code. We are disappointed that after almost two years in discussion there appears to be little real commitment to the code by credit unions.

Voluntary codes without effective enforcement measures lose their effectiveness over time. If the code is to be effective it will require an even more robust supervisory regime than if it had a compulsory status.

We also have a concern that the existence of a voluntary code for credit unions and a statutory code for credit institutions may cause confusion for consumers.

For all of the above reasons, we believe the Draft Consumer Protection Code for Credit Unions should be put on a statutory footing.

In addition, we are concerned that the code relates only to the credit unions' core services at a time when the credit unions' range of financial services is being extended following a recent relaxation of the rules governing which products credit unions may sell.

Is it the case that mortgage, insurance and investment products are still regulated when sold by credit unions? Do members of credit unions have the benefit of the main Consumer Protection Code when buying mortgages, investment products or PRSAs from credit unions? If so, this should be made clear and ideally those provisions in the main code should be incorporated in the draft credit union code as well so that members of credit unions have a one-stop-shop code covering all products and services they may buy from credit unions. Otherwise, the Credit Union Code will be like the Lisbon Treaty - totally unintelligible to users because its provisions aren't all available to read in one simple document.

DEFINITIONS (page 4)

Members (page 5): We are concerned about the definition of a "member" in the draft credit union code versus the definition of a "customer" in the main code. The member is described in the draft code as being an existing member only, whereas in the main code a customer also refers to a prospective customer. We believe the code should cover prospective members of a credit union as well as existing members as we believe prospective members of credit unions also deserve protection.

Contents (page 6): We note that there is no separate section on insurance and investment products and are anxious that consumers buying these products should a) be adequately protected and b) be able to find out what those protections are by consulting just one document.

CHAPTER 1: GENERAL PRINCIPLES (page 7)

We note that the draft credit union code does not contain a provision which is contained in the main code (at par 11), namely that a regulated institution must ensure that "without prejudice to the pursuit of its legitimate commercial aims, [it] does not, through its policies, procedures or working practices, prevent access to basic financial services."

We feel that given that the credit unions are intended to provide financial services to people who might have difficulty accessing financial services elsewhere that this protection in relation to access to financial services should be reflected in the draft code.

We would suggest something along the following lines: "A credit union is a not-for-profit organisation which aims to provide financial services to the community in which it operates. Without prejudice to the pursuit of its legitimate aim of safeguarding its members' deposits, a credit union will not through its policies, procedures or working practices, prevent access to basic financial services."

CHAPTER 2: COMMON RULES FOR ALL CREDIT UNIONS (Page 8)

ACCESS (page 9)

Par 7: There should be a requirement that a list of acceptable forms of identifications be displayed prominently in credit unions

TERMS OF BUSINESS (Page 9):

Par 8 k): The Consumer Panel has long been concerned that the savings protection scheme operated by credit unions is not a statutory scheme. With regard to the "nature" of the scheme, we believe it should be explicitly stated that the savings protection scheme operated by credit unions is not a statutory scheme.

PROVISION OF INFORMATION TO THE MEMBER (pages 10 and 11):

We note that the draft credit union code does not provide the same protection to consumers as the main code in cases where a credit union ceases to operate. The main code states at paragraph 15 that where a regulated entity intends to cease operating it must a) provide at least two months' notice to affected consumers to enable them to make alternative arrangements and b) ensure all outstanding business is properly completed.' We believe members of credit unions should also be offered this protection.

Par 20: This requires that all printed information should be of a print size that is clearly legible. The National Adult Literacy Agency has recommended that 12 points is the minimum that should be used on official communications. We believe the print size should be 12 points and that this should be specified in par 20. We have already made this suggestion in relation to the Moneylenders' code

KNOWING THE MEMBER

PRSAs: The protection in relation to the sale of PRSAs available in the main code at paragraph 26 is not in the draft credit union code even though credit unions may now sell PRSAs

Par 22: We question whether the exemption should apply as the member may have little or no choice and should have been given advice as to suitability/affordability.

Par 24: This calls on credit unions to ensure that "where a member refuses to provide information sought in compliance with this Code, the refusal is noted on that members record." We suggest adding "and the member must be notified."

Par 25: This says a credit union must endeavour to have the member certify the accuracy of the information it has provided to the credit union. Where the member declines to do so, the credit union must note this on the member's records.' Again, we would suggest a change in wording to state that "the credit union must note this on the member's record and the member must be notified."

With regard to pars 24 and 25, it is necessary, in our view, for the member to be given a copy of his/her record where a refusal to certify accuracy has been entered. Otherwise refusals could be recorded when in fact information or certification was not requested of the consumer at all.

Par 26 and 27: We question whether these should exemptions apply as the member may have little or no choice and should have been given advice as to suitability and/or affordability particularly in relation to 2.26(ii) and 2.27(ii)

Par 35: A requirement to have the complaints procedure displayed in credit unions should be included in this code.

UNSOLICITED CONTACT/COLDCALLING (Page 14)

Par 28: Consent should be active as opposed to passive. In other words, consumers must give their consent to cold-calling by actively ticking a box.

Par 29: We think this should go further. We are of the view that unsolicited contact, made in the accordance to the code should reflect as closely as possible the normal working day plus a window for after work contact. As unsolicited contact includes debt collection (see 28 b) we are of the view that such calls should be between the hours of 9am and 7pm. Unsolicited Contact should also be confined to the business week as defined in 'Definitions' under "business day". At the very least, we think unsolicited cold calls should not be permitted after 1pm on Saturday, the same recommendation we made in relation to the consultation on moneylenders

DISCLOSURE REQUIREMENTS

We note that the draft credit union code does not contain the disclosure requirements on page 16 of the main code. This requires regulated entities to state that they are regulated by the Financial Regulator. [Note to panel members: anyone know why this might be? Are credit union members being offered a lower level of protection, is this why the Financial Regulator does not wish the credit unions to describe themselves as regulated. If so, this is rather disturbing]

HANDLING COMPLAINTS (Page 16)

Par 35 d): We disagree that credit unions should have 50 days to resolve a complaint whereas the regulated financial institutions covered by the main

code have just 40 days. We see no reason why members of credit unions should be offered a lower standard of service when it comes to handling complaints than other consumers. In any event, we think 40 days is ample time for an institution to investigate complaints. We recommend that credit unions should operate to the same standards as other financial institutions when it comes to complaints handling.

CHINESE WALLS

We note there is no recommendation on Chinese Walls in the draft credit union code, whereas there is a requirement for such protections in financial institutions governed by the main code (see page 20, par 56 of the main code).

COMPLIANCE WITH THIS CODE (Page 19)

We note that a provision in the main code (p 20, par 60) has been dropped from the draft credit union code. The relevant provision states that “a regulated entity must, upon being required to do so, provide to the Financial Regulator, records evidencing compliance with the Code for a period prior to such requirement as the Financial Regulator may specify (up to a maximum period of six years.) [Note to panel: Any ideas why this may be and does it matter?]

CHAPTER 3: SHARE AND DEPOSIT ACCOUNTS (Page 20)

STATEMENTS (Page 20)

Par 1 c): The Consumer Panel has long been concerned that some banks only show net interest paid on deposit account statements. We think all financial institutions including credit unions should be required to show gross interest, DIRT tax and net interest either on the statement or in a separate end-of-year notification. This is particularly important given that many credit unions members might be entitled to a tax refund due to their age or other circumstances. We note that businesses that charge you always show VAT and PAYE deductions and we see no reason why banks and credit unions shouldn't be required automatically to show DIRT deductions, especially as the information is also required when filing tax returns. We would therefore suggest that the Code should contain a requirement that DIRT deductions be shown on bank statements or in a mandatory end-of-year notification.

ACCOUNTS (Page 21)

The draft code for credit unions omits an important provision contained in the main code on p 21 par 5. “A credit institution must advise consumers

who are subject to penalties, including interest surcharges, of the methods by which these penalties may be mitigated.' [Note to Panel: Anyone know why this is?]

Par 5: We believe this provision should go further. Members should get 10 days notice before all fixed term deposits mature, not just in relation to 1 year term deposits

CHAPTER 4 LOANS (Page 22)

APR

The APR should be explained, with the aid of a worked example, and should be included with any statement of the total cost of the loan at point of sale.

MORTGAGES

There is no section governing the sale of mortgages to credit union members even though they are now permitted to sell mortgages in certain cases, while some act as mortgage intermediaries. We believe the protections in relation to the sale of mortgages contained in the main code (p24 pars 10 - 15) should also be included in the draft code for credit unions.

INSURANCE PRODUCTS, INVESTMENT PRODUCTS AND SERVICES

With the exception of payment protection insurance, Insurance and investment products and services are not covered by the draft voluntary credit union code, but they are covered by the main code in Chapters 5 and 6. Again, we feel consumers of credit unions services should have the same protections as other consumers and that these protections should be communicated to them in one easy-to-read document.

Par 6: We are of the view that a separate form should be required in order to enhance transparency in the sale of payment protection insurance.

PERSONAL LENDING

Par 8: The warning in the box should also refer to legal consequences if you do not meet the repayment on your loan.

CHAPTER 5: ADVERTISING (Page 24)

GENERAL REQUIREMENTS

Par 8: "An advertisement that uses promotional or introductory rates must clearly state the expiry date of that rate and provide an indication of the rate that will apply thereafter. The requirement does not apply to advertisements for loans where the promotional rate is for a period that

does not exceed 1 year.’’ We would query why the protection should not also cover products with promotional rates of less than a year. We think it should apply to all products with promotional rates, particularly given that products with promotional rates have been widely cited as contributing to the subprime mortgage crisis.

LENDING (Page 26)

There is no provision governing the advertising of fixed-rate loans by credit unions whereas there is such a provision in the main code (p 36 par 19.)
[Note to Panel: anyone know why this is?]

Mortgage lending advertising: The provisions governing the advertising of mortgages in the main code are not included in the draft credit union code either. We believe they should be included given that credit unions are now allowed sell mortgages in some cases.

Investment advertising: Again the provision contained in the main code from paragraphs 30 onwards are not in the draft credit union code.

OTHER SUGGESTIONS FROM THE PANEL:

Compliance with the Code

It should specify that the Registrar for Credit Unions rather than the Financial Regulator monitors compliance with the code. Credit Unions who are complying with the code should provide an information note in a prominent place in their premises stipulating that they are following the Code. This might encourage credit unions to “buy in’’ to the code and also offer them some “kudos’’ for complying with it.