

CONSUMER PROTECTION CODE FOR MONEYLENDERS

Consultation paper CP33

COMMENTS BY THE CONSUMER CONSULTATIVE PANEL

May 2008

Note for Members of the Consumer Consultative Panel

The Regulator has invited comments on a proposed code of practice for moneylenders for submission by 16 May. (Consultation Paper 33). The Consultative Consumer Panel appointed a sub-committee of four members to prepare a response with the aid of an external 'rapporteur'. The rapporteur circulated a comparison between the proposed Moneylenders Code and the Consumer Protection Code. Thereafter the rapporteur discussed the draft code with the members of the sub-committee and also received written comments from the Chairman of the Panel and one other Panel member. He also discussed aspects of the proposed code with the responsible officer in the Regulator's staff.

Following this a tabulation of the comments was circulated for review by the sub-committee which, it was intended, would lead to a final synthesis. However, in the interest of speed, and bearing in mind the deadline for comments was 16 May, the rapporteur has short circuited things somewhat by fast forwarding to the final synthesis which is in fact a draft submission. (For convenience, a copy of the tabulation of comments is appended. There have been some slight changes to this which may help explain why some suggestions in the tabulation have not found their way into the draft submission.) What follows is therefore the draft submission on the rapporteur's best judgment of the wishes of the sub committee and the relevance and practicality of the comments in the light of the existing Consumer Protection Act, especially section VIII which deals with moneylenders.

COMMENTS ON THE PROPOSED CONSUMER PROTECTION CODE FOR MONEYLENDERS (CP33)

(Arabic paragraph numbers refer to the Moneylenders Code of Practice unless otherwise indicated. Bold headings on the left refer to headings in the CP33.)

The Moneylenders Code of Practice is referred to as MLCop. The Consumer Protection Code is referred to as the CPCop and the Consumer Credit Act to the CCA.)

Chapter 1: General Principles

i The sub-committee agrees that moneylenders provide a valuable service, particularly to those who have few other sources of credit. It is further agreed that imposing onerous obligations on moneylenders might prompt some to withdraw from the business, thereby widening the scope for illegal operators. In this context the sub-committee notes the point made by the Regulator about the generally small scale of money lenders

ii However, the sub-committee emphasizes that borrowers from money lenders are frequently the most disadvantaged and marginalized members of society. They are likely to have the most acute needs for credit, few alternatives and possibly limited understanding of costs.

iii The survey of the moneylending industry by the regulator in 2007, reported relatively favourable attitudes to moneylenders amongst the industry's clientele. But the sub-committee feels that this is no ground for complacency. Indeed, the sub-committee is inclined to the view that, considering the very high interest rates involved, consumer satisfaction must be based to some extent on misapprehension.

iv The overall conclusion by the sub-committee therefore is that the level of protection for the customers of money lenders should be at least as high, and preferably higher, than that available to other borrowers. The sub-committee feels that in principle compliance with standards which give effective protection to consumers, should not pose particular problems for money lenders. While some are small operations, others are significant and all, considering the rates of interest charged, are or should be highly profitable.

v In fact difficulty with implementing the code may have more to do with standard of education and training among the personnel of the moneylenders rather than financial resources per se. The sub-committee has some doubts whether they will be capable of observing the code without a significant upgrading of training in the industry generally. The monitoring and surveillance which the Regulator exercises over the whole financial sector should be proportionately more intensive on the moneylending sector considering the risks of consumer detriment.

Chapter 2: Common Rules for Moneylenders

General

vi Paragraphs 1 to 5 of the CPCCode cover a variety of provisions including ensuring that products do not have misleading names, that consumer instructions are recorded that bundling does not take place and that charges are imposed only for services explicitly requested. These are not in the MLCop. **The sub-committee recommends that the content of paragraphs 1 to 5 of the CPCop should be incorporated in the MLCop.**

vii While a money lender must have a place of business, it is not clear that the money lender is obliged to accept repayments there. **Moneylenders should be required to have a place of business where repayments can be made and therefore collection charges avoided.**

Terms of Business

viii Paragraphs 8 to 11 of the Consumer Protection Code (CPCCode) require the licensee to provide in written form to the potential consumer, information on its identity (name, address, services, relations with other financial institutions etc), and its terms of business including charges, default procedures, complaints procedures, etc. While MLs must have most of this information, there is no requirement in the proposed MLCop that they should be supplied to the potential consumer. **The sub-committee believes that:**

paragraphs 8 to 11 of the CPCCode should be included in the MLCop;

in identifying itself to the consumer the Terms of Business should state that the ML is licensed by the Regulator under the CCA;

the Terms of Business should state that the ML is liable to fines for breaches of the Code and the Act.

Provision of Information to Consumers

ix The sub-committee believes that the paragraph 3 on disclosure of fees, charges etc, should be reinforced by importing the provisions of Paragraph 44 of the CPCop which are more detailed.

x There should be included a paragraph which requires the money lender to explain that costs can be reduced if the consumer makes repayments at the moneylender's place of business.

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

xii The APR should be prominently displayed on the consumer’s loan book and on statements of account issued by moneylenders to borrowers.

xiii Paragraph 9 requires that all printed information should be of a print size that is clearly legible. The National Adult Literacy Agency has recommended that 12 point (i.e. this size) is the minimum that should be used on official communications. **The sub-committee recommends that the minimum print size should be 12 point and that this be specified in paragraph 9.**

xiv Paragraph 11, 16, 17. These require the moneylender to be aware of the conditions of the borrower and the suitability of the product, except where the borrower specifies the moneylender and the product. This waiver is to be found in the CPCode and deals with the situation where a consumer directly approaches a credit supplier and asks for a specific product. It is included in the MLCop in the interests of maintaining a level playing field as between different types of institution. But the sub-committee feels, in accordance with the point made above, that clients of moneylenders need greater protection than other borrowers. **The sub-committee recommends that the waiver in paragraphs 11, 16 and 17 be dropped.**

xv Paragraph 18 states the conditions under which a moneylender can make a cold call to a non customer. 18 (d) states that cold calls are permissible if the referrer is a financial services entity. The sub-committee believes that this encourages some of these entities, especially those dealing with poor risks, to promote borrowing to poor risks in the knowledge that in the event of difficulty, the individual can be unloaded onto a moneylender. The originator of the loan thus escapes the consequences of aggressive lending while the borrower is left facing even higher interest rates. **The sub-committee recommends that 18 (d) should be amended to forbid financial service entities from referring customers to moneylenders.**

xvi Paragraph 20 regulates the hours when unsolicited calls can be made to non customers. **The sub-committee proposes that unsolicited calls should not be permitted after 1.00 pm on Saturday**

xvii Paragraph 32 in the CPCode specifies the conditions under which an unsolicited call can be made to an existing customer. This is not included in the MLCop: there are no restrictions on under what conditions such calls can be made by moneylenders. **The sub-committee proposes that paragraph 32 of the CPCode should be incorporated in the MLCop.**

xviii Paragraph 27. A moneylender is required to ‘speedily’ correct errors. **The sub-committee believes that speedily should be defined to mean five working days.**

xix Paragraph 42 of the CPCode requires an institution operating in Ireland on a passport from another country to disclose the name of the foreign authority which authorized the institution. There is no equivalent in the MLCop. **The sub-committee**

recommends that moneylenders pass porting into Ireland from another country should name the foreign authority which has authorized them.

xx Paragraph 38 requires moneylender to notify the borrower when his agreement has been assigned to a third party as soon as practicable. **The sub-committee proposes that notification of assignment of agreements should be within five business days .**

Chapter 3: Advertising

xxi Paragraph 13 requires an advertisement which if it displays the annual rate of interest must display the total cost. **The sub-committee recommends that advertisements quoting the APR should it explain the APR with the aid of a worked example. The Regulator should consider proposing a template for worked examples of the APR**