

VOLUNTARY CONSUMER PROTECTION CODE FOR CREDIT UNIONS - RESPONSE TO CONSULTATION PAPER 32

SUBMISSION TO THE FINANCIAL REGULATOR BY C.U.M.A.,
THE CREDIT UNION MANAGERS ASSOCIATION.



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C.U.M.A., the Credit Union Managers' Association, is the primary representative and educational association for professional credit union managers in Ireland.

C.U.M.A., as a credit union stakeholder, welcomes this opportunity for positive engagement with the Financial Regulator. We believe that this exchange will lead to an enhanced code being presented, that will offer additional protection to credit union members, and that will ultimately strengthen the members' own institution - their credit union.

C.U.M.A. believes that the Code should be presented in a manner that is easy to read and comprehend. It should be an every-day working document, that will be of use to members. We believe that the code should, where warnings and advices are needed, set out in clear, agreed language, the exact content of such statements.

C.U.M.A. has identified a number of areas that the Financial Regulator omitted from this proposed code. We believe that these issues should be addressed before the Code is finalised. We look forward to further engagement with the Financial Regulator on these matters.

C.U.M.A. believes that the agreement of a draft code is only the first phase of this project - the Financial Regulator must then plan towards credit union staff training, roll-out, member awareness and education, and a certification and inspections regime for complying credit unions, if the Code is to be treated with the seriousness that it merits.



Tim Molan,
Chairman,
C.U.M.A.
June 2008

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Chapter Number	Chapter Title	Page	Provision
0	Definitions	5	definition of member
COMMENT			
The definition of "member" should relate to membership of the credit union from which the member in question is deriving service - the current definition could be read as confining rights upon a member of another credit union who is not necessarily a member of the credit union he or she is deriving service from.			

Chapter Number	Chapter Title	Page	Provision
0	Definitions	5	definition of officer
COMMENT			
The definition in the proposed code is inaccurate - under the Credit Union Act, 1997, as amended, an officer is defined as follows:- "officer", in relation to a credit union, includes a chairman (or president), vice-chairman (or vice-president), treasurer, secretary, a member of the board of directors or of a principal Committee or Supervisory Committee, employee, credit officer or credit control officer, but does not include an auditor appointed by the credit union in accordance with the requirements of this Act;". The definition should reflect the Credit Union Act.			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	8	Title and Introduction
COMMENT			
The title for this Chapter should be "Common Standards for All Credit Unions, the word "Standards" replacing "Rules". Use of the word "Rules" will be unnecessarily confusing to members, as all credit unions have registered Rules that are subject to the Credit Union Act 1997 as amended, and govern their operation. Delete "must" and replace with "will" in the introduction line.			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	8	2
COMMENT			
Greater clarity must be given to the phrase "on behalf of a member" - this could be read that a credit union must act upon a verbal instruction given by a relative of the member, purportedly on the member's behalf. The words "reasonable and lawful" should be inserted between the words "all and "instructions" on line 1. The Credit Union cannot be expected to record when the instruction was originally transmitted by the member, as this provision clearly suggests - it may have been posted from abroad, for instance. Perhaps the authors of the code meant to use the word "execution" in place of "transmission"?			

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Chapter Number	Chapter Title	Page	Provision
2	Common Rules	8	3
COMMENT			
The words "reasonable and legal" should be inserted between the words "any" and "condition". The words "in writing" should be inserted between the words "instruction" and "from".			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	8	4
COMMENT			
Insert the word "directly" between "member" and "purchasing". As members are the ultimate owners of credit unions, the wording as published might, in time, preclude a credit union from refusing to loan money to a member who cannot qualify for loan protection insurance, which is paid for by the credit union. Ultimately, however, the member is a part-owner of the credit union and indirectly pays for the insurance.			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	8	5
COMMENT			
Clarification is required as to whether this provision excludes a credit union from deducting an annual affiliation fee, or part thereof, to an industry representative association?			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	8	6
COMMENT			
Delete the word "normal" and insert the word "predominant" instead - the word "normal" is subjective in it's application, in this context, whereas the word "predominant" would reflect the intention of the provision.			

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Chapter Number	Chapter Title	Page	Provision
2	Common Rules	9	8
COMMENT			
<p>Already operating Credit Unions cannot "provide each member with a copy prior to providing the first service to that member"! Amend (b) to read "confirmation that the credit union is registered with the Registrar of Credit Unions". Delete the current (c) and (d) and replace with:- "confirmation that the credit union is regulated by the Registrar of Credit Unions " . Amend (f) to read "If the credit union is a tied agent or intermediary in relation to the provision of such services, the names of the regulated entities to which it is a tied agent or from which it holds an intermediary authority;". Delete "compensation" from (k) and substitute "Savings Guarantee"; delete "protection" and substitute "savings guarantee". Insert "directly to the member" between "available" and "from" on the last line.</p>			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	10	9
COMMENT			
<p>The provision of terms of business should not be confined to a "stand-alone document" as a medium - credit unions should have the freedom to provide terms of business in electronic format, as part of a "Membership Booklet", for instance, and in other formats, so long as it is clearly identified as "Terms of Business". It is also vital that a publication date be displayed prominently for the member's reference.</p>			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	10	10
COMMENT			
<p>Insert the words "that negatively affects some or all of the members" between the words between the words "business" and "it" on line 1. Thus, credit unions could improve their terms of business without a significant attendant mass communication cost.</p>			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	10	13
COMMENT			
<p>This is an impractical and very costly imposition on the orderly day-to-day running of the credit union business. It will discourage credit unions from piloting new services, and will increase the cost of introducing new services. Possible negative or detrimental impacts upon members are already covered in provision 10. Regulators should place undue cost burdens upon credit unions that are seeking to improve the range of services to members.</p>			

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Chapter Number	Chapter Title	Page	Provision
2	Common Rules	11	16
COMMENT			
This is not practical - what happens if a member comes in with ten cheques, or makes a lodgement of €100 using 10 x €10 notes? We would have to issue ten receipts for one transaction. Delete "each" and pluralise "instrument".			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	11	17
COMMENT			
Insert the word "properly" in front of "completed" on the first line.			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	11	20
COMMENT			
Definition of the words "clearly legible" is required. This is a subjective term, as is evidenced by the micro-text sizes clearly used by a number of financial institutions currently. A minimum font size should be specified. A number of critical omissions are made by the authors of this proposed code, and indeed of the Consumer Code, in relation to the provision of information to the non-sighted, partially sighted, and to persons of variable literacy capacities.			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	12	22
COMMENT			
The requirement in question exempts the credit union from undertaking a fact find when opening a share or deposit account. However, it does not exempt the credit union from a fact find in all subsequent operations, including lodgements and withdrawals, from that same account. Nor does it exempt the credit union from carrying out such a fact-find in the opening of service, ATM and Budget accounts. This is totally inoperable. It is impractical that we would not be exempted from fact-finding in advance of a lodgement or withdrawal.			

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Chapter Number	Chapter Title	Page	Provision
2	Common Rules	12	23
COMMENT			
Insert between the words "circumstances" and "before" on the first line, the words "notified by the member to the credit union," - the current wording imposes an unreasonable condition upon the credit union in that it cannot record information that it is unaware of.			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	13	26
COMMENT			
Here again, the exemption does not apply to the ongoing operation of share, deposit, service, ATM and Budget Accounts, as outlined in provision 22 above..			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	13	27
COMMENT			
This provision is just additional red tape - a member comes to a credit union seeking a loan, or a withdrawal of shares, deposits, Budget account savings, and we must tell the member in writing why the loan or withdrawal amount is suitable to him or her! A similar provision is not being executed in relation to Moneylenders, Banks and other financial service providers.			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	14	28
COMMENT			
This section would, if implemented, preclude a credit union from contacting a member who has fallen into loan arrears. If, for instance, a member had left the country, and returned after 18 months, the credit union's Credit Controller could not, under the proposed wording, telephone the member to discuss arrears with him/her. This provision should be amended by inserting the words "offering a financial product or service" between the words "contact" and "to" on the first line.			

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Chapter Number	Chapter Title	Page	Provision
2	Common Rules	14	29
COMMENT			
Insert the words "offering a financial product or service" between the words "contact" and "made" on line 1.			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	14	30
COMMENT			
Insert the words "offering a financial service or product" between the words "contact" and "in" on line 1.			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	14	31
COMMENT			
Insert the words "offering a financial service or product" between the words "contact" and "to".			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	15	33
COMMENT			
33(d) fails to define "periodically". This section would also have us advise all members if and when we have to deduct government card fees/charges.			

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Chapter Number	Chapter Title	Page	Provision
2	Common Rules	15	34
COMMENT			
Insert the words "that is" between the words "service" and "the" on line 2.			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	17	39
COMMENT			
This provision is not in any way user or member friendly - the member must look up the Investment Intermediaries Act to determine what a certified person is - few members would have ready access to this Act on a daily basis. Once again, the member has to access another piece of legislation - in this case the Consumer Credit Act - to define what a credit intermediary is. Item (d) is of an even more complex nature. It could also be argued that the obscure wording of this entire provision would not allow credit unions to pay wages to management and staff or to pay consultants. Nor would it allow a credit union to pay a fee to an institution such as an IT provider for transactions undertaken for sav. FFT.			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	18	40
COMMENT			
This does not take account of a situation in which the conflict of interest materialises after the relationship has been established - for instance, if a credit union were to learn that one of its members was a moneylender, and was after borrowing money from the Credit Union for subsequent onward lending, this provision could be read in a manner so as to hinder the credit union from recovering that money.			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	18	41
COMMENT			
Given that a "voluntary assistant" may be an "officer" of the credit union, the employer of the voluntary assistant is not the Credit Union in this instance, and this provision may not be suitable in this specific respect. Delete "does" and substitute "do" on line 1.			

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Chapter Number	Chapter Title	Page	Provision
2	Common Rules	18	43
COMMENT			
Insert the word "exclusively" between the words "used" and "to" on line 1.			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	18	44
COMMENT			
Insert the following ahead of the existing sentence "A credit union shall have a written policy on soft commission agreements. This policy shall be available to the member on request. A Credit Union shall maintain a public register of soft commission agreements."			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	18	Additional
COMMENT			
Additional provisions need to be added to deal with the entitlement of members to copies of the Code. The Regulator should certify, on the Financial Regulator's website, on the Credit Union Annual Report and in the Credit Union's Public Office(s), that a Credit Union is subject to the code, and should undertake regular monitoring of the Code.			

Chapter Number	Chapter Title	Page	Provision
2	Common Rules	18	Additional
COMMENT			
Provisions need to be inserted in relation to the operation of Nominations, of Life Savings and Loan Protection Insurances that are paid for by the credit union, and in relation to a number of other areas.			

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Chapter Number	Chapter Title	Page	Provision
3	Share and Deposit Accounts	20	GENERAL
COMMENT			
This Chapter should take account of the fact that Credit Unions also offer Budget, Service, Thrift and other savings accounts, and this should be reflected in the title.			

Chapter Number	Chapter Title	Page	Provision
3	Share and Deposit Accounts	20	1
COMMENT			
Subsection (b) should take account of the fact that members move, and credit unions maintain records where statements are returned - posting statements to addresses that we know are no longer valid, but are "the last known" address, is foolhardy, and may facilitate identity theft. Some credit union I.T. systems (and indeed some systems in the wider financial services industry) do not have the capacity to issue statements electronically - by specifying it as an entitlement under the code, some credit unions will encounter difficulty in complying with this provision.			

Chapter Number	Chapter Title	Page	Provision
3	Share And Deposit Accounts	21	6
COMMENT			
This provision fails to take account of the fact that it takes a considerable period to clear cheques through the clearing system. The provision should be amended by inserting "cleared" between "any" and "funds" in line 1. An additional sentence should read "Uncleared funds should be credited to the member's savings account immediately upon clearance".			

Chapter Number	Chapter Title	Page	Provision
3	Share and Deposit Account	21	7
COMMENT			
The warning should be of a standard type, specified within the Code, as the warnings in relation to arrears, guarantors, etc are specified in later sections of the code. There needs to be a consistency of approach - where a warning is required, the author of the code should specify it's exact wording. It should also be borne in mind that all multi-tenanted accounts are not "joint" accounts - some may, for very valid reasons, have more than two tenants.			

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Chapter Number	Chapter Title	Page	Provision
3	Share and Deposit Account	21	8
COMMENT			
Reference here again should be to multi-tenanted accounts. Any limitations on the operations of the account would have to be legal and reasonable, and agreeable to all parties, including the credit union, and would have to be in writing in a document signed by all parties capable of making a signature, and subject to the Credit Union Act.			

Chapter Number	Chapter Title	Page	Provision
3	Share and Deposit Account	21	Not listed
COMMENT			
A number of very significant issues are omitted from the code - (a) No mention is made about the rights of juveniles to make a signature, or to access an account opened in their name (b) No mention is made of the age that a juvenile can make a signature. (c) No mention is made of the operation of nominations, or the rights of nominees. (c) No mention is made in relation to the complex area of dealing with the accounts of the elderly and of persons in hospital and nursing home care. (d) No mention is made in relation to dealing with the accounts of members of reduced mental capacity, and of persons temporarily unwell.			

Chapter Number	Chapter Title	Page	Provision
4	Loans	22	1
COMMENT			
This is an unfair imposition on a credit union. The Financial Regulator does not restrict Credit Card Companies from offering a Credit Card to the same consumer with a pre-approved credit limit?			

Chapter Number	Chapter Title	Page	Provision
4	Loans	22	2
COMMENT			
The warning should read:- As a guarantor of this loan, you will have to pay off the loan, the interest and all associated charges, if any, if the borrowing member does not. Savings you hold in the Credit Union, up to the value of the loan and interest balance outstanding may be transferred against your liability arising from this guarantee. Before you sign this guarantee you should get independent legal advice.			

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Chapter Number	Chapter Title	Page	Provision
4	Loans	22	4
COMMENT			
<p>The Financial Regulator is asking the Credit Union to act against it's own interest, and those of it's shareholder members in a default situation. The Financial Regulator does not impose this requirement upon banks, building societies, money lenders and other entities it regulates. It should not seek to visit such an imposition upon Credit Unions. The Credit Union should not be obliged to advertise the name of any money advisers in it's correspondence. Nor should credit unions be asked to refer or otherwise draw the attention of members to advisers that are nor regulated under the Financial Regulators own code of Minimum Competency Requirements. The last sentence in this paragraph must be omitted.</p>			

Chapter Number	Chapter Title	Page	Provision
4	Loans	23	7
COMMENT			
<p>Thw use of the term "text box" is potentially confusing, in that this is the only place that it is used. The specific text of the warning that the Regulator wants to see put in place in relation to this provision should be stated clearly by the Regulator, as advised already in Chapter 3(7).</p>			

Chapter Number	Chapter Title	Page	Provision
4	Loans	23	8
COMMENT			
<p>Delete the word "approved" in the first line and substitute the word "disbursed" - there is no point in giving a member this information if he/she is not going to be approved for the loan. The warning should read "Warning: If you do not meet the repayments on your loan, your account will go into arrears. This may affect your credit rating. It may also lead to legal and other actions to recover the debt owed to the credit union and costs incurred by the credit union".</p>			

Chapter Number	Chapter Title	Page	Provision
4	Loans	23	9
COMMENT			
<p>Insert the words "as advised to the credit union by the member" between the words "facilities" and "and" on line 3. Credit Unions will also expect the Financial Regulator to enforce such a provision across banks, building societies, money lenders and other financial institutions, and to make full disclosure of such information to their clients, including a historic statement of all charges, costs and payments since inception of the loans, mandatory under legislation.</p>			

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Chapter Number	Chapter Title	Page	Provision
5	Advertising	24	2
COMMENT			
It would be hoped that the Financial Regulator would enforce this provision in a fair and even-handed way - the Regulator seems to have been unaware of a bank that recently seemed to suggest in it's adds that it was not really a bank, and was being attacked by "bankers".			

Chapter Number	Chapter Title	Page	Provision
5	Advertising	24	6
COMMENT			
This is vague and subjective. The Regulator needs to define "sufficient size" and "clearly legible". No provision is made for the visually impaired or for persons of impaired literacy.			

Chapter Number	Chapter Title	Page	Provision
5	Advertising	24	7
COMMENT			
Here again, in recent times, a well known bank has been successfully altering it's radio advertising warnings by the use of humour and speed in that section of the advertisement. The warning section of a radio or television advertisement should not be obscured in any way by comedy, deflection or speed.			

Chapter Number	Chapter Title	Page	Provision
5	Advertising	26	20
COMMENT			
The warning should read: Warning: If this new loan takes longer to pay off than your previous loans, it might mean that you will pay more than if you paid your previous loans over their original terms.			

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Chapter Number	Chapter Title	Page	Provision
5	Advertising	26	21
COMMENT			
The Compound Annual Rate (C.A.R.) should be the comparative rate quoted. As mentioned already, the Financial Regulator should specify the Warning required under sub-provision (d).			

Chapter Number	Chapter Title	Page	Provision
General Comment	Code Title		
COMMENT			
A more accurate title for the Code would be "Member Protection Code for Credit Unions". Credit Unions deal only with their members, not the wider consumer market. The use of the term "voluntary" is potentially misleading where, as has been stated, the adherence or otherwise of a credit union to the code may be a factor in the deliberations by statutory authorities in a dispute between a member and a credit union.			