



**Submission from the Irish League of Credit Unions  
in response to Consultation Paper CP 32:**

***Voluntary Consumer Protection Code for Credit  
Unions***

*(in respect of their core services)*

**Irish League of Credit Unions, June 2008**

## **Introduction**

The Irish League of Credit Unions (“the ILCU”) welcomes the opportunity to comment on this consultation paper issued by the Financial Regulator.

The ILCU is the leading trade and representative body for credit unions in Ireland. Membership comprises approximately 430 credit unions in the Republic of Ireland with assets in excess of €1 billion and membership in excess of 2.2 million. The ILCU also represents over one hundred credit unions in Northern Ireland.

Credit unions occupy a unique position in the social and economic fabric of Ireland. In the financial services sector credit unions have a unique ethos and modus operandi that distinguishes the movement from commercial financial service providers. The main reasons for this credit union difference are that:

- the ultimate responsibility for the general control, direction and management of the affairs, funds and records of a credit union rests with **volunteers**;
- credit unions operate on a not-for-profit basis;
- credit unions have social as well as economic objectives;
- credit unions are community based, financial cooperatives providing services to the communities (including many marginalised and disadvantaged communities) within which they operate and by which they were established; and
- credit unions have members (not customers / consumers) who own their respective credit unions and unlike the customers / consumers of commercial financial service providers who simply avail of a service, credit union members are uniquely placed to participate in the operation and governance of their credit union.

On 4<sup>th</sup> March 2008 the Financial Regulator published a consultation paper entitled “Voluntary Consumer Protection Code for Credit Unions (in respect of their Core Services)” (“the Code”). The consultation paper is seeking views on the introduction of the Code. In its press release the Financial Regulator states that it:

*“...welcomes submissions from all interested parties on this consultation paper and is looking forward to working with credit unions to introduce the Code.”*

The ILCU has reviewed the Code over the past few weeks and this document outlines the views of the ILCU on the Code.

### **Specific issues**

There are a number of specific issues referred to in the consultation paper that require to be addressed:

#### ***1) The need for a Regulatory Impact Assessment (“RIA”)***

The Government’s White Paper entitled “Regulating Better” sets out six core principles of good regulation which aim to ensure that new regulations are more rigorously assessed in terms of their impacts, more accessible to all and better understood.

The six principles are as follows:

- a) **Necessity** - is the regulation necessary, reduction of red tape, are rules and structures that govern this area still valid?

- b) **Effectiveness** - is the regulation properly targeted? Is it going to be properly complied with and enforced?
- c) **Proportionality** - do the advantages outweigh the disadvantages of the regulation? Is there a smarter way of achieving the same goal?
- d) **Transparency** - consultation with stakeholders prior to regulating? Is the regulation in this area clear and accessible to all?
- e) **Accountability** - is it clear under the regulation precisely who is responsible for whom and for what? Is there an effective appeals process?
- f) **Consistency** - will the regulation give rise to anomalies and inconsistencies given the other regulations that are already in place in this area? Are we applying best practice developed in one area when regulating other areas?

The Code, although voluntary in nature, will become statutory if the legislation changes. An RIA is the only way to effectively assess the impact of the Code on credit unions and their members and whether or not the administrative burden on credit unions will outweigh any perceived extra protection for credit union members. The Financial Regulator has generally undertaken to carry out RIAs yet none has been done to date in respect of the Code. Consequently, there exists a gap on the basis of regulating better in accordance with the six principles of better regulation. The ILCU believes that the Financial Regulator should conduct an RIA in respect of the Code.

## 2) *Sanctions*

On the basis that the Code is a voluntary code, credit unions can decide whether or not to adopt it. If they choose not to do so they should not be penalised one way or another as it is voluntary in nature. It should be noted that smaller credit unions may not have the administrative ability or financial resources to implement the Code and should not be penalised by:

- the Financial Regulator for non-implementation; and
- by members bringing complaints against credit unions on the basis that they have not adopted the Code as best practice.

Indeed the Financial Regulator alluded to the fact that the Code will be taken into account by the Financial Services Ombudsman when dealing with member complaints. This should not be the case.

### **3) *IT Issues***

- The document is vague on IT requirements and General Principle number 4 seems to be somewhat of a ‘catch all’ regarding IT requirements. This principle should be amended so that credit unions are required to have ‘reasonable’ controls and checks in place. Also, from an IT perspective the document needs to be very prescriptive so that is not open to interpretation.
- Secondly, any rollout of changes to credit union computer systems will require a substantial period of time to be implemented. There are over 400 credit unions in the Republic of Ireland served by 12 main IT suppliers; some of these suppliers would have to deal with over 100 individual credit unions. Therefore, the implementation of IT changes is significantly more difficult for credit unions and their suppliers than it would be for banks or insurance companies generally and this must be considered when implementation dates for the introduction of the Code are being decided.

### **4) *Paper Issue***

- While the ILCU sees the rationale for and welcomes the introduction of initiatives such as the terms of business, there may be a real danger that consumer / member protection just means more paper is given to the member. For example, previously upon collecting a loan, members of a credit union received a single page (a copy of the promissory note). However, under the terms of the Code members will receive a four page

copy of the credit agreement, the terms of business of the credit union and perhaps a suitability letter. The suitability letter will also be given to the member for each subsequent loan. The question that arises is will the benefits to the consumer/member be outweighed by the operational difficulties these will cause?

## 5) *Know Your Member and Suitability*

### ➤ **Introduction**

The ILCU recognises the importance of collecting and recording information regarding the financial circumstances of a member when providing a complex financial product. The Consumer Protection Code (August 2006), Chapter 2, paragraph 24 requires regulated entities to gather and record sufficient information from consumers before providing a recommendation or service or product to the consumer. This requirement does not apply where a consumer is seeking a basic banking product or service, which includes an overdraft.

The ILCU also recognises the importance of ensuring that the financial institution uses all available facts about the consumer to ensure that the product or service offered is suitable to that consumer. The Consumer Protection Code (August 2006), Chapter 2, Paragraph 30 make this a requirement for all regulated entities, but excludes those services that are defined as a basic banking product or service, which includes an overdraft.

Under the Code a credit union is required to undertake a fact-find and suitability test with members before issuing a loan. This is not consistent with the requirements of other financial institutions under the Consumer Protection Code (August 2006) as all basic banking products and services are exempt from such procedures. It is the opinion of the ILCU that credit union loans do not share the same complex nature as other products provided by other financial institutions. The overdraft products offered by these financial institutions bear much greater resemblance to a credit union loan, and as such, it is recommended that credit

union loans be reclassified as “basic financial products and services” under the Code which are exempt from the “Know Your Member” and “Suitability” sections.

In 2004, 45.31% of all loans advanced by credit unions in the Republic of Ireland were under €1,000. 94.56% of all loans advanced by credit unions were under €10,000. In 2007, it is estimated that the average credit union loan is €8,150. The vast majority of these loans will have a term of 5 years or less.<sup>1</sup>

➤ **Suitability**

Credit unions in the Republic of Ireland provide short to medium-term loans to credit union members. Many credit unions will have one single loan product for members while others could have a number of different loan types for specific purposes, namely:

- a standard loan,
- an education loan,
- a car loan
- a within shares loan, and
- a community development loan.

The member will fall into only one loan category depending on the purpose and current share holdings of the member. Therefore the credit union is not required to assess which loan product is most suitable for the member.

The only feature of these loans that vary is the interest rate, as credit unions do not apply charges or penalties to any loans and the repayment structure will be

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<sup>1</sup> Taken from the ILCU Annual Report 2007.

taken from the lending policy of the credit union. Unlike the loan products offered by banks, the members of credit unions are eligible for one loan product based on their need/circumstance. The rate charged for this loan will be the same regardless of the amount borrowed.

Credit unions currently conduct a loan assessment procedure for all members looking to borrow. The information gathered during this process will clearly identify the loan product which the member qualifies for. For example, if the member requires a loan for a car, they will qualify for the “Car Loan” product, if they would like to borrow an amount that is less than their current share holding, they will qualify for the “Within Shares Loan” product. If the member qualifies for more than one loan category, they will always be provided with the lowest interest option. In many cases credit unions only have one loan product so this process becomes very simple.

Once a member qualifies for a loan category, there is no variance in the rate paid. Unlike many loan products offered by banks, the duration and loan amount will not have an impact on the amount of interest charged to the member.

Based on the structure of credit union loans, it is difficult to see any situation where a suitability test benefits the member. The credit union loan does not share the same characteristics as loan products offered by other financial institutions. The credit union loan bears much greater resemblance to overdraft facilities offered by banks to current account holders. Overdrafts are one of the banking products which qualifies as a “basic banking product or service” under the Consumer Protection Code (August 2006).

➤ **Requested Action**

Based on the evidence presented, it is clear that the loan products offered by credit unions to members are equivalent to a “basic banking product or service” as



defined in the Consumer Protection Code (August 2006). As such, the ILCU requests that the Financial Regulator recognises credit union loans as basic financial products which do not have any relevance in the “Know Your Member” and “Suitability” sections of the Voluntary Consumer Protection Code. As no other service applies to these sections they can be removed from the code.

## **6) Use of Appropriate Language**

### **➤ Mandatory Nature of Language**

The ILCU has a concern regarding the wording used in the Code, as it does not reflect the voluntary status of the Code. The Code currently has no legal basis and as such credit unions are not legally obliged to implement its provisions.

Due to lack of prior consultation, the Code uses terminology taken from the Consumer Protection Code (August 2006) which has a legislative basis. It is not appropriate for the Code to use terminology such as “must” when referring to the voluntary actions of credit unions. For example Chapter 2, paragraph 36 states that “*When a credit union receives a verbal complaint it **must** offer the member the opportunity to have the complaint treated as a written complaint*”. Under a voluntary code this should be written as “*When a credit union receives a verbal complaint it **should** offer the member the opportunity to have the complaint treated as a written complaint*” to better reflect the voluntary nature of the Code. Further examples of this inaccurate terminology are highlighted in Appendix I of this submission.

### **➤ Reasonableness**

A number of sections of the Code omit any element of reasonableness when referring to the responsibilities of a credit union to its members. One such example is Chapter 2, paragraph 11 which states that “A credit union must ensure

that all information it provides to a member is clear and comprehensible, and that key items are brought to the attention of the member”.

The ability of an individual to comprehend information varies greatly depending on their reading and learning ability. A strict interpretation of this section of the Code would create the expectation that a credit union must ensure that all information is fully comprehensible to every member regardless of their reading and learning ability in order to comply with the Code. As this is not a realistic expectation it is more appropriate to insert a clause of reasonableness.

While the Financial Regulator has verbally stated that an element of reasonableness applies across the Code, it contains no such clause or reference. As the Code can be accessed by credit union members and external bodies such as the Financial Services Ombudsman, it is requested that a reasonableness clause be inserted where appropriate. The areas requiring such a revision are highlighted in Appendix I of this submission.

➤ **Requested Action**

The ILCU requests that the language and terminology in the Code is thoroughly revised before its final publication, the required changes have been highlighted in Appendix I of this submission.

The ILCU deems it necessary to state that such basic errors in language and terminology could have been avoided had there been open consultation with the Credit Union Movement prior to the publication of the Code.

**Conclusion**

It is clear that the unique ethos and structure of the credit union movement in Ireland were not given full consideration in the development of the Code. Indeed, this is almost an exact replica of the Consumer Protection Code imposed on credit unions without

reflecting the very real differences between credit unions and other providers of financial services. The credit union movement places the interests and wellbeing of its members at the core of its values. The ILCU does not believe that the Code in its current form will be of overall benefit to credit unions or credit union members.

The ILCU requests that the following:

- The Financial Regulator undertakes a full regulatory impact analysis of the Code, in line with Government guidelines on better regulation. This should be undertaken before any further action is taken on developing or implementing the Code. This should be a thorough and transparent process.
- A clear statement should be included in the Code which guarantees that the Financial Regulator, the Financial Services Ombudsman and any other relevant body will not impose sanctions directly or indirectly on those credit unions that do not adopt the Code or fully meet the provisions of the Code.
- The provisions which impact upon the IT systems of credit unions should be comprehensively revised. These provisions require increased clarity and understanding of the IT infrastructure that exists in the credit union movement.
- The amount of paperwork to be provided to members under this Code is excessive. The Financial Regulator should amend the provisions in relation to the distribution of information to members to ensure that the current communication structure of credit unions is utilised to minimise the volume of paper distributed to members.
- Credit union loans are not comparable to complex banking products and services offered by other financial institutions. The Code should be amended to include a definition of loans as a basic financial product or service which is exempt from the provisions under the “Know Your Member” and “Suitability” sections. This

will ensure fair and consistent treatment of all financial institutions regulated by the Financial Regulator.

The language used in the Code does not reflect the voluntary nature under which it has been introduced. This Code also omits any aspect of reasonableness in its provisions. The ILCU requests that the Financial Regulator comprehensively revises the language and terminology used.

## Appendix I

Voluntary Consumer Protection  
Code for Credit Unions  
(In respect of their Core Services)  
March 2008

[Change title to “ Credit Union Member Code/Charter”](#)

# / CP32

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## INTRODUCTION

The Financial Regulator commenced operations on 1 May 2003, as the single body for regulating all financial services in Ireland. A key driving force behind our establishment was a determination to put consumers at the heart of financial services regulation.

In our public response to the Consultation Paper on the Consumer Protection Code (CP10) we stated that: “Following the publication of the Code, we will commence discussions with the Department of Finance, credit union representatives, consumer and social groups and other interested parties, with a view to applying an appropriate Code for credit unions. The Code for Credit Unions will take into consideration the special structure and voluntary ethos of the credit union movement”. The Financial Regulator’s Strategic Plan 2008-2010 states that the Financial Regulator will: “Consult credit unions on an appropriate consumer protection framework for their members, in respect of their core business”. In the context of credit unions, ‘Core Services’ means Savings and Loans.

At this stage there is no legal basis to support the imposition of a statutory Consumer Protection Code for Credit Unions in respect of their Core Services. Accordingly, the intention is that such a Code would be voluntary in nature for the foreseeable future. However, in the event of a general review of credit union legislation taking place, the Financial Regulator will be seeking to have the Code written into such legislation.

Preliminary consultations with the Credit Union Movement commenced in late 2006 and we have engaged in extensive consultation since then. During this preliminary consultation process, we gave an undertaking to produce a first draft of the Code and forward the draft document to all Credit Unions, Credit Union Chapters, the various Credit Union Representative Organisations and other Stakeholders, and other interested parties. We are delivering on this commitment as part of the Formal Public Consultation process, which we are now commencing. The proposed Code is to be found at pages 3-27 of this Consultation Paper.

We believe that consumers are entitled to the same levels of protection regardless of which provider they are dealing with. This Consultation Paper applies all relevant parts of our existing Consumer Protection Code to Credit Unions making adjustments that take into account the nature of credit union business.

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## The Consultation Process

The closing date for submissions is 30 June 2008.

We welcome submissions from all interested parties. Please make your submissions in writing and, if possible, by email or on disk.

When addressing any issues raised in this Consultation Paper the corresponding chapter and paragraph number should be used to identify the section being referred to. Where the issue being raised is not included in the Consultation Paper please indicate this in your submission.

We place a high value on the openness of the Consultation Process. We intend to make all submissions available on our website after the deadline for receiving submissions has passed. For this reason we would ask you not to include commercially or personally sensitive material in your submission.

If you do include such material, please highlight it clearly so that we may take reasonable steps to avoid publishing that material. This may involve publishing submissions with the sensitive material deleted, and indicating the deletions. In some cases it may not be possible to publish any information that you deem confidential. So be aware that, unless you clearly identify any commercially or personally sensitive information, you are making a submission on the basis that you consent to it being published in full. We will not publish any material that we deem potentially libellous.

Please mark your submission 'Credit Union Code' and send it to:

Consumer Protection Codes Department  
Financial Regulator  
P.O. Box 9138  
College Green  
Dublin 2  
Email: [creditunioncode@financialregulator.ie](mailto:creditunioncode@financialregulator.ie)  
Fax: 01 410 4969

# SCOPE

## To whom this Code applies

This Consumer Protection Code for Credit Unions (“Code”), is issued by and in the name of the Irish Financial Services Regulatory Authority (“Financial Regulator”) and applies to credit unions within the State.

This Code is being adopted by credit unions on a voluntary basis.

## Other Matters

The provisions of this Code will come into effect on a date to be agreed by the Financial Regulator with the Credit Union Movement.

We use the term ‘credit union’ throughout the Code to refer to entities to whom the Code applies.

Please refer to the Definitions section for any term shown in bold and italics throughout the text of the Code.

# DEFINITIONS

In this Code:

**“advertisement”** means any commercial communication usually paid for by a **credit union**, which is addressed to the **member**, public, or a section of it, the purpose being to advertise a product, service or **credit union** the subject of this Code;

**“advertised product or service”** means a product or service that is the subject of an **advertisement**;

**“business day”** means any day except Saturday, Sunday, bank holidays and public holidays; [some credit unions open Saturdays and Sundays](#)

**“certified person”** has the meaning assigned to it by Section 55 of the Investment Intermediaries Act, 1995;

**“charges”** means any cost or fee which a **member** must pay in connection with a product or service provided by a **credit union**;

**“complaint”** refers to an expression of grievance or dissatisfaction by a **member**, either verbally or in writing, in connection with: [definition to include what could be perceived as a nuisance](#)

a) the provision of a product or service to the **member** by a **credit union**, or

b) the failure of a **credit union** to provide a product or service to the **member**;

**“core service”** means savings or loans; [define savings as per the Credit Union Act](#)

**“credit union”** means a society registered as such under the Credit Union Act 1997, (as amended), including a society deemed to be so registered;

**“employee”** means a person employed under a contract of service or a person otherwise employed by a **credit union**;

**“inducement”** means any gifts or rewards (monetary or otherwise) provided to a **credit union** but does not include:

a) disclosable commission, or

b) goods or services which can reasonably be expected to assist in the provision of services to **members** and which are provided or are to be provided under a soft commission agreement;



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**“member”** means a **member** of a credit union; needs to be more specific, too general

**“officer”** in relation to a **credit union** includes a chairman (or president), vice chairman (or vice president), treasurer or secretary, a **member** of the board of directors or of a principal committee or supervisory committee, employee Credit Officer (as per CU Act) or credit control officer, but does not include an auditor;

**“outsourced activity”** is where a **credit union** employs or engages another person (other than a natural person who is an employee of the **credit union** under a contract of service) to carry out an activity on its behalf;

**“person”** means a natural person or a legal person;

**“protection policies”** for the purposes of this Code include the following:

- a) insurances of a class falling within the European Communities (Non-Life Assurance) Framework Regulations, 1994; and
- b) insurances of classes I, III and IV as set out in Annex I of the European Communities (Life Assurance) Framework Regulations, 1994 where the purpose and intention of the policy is solely to provide protection;

**“record”** means any document, file or information (whether stored electronically or otherwise) and which is capable of being reproduced in a legible form;

**“soft commission agreement”** means any agreement under which a **credit union** receives goods or services, in return for which it agrees to direct business through or in the way of another **person**;

**“terms of business”** means the document in which a **credit union** sets out the basis on which it will conduct business with **members**;

**“voluntary assistant”** in relation to a credit union means a **member** of the **credit union** who, although not an **officer** of the **credit union**, is engaged in any way (but without remuneration), in the operation of the **credit union**.

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# CHAPTER 1

## GENERAL PRINCIPLES

A **credit union** must ensure that in all its dealings with **members** it:

- 1 acts honestly, fairly and professionally in the best interests of its **members**;
- 2 acts with due skill, care and diligence in the best interests of its **members**;
- 3 does not recklessly, negligently or deliberately mislead a **member** as to the real or perceived advantages or disadvantages of any product or service;
- 4 has and employs effectively the resources and procedures, systems and control checks that are necessary for compliance with this Code;
- 5 seeks from its **members** information relevant to the product or service requested;
- 6 makes full disclosure of all relevant material information, including all **charges**, if any, in a way that seeks to inform the **member**;
- 7 seeks to avoid conflicts of interest;
- 8 corrects errors and handles **complaints** speedily, efficiently and fairly;
- 9 does not exert undue pressure or undue influence on a **member**;
- 10 ensures that any **outsourced activity** complies with the requirements of this Code; and
- 11 complies with the letter and spirit of this Code.

## CHAPTER 2

### COMMON ~~RULES~~ Standards FOR ALL CREDIT UNIONS GENERAL

1 A **credit union** must ensure that the name of a product or service, which it provides is not misleading in terms of the benefits that the product or service can deliver.

2 A **credit union** must ensure that all reasonable and lawful instructions from or on behalf of a **member** (clarity around to whom this applies) are processed properly and promptly and that the date of both the receipt and transmission-execution of the instructions is recorded. This will have major IT implications around the areas of standing orders and payroll deductions. Also if a credit union is only 3 days a week how do we process and deal with exceptions? It is not reasonable to assume lodgement on the day of acceptance

3 A **credit union** must ensure that, where it accepts an instruction from a **member** that is subject to any reasonable and lawful conditions imposed by the **member**, it maintains a **record** of the condition to which the instruction is subject.

4 A **credit union** must not make the sale of a product or service contingent on the **member** purchasing another product or service from the **credit union**.  
Are there issues with getting the loan being linked to savings or the credit union practice of having the member pay into savings while repaying the loan

5 A **credit union** must not charge a **member** a fee for any optional extra(s) offered in conjunction with a product or service, unless that **member** has positively indicated that they wish to purchase the optional extra(s). define optional extras

6 A **credit union** must ensure that all warnings required by this Code are prominent, i.e. they must be in a box, in bold type and of a font size that is larger than the normal font size used throughout the document or **advertisement**.

Insert a new point 7 around disclosures e.g. this credit union is regulated by the Financial Regulator

## ACCESS

7 A **credit union** must take into consideration the provisions of the relevant anti-money laundering guidance notes issued with the approval of the Money Laundering Steering Committee, and in particular any guidance in such notes on how to establish identity, in order to ensure that a **person** is not denied access to financial services solely on the grounds that that **person** does not possess certain specified identification documentation.

## TERMS OF BUSINESS

8 A **credit union** must draw up its **terms of business** and provide each **new member** with a copy prior to providing the first service to that **member**. The **terms of business** must set out the basis on which the **credit union** provides its services and must include at least the following:

- a) the legal name, address, and contact details of the **credit union**;
- b) confirmation that the **credit union** is registered with the Registrar of Credit Unions and the name of the competent authority that has registered the **credit union**;
- ~~c) the name of the regulatory authority which currently regulates the **credit union**;~~
- ~~d) the regulatory status of the **credit union**;~~
- e) a description of the services that the **credit union** provides;
- f) if the **credit union** is tied agent/intermediary for any of the services outlined in e) above, the name of the regulated entity to which it is tied and details of the service for which it is tied;
- g) a general statement of the **charges**, if any, imposed directly by the **credit union**;
- h) a summary of the **credit union's** policy in relation to conflicts of interest;

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i) an outline of the action and remedies which the **credit union** may take in the event of default by the **member**;

j) a summary of the **complaints** procedure operated by the **credit union**; and

k) if the **credit union** is a **member** of a ~~compensation scheme~~ savings protection scheme?, the name of the scheme and the nature and level of protection available from the scheme.

9 A **credit union** must provide its **terms of business** to a **member** can this be integrated with a leaflet/membership pack as a stand-alone document.

10 Where a **credit union** makes a material change that would have a regulatory impact on the member to its **terms of business**, it must provide each affected **member** with details of the change as soon as possible. What constitutes a material change?  
Amalgamate 10 and 13

## PROVISION OF INFORMATION TO THE **MEMBER**

11 A **credit union** must ~~endeavour to ensure~~ ensure that all information it provides to a **member** is clear and comprehensible to whom? Very subjective, replace with concise? and that key items are brought to the attention of the **member**. The method of presentation must not disguise, diminish or obscure important information.

12 A **credit union** must supply information to a **member** on a timely basis. In doing so, the **credit union** must have regard to the following:

a) the urgency of the situation; and

b) the time necessary for the **member** to absorb and react to the information provided.

13 Where a **credit union** intends to amend or alter the range of services it provides, it must give notice to affected **members** at least one month in advance of the amendment being introduced.

14 A **credit union** must ensure that, where applicable, documents conferring ownership rights are given to the **member** in a timely manner or are held for safekeeping under an agreement with the **member**. What is meant by ownership rights?

15 A **credit union** must ensure that, where it intends to record a telephone conversation with a **member**, it informs the **member**, at the outset of the conversation, that it is being recorded.

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16 A **credit union** must provide a **member** with a receipt for ~~each~~-negotiable or non-negotiable instruments presented by the **member** as payment for a financial product or service provided by that **credit union**.

17 A **credit union** must acknowledge in writing, the receipt of a properly completed direct debit mandate or payroll deduction mandate, received from a **member** as a payment instruction for a financial product or service provided by that **credit union**.

18 A **credit union** must ensure that, where it communicates with a **member** using electronic media, it has in place appropriate arrangements to ensure the secure transmission of information to, and receipt of information from, the **member**. What is meant by secure transmission? Does this mean encryption?

19 A **credit union** must provide each **member** with the terms and conditions attaching to a product or service, before the **member** enters into a contract for that product or service, or before the cooling-off period (if any) expires.

20 A **credit union** must ensure that all printed information it provides to **members** is of a print size that is clearly legible.

Is there a recommended font size?

## PRESERVATION OF A *MEMBER'S* RIGHTS

21 A *credit union* must not, in any communication or agreement with a *member* (except where permitted by applicable legislation), exclude or restrict, or seek to exclude or restrict:

- a) any legal liability or duty of care to a *member*, which it has under applicable law or under this Code;
- b) any other duty to act with skill, care and diligence, which is owed to a *member* in connection with the provision to that *member* of financial services; or
- c) any liability owed to a *member* for failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of a financial service.

## KNOWING THE *MEMBER*

Omit paragraphs 22- 27 – superfluous

22 Before providing a product or service to a *member*, a *credit union* must gather and record sufficient information from the *member* to enable it to provide a recommendation or a product or service appropriate to that *member*. The level of information gathered should be appropriate to the nature and complexity of the product or service being sought by the *member*, but must be to a level that allows the *credit union* to provide a professional service.

This requirement does not apply where:

- i) the *member* is opening a share account or a deposit account;
- ii) the *member* has specified both the product and the product provider and has not received any advice; or
- iii) the *member* is purchasing or selling foreign currency.

23 A *credit union* must gather and record details of any material changes to a *member's* circumstances before providing that *member* with a subsequent product or service.

24 A *credit union* must ensure that, where a *member* refuses to provide information sought in compliance with this Code, the refusal is noted on that *member's* records.

25 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*.



**SUITABILITY**

26 A **credit union** must ensure that, having regard to the facts disclosed by the **member** and other relevant facts about that **member** of which the **credit union** is aware:

- a) any product or service offered to a **member** is suitable to that **member**;
- b) where it offers a selection of product options to the **member**, the product options contained in the selection represent the most suitable from the range available to the **credit union**; or
- c) where it recommends a product to a **member**, the recommended product is the most suitable product for that **member**.

This requirement does not apply where:

- i) the **member** is opening a share account or a deposit account;
- ii) the **member** has specified both the product and the provider and has not received any advice; or
- iii) the **member** is purchasing or selling foreign currency.

27 Before providing a product or service to a **member**, a **credit union** must prepare a written statement setting out:

- a) the reasons why a product or service offered to a **member** is considered to be suitable to that **member**;
- b) the reasons why each of a selection of product options offered to a **member** are considered to be suitable to that **member**; or
- c) the reasons why a recommended product is considered to be the most suitable product for that **member**.

The **credit union** must give a copy of this written statement to the **member** and retain a copy.

This requirement does not apply where:

- i) the **member** is opening a share account or a deposit account;
- ii) the **member** has specified both the product and the provider and has not received any advice; or
- iii) the **member** is purchasing or selling foreign currency.

## UNSOLICITED CONTACT (COLDCALLING)

28 When contacting a **member**:

A **credit union** may make an unsolicited contact to a **member** offering a financial product or service, who is an individual, by way of a personal visit or telephone call, only if:

- a) the **credit union** has, within the previous twelve months, provided that **member** with a product or service similar to the purpose of the unsolicited contact;
- b) the **member** holds a product, which requires the **credit union** to maintain contact with the **member** in relation to that product;
- c) the purpose of the contact is limited to offering **protection policies** only; or
- d) the **member** has given his/her consent in writing to being contacted in this way by the **credit union**.

29 Unsolicited contact, made in accordance with this Code, may be made only between 9.00 a.m. and 9.00 p.m. Monday to Saturday (excluding bank holidays and public holidays), unless otherwise requested by the **member**.

30 When making an unsolicited contact in accordance with this Code, the representative of a credit union must immediately and in the following order: This has IT implications around recording of consent, request not to make contact etc.

- a) identify himself or herself by name, the name of the **credit union** on whose behalf he/she is calling and the purpose of the contact;
- b) inform the **member** that the call is being recorded, if this is the case; and
- c) establish if the **member** wishes the call to proceed; if not the caller must end the contact immediately.

31 A **credit union** must abide by a request from a **member** not to make an unsolicited contact to him/her again.

32 A **credit union** must not reach a binding agreement with a **member** on the basis of an unsolicited contact alone, except in the circumstances permitted under the European Communities (Distance Marketing of Consumer Financial Services) Regulations, 2004.

## CHARGES

33 A credit union must, where applicable:

- a) provide the **member** with details of all **charges**, including third party **charges**, which the **credit union** will pass on to the **member**, prior to providing a service to the **member** and where such **charges** cannot be ascertained in advance, the **credit union** must advise the **member** that such **charges** will be levied as part of the transaction;
- b) advise affected **members** of increases in **charges**, or the introduction of any new charges, at least 30 days before the change takes effect;
- c) detail in each statement provided to the **member**, all **charges** applied during the period covered by that statement; and
- d) where **charges** are accumulated and applied periodically – define? to accounts, advise **members** at least 10 **business days** before deduction of **charges** and give each **member** a breakdown of such **charges**, except where charges total an amount of €12.70 round to €15 if possible... or less.

## ERRORS

34 A credit union must:

- a) speedily, efficiently and fairly, correct an error in any charge or price levied on, or quoted to, a **member** in respect of any product or service that is the subject of this Code;
- b) where the **credit union** considers that there may have been a material charging or pricing error, without delay, inform the Financial Regulator of its proposals for correcting any such error as may have occurred in accordance with paragraph a) above (if any such information is provided verbally in the first instance, it must be provided to the Financial Regulator in writing on the next **business day**); and
- c) notify all affected **members**, both current and former, in a timely manner and in such form as may be agreed with the Financial Regulator, of any material charging or pricing error that impacted negatively on the cost of the service or the value of the product provided.

## **HANDLING COMPLAINTS – How does this fit in with the provisions of the Credit Union Act**

35 A **credit union** must have in place a written procedure for the proper handling of **complaints**. This procedure need not apply where the **complaint** has been resolved to the complainant's satisfaction within 5 **business days**, provided however that a record of this fact is maintained. At a minimum this procedure must provide that:

- a) the **credit union** will acknowledge each **complaint** in writing within 5 **business days** of the **complaint** being received;
- b) the **credit union** will provide the complainant with the name of one or more individuals appointed by the **credit union** to be the complainant's point of contact in relation to the **complaint** until the **complaint** is resolved or cannot be processed any further;
- c) the **credit union** will provide the complainant with a regular written update on the progress of the investigation of the **complaint** at intervals of not greater than 20 **business days**;
- d) the **credit union** will attempt to investigate and resolve a **complaint** within 50 **business days** of having received the **complaint**; where the 50 **business days** have elapsed and the **complaint** is not resolved, the **credit union** will inform the complainant of the anticipated timeframe within which the **credit union** hopes to resolve the **complaint** and of the **member's** right to refer the matter to the Financial Services Ombudsman, the Pensions Ombudsman or the District Court where relevant, and will provide the **member** with the contact details of such Ombudsman; and
- e) the **credit union** will advise the complainant in writing, within 5 **business days** of the completion of the investigation of a **complaint**, of the outcome of the investigation and, where applicable, explain the terms of any offer or settlement being made. The **credit union** will also inform the complainant of the right to refer the matter to the Financial Services Ombudsman or the Pensions Ombudsman, where relevant, and will provide the **member** with the contact details of such Ombudsman.

36 When a **credit union** receives a verbal **complaint**, it must offer the **member** the opportunity to have the complaint treated as a written **complaint**.

37 A **credit union** must maintain an up-to-date **record** of all **complaints** subject to the complaints procedure. This **record** must contain the details of each **complaint**, a **record** of the **credit union's** response(s), any other relevant correspondence or **records** and the action taken to resolve each **complaint**.

## **MEMBER RECORDS** what is meant by this? Does it envisage a comprehensive file?

38 A **credit union** must maintain up-to-date **member records** containing at least the following:

- a) a copy of all documents required for **member** identification and profile;
- b) the **member's** contact details;
- c) all information and documents prepared in compliance with this Code;
- d) details of products and services provided to the **member**;
- e) all correspondence with the **member** and details of any other information provided to the **member** in relation to the product or service;
- f) all documents or applications completed or signed by the **member**;
- g) copies of all original documents submitted by the **member** in support of an application for the provision of a service or product; and clarity from a Data Protection point of view
- h) all other relevant information concerning the **member**.

Details of individual transactions must be retained for 6 years after the date of the transaction. All other **records** required under a) to h), above, must be retained for 6 years from the date the relationship ends. **Member records** are not required to be kept in a single location but must be complete and readily accessible.

## **FEES, COMMISSIONS AND OTHER REWARDS**

39 A credit union may pay a fee, commission, other reward or remuneration only to a person that is:

- a) a **credit union**;
- b) a **certified person**; clarify
- c) an individual for whom a **credit union** has taken full and unconditional responsibility;
- d) an entity specifically exempt by law from requiring authorisation; clarify

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e) an authorised “credit intermediary” (within the meaning of the Consumer Credit Act, 1995); or

f) a financial services provider operating in the State in accordance with freedom of services or establishment provisions of EU law.

### **CONFLICTS OF INTEREST How does this fit in with the provisions of the credit Union Act**

40 Where conflicts of interest arise and cannot be reasonably avoided, a credit union may undertake business with or on behalf of a **member** with whom it has directly or indirectly a conflicting interest, only where that **member** has acknowledged, in writing, that he/she is aware of the conflict of interest and that he/she still wants to proceed.

41 A **credit union** must take reasonable steps to ensure that it or any of its **officers** or employees does not offer, give, solicit or accept, any **inducement** likely to conflict with any duties of the recipient or of the recipient’s employer.

42 A **credit union** must not enter into a **soft commission agreement** unless such agreement is in writing. Any business transacted under a **soft commission agreement** must not conflict with the best interests of its **members**. Where a **credit union** considers that a **member** may be affected by the **soft commission agreement**, the **member** must be made aware of the **soft commission agreement** and of how the **soft commission agreement** may affect him/her. A copy of the **soft commission agreement** must be made available to the **member** on request.

43 Goods or services received by a **credit union** under a **soft commission agreement** must be used to assist in the provision of services to **members**.

44 A credit union must provide to any affected **member** details of any changes in its policy on **soft commission agreements** promptly after implementation of any such changes.

**COMPLIANCE WITH THIS CODE**

45 A **credit union** must have adequate systems and controls in place to ensure compliance with this Code.

46 Where the Financial Regulator requests a **credit union** to provide information in respect of the **credit union's** compliance with this Code, such **credit union** should provide information which is full, fair and accurate in all respects and not misleading and to do so in any reasonable period of time or format that may be specified by the Financial Regulator.

47 Where the Financial Regulator requests information in respect of a **credit union's** compliance with this Code, and the Financial Regulator is of the opinion that a meeting with personnel of the **credit union** is necessary in order to procure such information in a satisfactory manner, the **credit union** must use its best endeavours to arrange for appropriate personnel to participate in such a meeting in order to provide the requested information to the Financial Regulator.

# CHAPTER 3

## SHARE AND DEPOSIT ACCOUNTS

### STATEMENTS

1 A **credit union** must, at least annually, issue statements of transactions on all share and deposit accounts with a balance in excess of €20, unless otherwise agreed with the **member** in writing.

This statement must:

- a) include details of the dividend or interest rates applied to the account during the period covered by the statement;
- b) be issued to the **member's** last known postal address, or be made available to the **member** electronically if the **member** so requests; and
- c) where tax is deducted from a dividend or interest paid, provide information on the tax deducted or inform **members** how they may obtain a certificate detailing the tax paid.

### CHANGES IN INTEREST RATES

2 A **credit union** must ensure that when it announces a change in interest rates on deposit accounts, the notification states clearly the date from which the changes will apply.

3 Where a **credit union** changes the interest rate on deposit accounts, it must update the information on information services, including telephone helplines and websites as soon as the change comes into effect.



## ACCOUNTS

4 A **credit union** must make available to existing deposit holding **members**, details of the different interest rates, if any, that are being applied to its other deposit accounts.

5 A **credit union** must ensure that at least 10 days before the maturity of a fixed-term deposit, which has a minimum term of 1 year, it alerts the **member** about its impending maturity.

6 A **credit union** must ensure that any cleared funds lodged by a **member** to the **member's** share or deposit account are credited to that account on that day and uncleared funds to be credited immediately upon clearance.

## JOINT ACCOUNTS

7 A **credit union** must, before a members opens a joint account, which permits full access and use of funds in the account by either named party, warn such **member** of the consequences of opening and operating such a joint account.

8 A **credit union** must ascertain from the accountholders of a joint account any reasonable and lawful limitations that they wish to impose on the operations of the account.

# CHAPTER 4

## LOANS

### UNSOLICITED CREDIT FACILITIES

~~1 A credit union must not offer unsolicited pre-approved credit facilities.~~

### ARREARS AND GUARANTEES

2 Where a loan is being advanced subject to a guarantee and indemnity, the guarantee must outline the obligations of the guarantor and must contain the following warning:

**Warning: 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. Before you sign this guarantee you should get independent legal advice.**

3 If the terms of the loan agreement change, the **credit union** must notify the guarantor in writing.

4 A **credit union** must have in place procedures for the handling of arrears cases.

~~A credit union must advise members who have defaulted on their repayments of relevant credit counseling services and the contact details for such a service, e.g. name and address of a local Money Advice & Budgeting Service (MABS).~~

## PAYMENT PROTECTION INSURANCE

5 Where a **credit union** offers repayment protection insurance in conjunction with a loan, the initial repayment estimate of the loan advised to the **member** must be exclusive of the payment protection premium.

6 A combined application form can be used, provided that all information relating to payment protection insurance is contained in a separate section and this section also contains a requirement for the **member** to sign in order to apply for payment protection insurance.

7 A text box indicating that the payment protection insurance is optional must be included in the application form immediately above where the **member** is required to sign.

## PERSONAL LENDING

8 Prior to a loan being approved, a **credit union** must explain to a **member** the effect, if any, of missing any of the scheduled repayments. This information must be highlighted in any relevant documentation and the following notice should also appear:

**Warning: If you do not meet the repayments on your loan, your account will go into arrears. This may affect your credit rating.**

## CONSOLIDATION

9 Where a loan is offered to a **member** for the purpose of consolidating other loans or credit facilities, the **credit union** must provide the **member** with a written indicative comparison of the total cost of continuing with the existing facilities and the total cost of the consolidated facility on offer.

This may be overly difficult/impossible for credit unions to do

# CHAPTER 5

## ADVERTISING

### GENERAL REQUIREMENTS

- 1 A credit union must ensure that all its **advertisements** are fair and not misleading.
- 2 An **advertisement** must not influence a **member's** attitude to the **advertised product or service** or the **credit union** either by inaccuracy, ambiguity, exaggeration or omission.
- 3 The name of the **credit union** publishing an **advertisement** must be clearly shown in all **advertisements**.
- 4 The nature or type of the **advertised product or service** must be clear and not disguised in any way.
- 5 An **advertisement** must be designed and presented so that any reasonable **member** knows immediately that it is an **advertisement**.
- 6 The design and presentation of an **advertisement** must allow it to be clearly understood. Where small print or footnotes are used, they should be of sufficient size and prominence to be clearly legible. Where appropriate they should be linked to the relevant part of the main copy.
- 7 Warnings and product specific information must be clear and must not be obscured or disguised in any way by the content, design or format of the **advertisement**.
- 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. This requirement does not apply to **advertisements** for loans where the promotional rate is for a period that does not exceed 1 year.
- 9 Any statement or promise contained in an **advertisement** must be true and not misleading at the time it is made and any assumptions on which it is based must be reasonable and stated clearly.
- 10 Any forecast contained in an **advertisement** must not be misleading at the time it is made and any assumptions on which it is based must be reasonable and stated clearly.
- 11 An **advertisement** must not be misleading in relation to:

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- a) the **credit union's** independence or the independence of the information it provides;
- b) the **credit union's** ability to provide the **advertised product or service**;
- c) the scale of the **credit union's** activities;
- d) the extent of the resources of the **credit union**;
- e) the nature of the **credit union's** or any other **person's** involvement in the **advertised product or service**;
- f) the scarcity of the **advertised product or service**;
- g) past performance or possible future performance of the **advertised product or service**.

12 An **advertisement** that promotes more than one product must set out clearly the different features of each product in such a way that a **member** could distinguish between the products.

13 Any recommendations or commendations quoted must be complete, fair, accurate and not misleading at the time of issue, and relevant to **the advertised product or service**.

14 A recommendation or commendation may not be used without the consent of the author and, if the author has received any payment from the **credit union** for the recommendation or commendation, the **advertisement** must state that fact.

15 Comparisons or contrasts must be based either on facts verified by the **credit union**, or on reasonable assumptions stated within the **advertisement** and must be presented in a fair and balanced way; and not omit anything material to the comparison or contrast. Material differences between the products must be set out clearly.

16 It is not necessary to display the required warnings set out in this chapter if the **advertisement** does not refer to the benefits of a product but only invites a **member** to discuss the product or service in more detail with the **credit union**.

## LENDING

17 Where an **advertisement** includes an annual percentage rate, the **advertisement** must clearly state if the underlying interest rate is fixed or variable.

18 An **advertisement** for a loan for a specified term must, if displaying the annual percentage rate and the term, display the total cost of credit.

19 **Advertisements** for the consolidation of two or more debts must, where sample figures are offered in the **advertisement**, indicate the difference between the total cost of credit of the consolidated loan and the total cost of credit of the individual debts that are the subject of consolidation.

20 An **advertisement** for a debt consolidation loan must carry the following warning:  
Warning: This new loan may take longer to pay off than your previous loans. This means you may pay more than if you paid over a shorter term.

## SAVINGS & INVESTMENTS

21 Where an interest rate for a deposit account is displayed in an **advertisement**, it must clearly state the following:

- a) whether the rate quoted is variable or fixed, and if fixed, for what period;
- b) the relevant interest rate for each term quoted together with the equivalent annual rate for each rate quoted, and each rate should be given equal prominence;
- c) the minimum term and/or minimum amount required to qualify for a specified rate of interest, if applicable; and
- d) if any tax is payable on the interest earned.

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22 Information about the past performance of the **advertised product or service** or of the **credit union** must:

- a) be based on a product similar to that being advertised;
- b) not be selected so as to exaggerate the success or disguise the lack of success of the advertised product or service;
- c) state the source of the information;
- d) be based on actual performance;
- e) state clearly the period chosen, which must be related to the term of the product being advertised; where that term is open-ended, the longest term available should be included;
- f) include the most recent period;
- g) indicate, where they arise, details of transaction costs, interest and taxation that have been taken into account; and
- h) state, where applicable, the basis upon which performance is quoted.

23 An **advertisement**, which contains information on past performance, must contain the following warning:

**Warning: Past performance is not a reliable guide to future performance.**