

Mr. Bernard Sheridan
Codes Department
Financial Regulator
P.O. Box 9138
College Green
Dublin 2

30 June 2008

Re: CP 32 - Voluntary Consumer Protection Code for Credit Unions

Dear Bernard,

Irish Banking Federation (IBF) welcomes the Financial Regulator's Consultation Paper 32, which seeks to extend the standards of consumer protection regulation currently applying to our members, to Credit Unions. We fully support the Financial Regulator's intention to ensure that all consumers receive the same level of consumer protection when choosing financial products and services, and note that this objective was supported by a range of parties who responded to the consultation on CP10.

Having invested considerable resources in preparing for the implementation of CPC, IBF members appreciate fully the similar challenges for Credit Unions in implementing the voluntary code. The Financial Regulator's consumer remit obliges it to ensure that all consumers benefit from the same level of protection regardless of the provider, "We believe that consumers are entitled to the same levels of protection regardless of which provider they are dealing with"¹. While the Financial Regulator states that it wishes to consider the special structure and voluntary ethos of the Credit Unions movement in framing and implementing the Code, we do expect that the overriding principle of equality of consumer protection standards will prevail.

Bearing this principle in mind please find attached an appendix with a detailed comparison of requirements in statutory Consumer Protection Code (CPC) and the voluntary code as drafted in CP32. In addition we make some general comments below,

1. General Comments

1.1 Consistent Consumer Protection

It is disappointing that the Financial Regulator could not obtain the necessary changes to legislation to enable the Financial Regulator to apply the Consumer Protection Code in the same manner across the board for the benefit of all consumers. This Code is statutory for regulated entities. The fact that the planned code addressing the core services – saving and loan accounts – of Credit Unions must be voluntary is, disappointing. It is unlikely that consumers, particularly more vulnerable consumers, will generally appreciate that the rules for consumer protection will be different for Credit Unions.

According to the Irish League of Credit Unions, credit unions provide access to financial services across all sectors of society, especially to marginalised and disadvantaged communities and individuals - but as the Code is voluntary, the application of the suitability requirements of CPC, for example, may not apply to those customers that most require this.

¹ CP32, page 2

It may be appropriate to explore further the adoption of the code through reflection in the standard rules of Credit Unions, which are given statutory force under Section 15 of the Credit Union Act, 1997 which states “the registered rules of a credit union shall bind the credit union and all members of it”.

1.2 Future proofing the code

The voluntary code will in any case only apply to savings and loans. Again in the interest of consistent regulation and protection for consumers, we argue that the code should be future-proofed to ensure that any new products and services and the development of new or varied product features, which would come within the definition of core services, should automatically fall with the scope of the code, thus obviating the need for regular updates to its text.

Some examples, in this regard, which we note later arise in respect of mortgage loans and fixed rate loans.

1.3 Distinction between core and non-core services.

The important distinction being drawn between core and non core services needs to be applied on a consistent basis, having regard to both current conditions and, as noted above, future developments.

This code should not include partial overlaps with statutory CPC. In the provision of any given service, it should be clear which Code applies. It should not be necessary to repeat items here which only apply to non core services.

Equally, in the interests of clarity, the final text of the code should include an explicit statement to the effect that CPC applies to all non-core services.

1.4 Staff Training

We welcome the intention to ensure that Credit Union staff will achieve specified competency levels, and anticipate that the Financial Regulator will ensure that planned training by ILCU will reach the same standard as required for staff of financial service providers under the Minimum Competency Requirements (MCR). However, IBF would recommend that:

- (a) The Financial Regulator’s minimum competency requirements apply to those Credit Unions who adopt the code to avoid consumer confusion caused by different standards
- (b) Consistent training standards and competency levels should apply to all Credit Unions who adopt the code, regardless of size, location, products offered or whether they are members of the ILCU
- (c) Credit unions should be subject to similar or comparable oversight and regulatory supervision vis-a-vis MCR

1.5 Alignment with existing and new Legislation

Notwithstanding our desire for a level playing field and the application of consistent consumer protection requirements regardless of the nature of the provider, we would point to the need to have regard to other forthcoming legislative requirements which have been agreed at EU level. There is a need for pragmatism in ensuring that industry sectors are not required to implement change in specific areas where it is known that they will have to make further changes within the foreseeable future.

In this regard we would flag upstream Directives such as the Consumer Credit Directive, and the Payment Services Directive.

1.6 Financial Regulator monitoring of Implementation of Code

Given the voluntary nature of this code and the number of consumers impacted – estimated at half the population- it might be appropriate for the Financial Regulator to request Credit Union representatives

to provide some regular update of the scale of implementation of this Code and to publish updates on compliance by Credit Unions with this Code. Otherwise there is the risk of uneven or indeed inconsistent application. In this regard, we specifically note the omission of Common Rule 60 (as per statutory CPC) and would suggest that consideration be given to insertion of an appropriate equivalent in the voluntary code:

“A regulated entity must, upon being required by the Financial Regulator to do so, provide to the Financial Regulator records evidencing compliance with this Code for a period prior to such requirement as the Financial regulator may specify (up to a maximum period of 6 years).”

We would suggest that as this code is voluntary, those Credit Unions that apply it must adopt all of the code in full for all of their members in order to maximise its credibility. Also, the Financial Regulator might provide some method by which consumers can easily establish, without having to ask in the Credit Union branch, whether the Credit Union applies the Code. If a Credit Union breaches the Code, the Financial Regulator cannot impose sanctions but could perhaps make members aware of the breach.

We trust our comments will be considered in the constructive spirit in which they are offered. If there are any aspects which you wish to discuss further, we are happy to meet you.

Yours Sincerely,

**Eimer O'Rourke
Head of Retail Banking
Irish Banking Federation**

Appendix I

2. Comments on Proposed General Principles and Rules

2.1 Definitions

CPC describes a customer as *“any person to whom a regulated entity provides or offers to provide a service the subject of this Code, and any person who requests such a service”*. CPC General Principles apply to regulated entities in all their dealings with “customers” whiles CP32 refers to credit union dealings with “members”. Consumer protection should equally apply were a credit union offers to provide a service to a potential member or a potential member requests such a service. A definition of member or customer that includes potential members is needed.

2.2 General Principles

We note that the voluntary code does not include general principle 11, which states, “A regulated entity must not, through its policies, procedures, or working practices, create a barrier of access to financial services”

Given that the stated objective of the Financial Regulator for Credit Unions is to “develop a code unique to Credit Unions which recognises the unique role Credit Unions play in providing access to financial services across all sectors of society, on a not-for-profit basis especially to marginalised and disadvantaged communities and individuals”, we would see this point as being directly relevant.

We would propose inclusion of an equivalent principle along the lines of: “without prejudice to its common bond, a Credit Union must not, through its policies, procedures or working practices, prevent access to basic financial services”

2.3 Common Rules

○ Notification (CPC 2.14 – 3.2)

Credit union members should be entitled to advance notification if their Credit Union intends to cease operating or to move. Rule 2.14 and 3.2 of the statutory CPC ensures customers of other regulated entities receive such notification

○ Suitability (CPC 2.26)

We note that rule 26 on suitability does not apply to the opening of share or a deposit account. This would seem to be proportionate, and in line with the treatment of basic banking products and services in common rule 30 of CPC, if it is confined to “basic” share accounts and “basic” deposit accounts. Given the range of share and deposit accounts which some Credit Unions offer, the opening of all such accounts should not be exempt from the suitability requirements.

For example, CP32 does not make any distinction between share/deposit accounts with a term of one year or greater. Customers of Credit Unions that sell fixed term up to a year and Special Term Accounts for 3 and 5 years will not be afforded the same level of protection they would receive in other regulated entities. The Financial Regulator may wish to give further consideration to the treatment of fixed term deposits, which might include provision of appropriate definitions of a share account and a deposit account, the latter with the specification that a deposit product is “an ordinary deposit or a term deposit account with a term of less than one year”. This would ensure that all term accounts greater than one year are subject to the same regulatory requirements.

However, whilst a full suitability regime may not be appropriate for basic share and deposit accounts, we do feel there are important distinctions between share and deposit accounts, and potentially other impacts which should be brought to the member's attention, when making choices in respect of these savings products.

This might include appropriate information on membership rights, determination of rate of return, and potentially tax liability. For example, while DIRT is automatically deducted from deposit accounts, it is not automatically deducted from Credit Union share accounts unless a member opts to have it deducted. In practice, although eligible for DIRT, only about half of members have opted to avail of the benefits of reduced tax and declarations offered by deduction at source.

The distinctions between these account types are already inherently recognised in CP32, e.g. Provisions 2, 3, 4 & 5 in Chapter 3 are applicable only to deposit accounts, presumably due to the different nature of a share account, and the way in which its return is generally only determined at the end of the relevant period, rather than at the outset.

The impact of the customer's choices, in this regard, should be alerted to them. Perhaps an appropriate way of addressing this issue would be to include a provision along the lines of CPC Ch 2 (30) (iii) e.g., "where in the context of opening a share or a deposit account, the Credit Union has alerted the member to the differences between a share account and a deposit account".

- **Distinction between core/non core services – (CPC Rule 2.22 / 2.23 / 2.28(c))**

Forex is not a core service (which is defined as savings and loans). As such the Statutory Consumer Protection Code would govern its provision and reference to it in this code should be deleted. This is also true for Rule 28(c) – protection policies – as non core products are already covered by Statutory CPC.

- **Register of customers – (CPC 2.29)**

The requirement to maintain a list of customers could be equally applicable to Credit Unions as per rule 29 in the statutory CPC. Under Section 75 of the Credit Union Act 1997 and registered rules credit unions must maintain a register of members. Credit Unions can only provide products and services to their members.

- **Unsolicited Cold Calling – (CPC 2.33 & 2.34)**

The voluntary code does not include provisions on unsolicited calling of consumers who are not already members. By not envisaging the possibility, it allows for unregulated cold calling of the public or for example of a class of persons which appear to meet the common bond criteria of a particular Credit Union. This could be used to solicit membership of a Credit Union. Provisions comparable to Rules 33 and 34 of CPC should be included.

- **Disclosure – (CPC 2.39-43)**

The statutory CPC requires each financial service provider to provide a regulatory disclosure statement on its stationery, advertisements and on all electronic communications with consumers. The rationale behind requirements 39 – 43 in statutory CPC is that consumers are entitled to be aware of the regulatory status of the entities with whom they do business.

As the development of CPC on a voluntary basis demonstrates, there is some ambiguity around the regulatory status of Credit Unions. Consumers are nevertheless entitled to understand what that status is, as it may inform their decision around choice of financial services provider. Accordingly, we would advocate that an appropriate regulatory disclosure statement be developed and included in the voluntary CPC.

- **Complaints Handling (CPC 2.35)**

We welcome the move towards extending the same regime for complaints handling to Credit Unions, particularly the timeline. We note that Credit Unions have ten more days to seek a resolution (i.e., 50 business days here, but 40 business days in statutory CPC), and would caution that this could add to confusion for consumers. We note that the timelines followed by the Financial Services Ombudsman do not differentiate, and therefore, we propose that 40 days should apply.

- **Payment of fees (CPC 2.50)**

Rule 39 in the voluntary code omits the possibility of a Credit Unions paying a fee, commission or other reward to a regulated entity which is authorised by the Financial Regulator, whilst it does envisage such payment to a financial service provider operating in the State in accordance with freedom of services or establishment provisions of EU law. We presume that this is an accidental omission and that there is not an intention to preclude Credit Unions from having dealings with domestically based, regulated financial service providers.

- **Compliance with the Code (CPC 2.60)**

We propose that the requirement in Statutory CPC that regulated entities provide records evidencing compliance be applied to Credit Unions also.

2.4 Chapter 3 – Share and Deposit Accounts

- Notification of closure or re-withdrawal of a branch (CPC 3.2)
- Information on the date from which a change in interest rates applies (CPC 3.3)
- Notification that member may be subject to penalty charges and how to mitigate same (CPC 3.4)

Credit union members are equally entitled to be aware of branch changes and to have full transparency on interest rates as are all other consumers. Accordingly, the specific requirements of the statutory code listed above should be incorporated into the voluntary code.

2.5 Chapter 4 – Loans (CPC 4.2)

Rule 2 from CPC has been omitted. Is it clear that the potential issue by a Credit Union of a credit card would fall outside of the definition of core services i.e. loans, and would thus be subject to Statutory CPC? If not, in the interests of future proofing the code, the provision should be included in the voluntary code.

Rule 8 of CP32: the warning may need to be considered further. Most Credit Unions do not consult or notify a credit register. In the absence of participation of a Credit Union in a credit register, the primary impact of missed payments may not be the impact on the credit rating, but may in fact be the likelihood of Judgements being registered against the individual.

Rules 5, 6, 7 of CP32, – payment protection insurance: These sections should be omitted as Statutory CPC will automatically apply.

Rule 9 of CP32: This goes slightly further than statutory CPC, in that Credit Unions must provide comparison of cost of consolidated loans vs. non-consolidated for personal loans. (In CPC this provision only applies to mortgage loans which will consolidate other loans). We are not aware of any rationale for changing this provision for Credit Unions.

Several Credit Unions act as authorised mortgage intermediaries, and as such are covered by CPC. However, Credit Unions are also free to act as mortgage lenders, offering loans to members for the purchase of sites and houses, with those loans secured on the property.

The provision of mortgage loans in this way comes within the definition of core services, therefore provisions 10-18 of Ch 4 Statutory CPC should be included in the voluntary code. These provisions would provide members of Credit Unions that might offer mortgages with the same protection they could expect from other mortgage lenders including: alerting consumers who fall into arrears, the relationship of the regulated entity with mortgage intermediaries, sight of valuation documentation and lifetime mortgages.

2.6 No Chapter on Insurance

We note that Credit Unions that act as insurance intermediaries are subject to statutory CPC for that aspect of their business.

2.7 No chapter on Investment

Investment products are defined in Statutory CPC as including a deposit with a term equal to or greater than one year. As Credit Unions can offer this product, and that it would fall within the definition of core services, the rationale for omitting the equivalent of Chapter 6 Statutory CPC is not clear. However, we would be interested in hearing feedback on this issue and what the Financial Regulator's thinking is as to the applicability of investment rules in this context.

2.8 Chapter 5 Advertising

Statutory CPC defines consumer as including a potential consumer. The use of "member" in the advertising section seems unduly narrow. An advertisement could target "potential members" as well as existing members. It is quite possible that an individual, who is not an existing member of a credit Union, would have less understanding of some of the basic relevant concepts. It therefore seems that applying the test of "any reasonable member knows that it is an advertisement (5)" "must not influence a members attitude (2)" "only invites a member to discuss(16)" may be too light a test, and perhaps the use of the concept "consumer" or "potential member" would be more appropriate here.

References to APR and EAR may need to be defined, or in the case of APR referenced to the definitions contained in the Consumer Credit Act.

The warning of fixed rate loans included in CPC 7.19 should also be applied to Credit Unions.

Rule 19 and Rule 20 of CP32 set a higher bar than CPC (as noted re rule 9.4) and as such, we would recommend that they be revised to bring them in line with CPC.

Notwithstanding these comments, rules 17 to 20 should be reviewed in light of the Consumer Credit Directive that was adopted by EU Council in May this year. This is a maximum harmonisation directive which sets out requirements for Standard Information to be included in advertising. There seems little point in requiring an industry to bring its advertising in line with one set of regulatory requirements, only to have to revisit that within approximately one year of implementation.

In line with our commentary on the Loans Chapter, the rules on advertising mortgages (CPC 7.22 & 7.25) should be included for Credit Unions also.

Rule 21 applies only to advertising of deposit accounts. Given that some 90% + of savings with Credit Unions are in share accounts, it might be appropriate to consider whether any provisions are required with respect to advertisements which suggest a rate of return on share accounts.

Given comments above re Investment products, it's not entirely clear why having omitted the chapter on investment products, rule 22 and 23 have been included in the advertising chapter.

As it seems possible that the circumstances envisaged in Statutory CPC rules 7.32 (description of product as guaranteed), 7.33 (impact of taxation) and 7.40 (early redemption) could potentially apply to core Credit Unions products, it would seem reasonable to incorporate these rules into the Code.
