



FINANCIAL REGULATOR
Rialtóir Airgeadais

Consumer Protection Code for Licensed Moneylenders

Public Response to CP33

December 2008



Contents

Contents	1
Consumer Director's Statement	2
Introduction	6
Public Response on Consultation Paper 33	8
Appendix 1	17

Consumer Director's Statement

The Financial Regulator conducted a detailed review of the moneylending industry in 2006 and published "A Report on the Licensed Moneylending Industry" in March 2007 ("the Report"). One of the commitments given in the Report was that we would review the current Interim Code of Practice for Moneylenders ("the Interim Code"), with a specific emphasis on increasing transparency, helping consumers make informed decisions and enhancing the consumer protection framework.

The purpose of the Consumer Protection Code for Licensed Moneylenders ("the ML Code") is to meet the commitment given in the Report and to help us to deliver our strategic goal of helping consumers to make informed choices in a safe and fair market.

We are strongly committed to increasing transparency in the moneylending sector, particularly in relation to costs and terms and conditions associated with loans from moneylenders. Therefore, while working on the ML Code, we have also been working on a number of other initiatives, which will assist in increasing transparency for consumers of moneylenders. The following is a brief summary of those initiatives:

Increasing transparency in relation to the costs associated with loans from moneylenders

In November 2007, we engaged with a number of interested parties with a view to seeking proposals on how best to disclose the costs associated with loans from moneylenders. Those who responded appear to agree that the Annual Percentage Rate of interest ("APR") is not a useful comparison measure, particularly for loans with terms of less than one year. This has helped to inform our decision to place more emphasis on

the cost of credit per €100 borrowed and on the total cost of credit in relation to loans from moneylenders.

Review of product types offered by the moneylending industry

Moneylenders are required by law to disclose the maximum APR that they charge. However, it is often the case that the product/loan that attracts a moneylender's highest APR is not the product/loan that attracts the highest cost of credit.

We therefore completed an extensive review of all product types offered by moneylenders in the State, in April 2008. This has allowed us to:

- categorise moneylenders into four categories¹, which best describe the types of products that they offer i.e. *Home Collected* (door-step collection), *Remote* (payments are made other than at the consumer's home e.g. at the moneylender's office or by way of direct debit etc.), *Retail* (supply of credit for furniture, electrical or other goods), and *Other* (e.g. catalogue companies which supply goods on credit by use of running accounts - these accounts are similar to credit cards); and
- compare costs between moneylenders offering the same types of products, in a more meaningful and transparent manner.

¹ For information, there are currently 52 licensed moneylenders in the State. There are 36 moneylenders in the Home Collected category, 5 in Remote, 15 in Retail and 5 in Other. Some moneylenders operate in more than one category.

Enhancement of the annual licensing process

The review of the product types offered by licensed moneylenders allows us to compare the costs of credit on loans of similar duration and amounts, within their specific category. The format of the annual licences has also been amended to include details of each product/loan on offer from a moneylender, together with the length of the loan, APR, collection charge (if any) and total cost per €100 borrowed.

A moneylender's licence is required to be displayed in each moneylender's public office, and should therefore increase transparency for consumers who attend a moneylender's office to seek credit. Furthermore, it is our intention to make this information accessible through the public register of moneylenders (see further details below). For reference, the ML Code will also require moneylenders to assist consumers in understanding the product provided, including the method of repayment, all related interest payments, charges and the cost per €100 borrowed.

Review of the format and content of the public register for moneylenders

The Financial Regulator is obliged to maintain a statutory register of licensed moneylenders. The format and content of the register is currently being reviewed in order to make it more transparent and user-friendly for consumers and other users. As stated above, the focus will be on disclosing the cost per €100 borrowed and the total cost of the loan. The register will also distinguish between the different categories of moneylenders, which will facilitate consumers in shopping around for cheaper loans. This will make it possible to compare like with like e.g. all moneylenders offering home collected, cash loans etc.

Review of the terms & conditions attached to loans from moneylenders

We are currently reviewing the terms and conditions of all agreements in the moneylending sector. The terms and conditions that are currently in place are largely those that have been in place since the introduction of the Consumer Credit Act, 1995 ("the Act"). The aim of the project is to assess the fairness of moneylenders' terms and conditions, by using the European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995 as the basis for our considerations.

Finally, I would like to take this opportunity to thank those who have given their input to the ML Code, through their submissions on CP33 and also through the various meetings that were held with stakeholders.

A handwritten signature in black ink, appearing to be 'M. J. O'Sullivan', written in a cursive style.

Introduction

The finalisation of the Consumer Protection Code (“the CP Code”) in 2007 was a landmark development for consumers, as it requires firms to act in the best interests of their customers by selling them products that are suitable, explaining why the products offered are suitable and treating customers fairly if things go wrong. The CP Code is unique in providing statutory provisions to protect customers who are considering taking out a loan.

In March 2008, the Financial Regulator issued Consultation Paper 33 – Consumer Protection Code for Licensed Moneylenders (“CP33”). The paper included a draft code for moneylenders and sought the views of interested parties. Ten submissions were received. The names of the respondents are listed in Appendix 1 and all of the submissions are available on our website (www.financialregulator.ie).

In considering the provisions of the ML Code, it is important to remember that the moneylending industry in Ireland is evolving and that the traditional view of a moneylender collecting repayments door-to-door on a weekly basis is not the only type of moneylender currently licensed to operate in this State. Some licensed moneylenders are large firms operating nationally and others are specialist firms lending for specific items and services, such as hearing aids or club membership subscriptions. Other moneylenders provide goods on credit e.g. clothes, furniture, electrical goods etc.

Therefore, the ML Code is based, insofar as reasonable and practicable, on the CP Code, which became fully effective for other financial service providers, including regulated lenders, in July 2007. The ML Code also contains some provisions that are specific to the sector, because of the uniqueness of some of the products and services offered. It takes account of all types of moneylending and it is possible, therefore, that some of its provisions may not be applicable to all those licensed to operate in the sector. For example, the prohibition on increasing a consumer’s credit

limit, other than at the consumer's request, may be more relevant to moneylenders which operate running accounts².

In finalising the ML Code, we have taken account of the legal framework in which licensed moneylenders operate and we acknowledge that the regulatory framework for all regulated lenders is evolving. In particular, we note the impending transposition of the Consumer Credit Directive into Irish law and the existing requirements for moneylenders under the Act. Work is also ongoing with regard to the modernisation and consolidation of financial services legislation. In this regard, we will continue to work closely with the Department of Finance as it progresses this work and undertakes its review of consumer credit legislation.

We have been guided in drawing up the ML Code by the Government's six core principles for better regulation. We also have an obligation to ensure that we act reasonably and proportionately when developing any code and that we listen to the genuine concerns of the industry in relation to the practical implications of introducing particular provisions. We can assure all those who made a submission that we have fully considered the issues raised in arriving at our decision on how to proceed.

Finally, the aspects of the submissions that are discussed in this paper are those that are of particular relevance to the moneylending sector. Some respondents put forward arguments in relation to the introduction of certain requirements in the credit sector. This paper does not discuss such arguments in detail as this was done previously through Consultation Paper 10 on the CP Code. Similar requirements currently apply to other financial service providers in the credit sector, since the introduction of the CP Code.

² A 'running account' is defined in section 2 of the Act as "a facility under a credit agreement whereby the consumer is enabled to receive, from time to time, from the creditor or a third party, cash, goods or services to an amount or value such that, taking into account payments made by or to the credit of the consumer, the credit limit (if any) is not at any time exceeded."

Public Response to Consultation Paper 33

General

What the submissions say

In general, the responses were varied, with a number of industry respondents strongly objecting to the provisions of the ML Code and other stakeholders welcoming its introduction. One respondent felt that there was no obvious rationale for the introduction of a code in this sector of the industry, while another felt that the level of protection for consumers of moneylenders should be at least as high and preferably higher than that available to other borrowers. One submission noted that the principles that apply to the credit industry in general would now apply to moneylenders, thereby affording their consumers the same level of protection.

Our response

We agree that consumers of moneylenders are equally entitled to the protections of the CP Code in relation to acting in the best interests of the consumer and the integrity of the market, disclosure, complaints handling etc. We feel, however, that the ML Code should also take account of the unique nature of moneylending business and have therefore decided that it should be based on the CP Code insofar as reasonable and practicable.

Date of introduction of the ML Code

When we introduced the CP Code and the Minimum Competency Requirements in 2006, we committed to reviewing them after two years to ensure that they are operating as intended and that they have achieved their desired objectives. In this regard, one of our major priorities for 2009 is to undertake these reviews.

What the submissions say

Some respondents to CP33 questioned the timing of the introduction of the ML Code and suggested that it would be unfair to introduce it in 2008, when we have also committed to conducting a Review of the CP Code in 2009 (“the 2009 Review”).

Our response

We accept this argument and will therefore introduce the General Principles of the ML Code with effect from 1 January 2009, with the remainder of the ML Code to come into effect following the 2009 Review. This decision will enable the final ML Code to reflect any relevant changes to the CP Code. It will also allow us to consider the inclusion of a number of new provisions in the CP Code, which have resulted from the consultation on the ML Code e.g. the provision of information on debt counselling services and the disclosure of the high-cost nature of loans, if and where appropriate.

Illegal moneylending

What the submissions say

One respondent commented that there was no undertaking by the Financial Regulator to investigate illegal lending.

Our response

The Act provides that it is illegal to operate as a moneylender in this State without the appropriate licence. The Financial Regulator has no powers with regard to illegal moneylending, as this is a criminal activity and a matter for an Garda Síochána in the first instance.

The scope of the ML Code therefore applies to moneylenders licensed under the Act. It does not extend to lenders that are operating without a licence.

Definitions

What the submissions say

We considered the proposed definition of a 'consumer' in the context of the submissions received, the definition of 'moneylending' in the Act and also in the context of the client base of moneylenders.

Our response

The definition of a 'consumer' that was used in CP33 was based on the definition used for other lenders in the CP Code. However, given that 'moneylending' is defined in the Act as credit supplied by a moneylender to a 'consumer' on foot of a moneylending agreement, we have decided to revert to the definition of 'consumer' provided in the Act. The amended definition means that the ML Code will now apply where a moneylender is dealing with a natural person acting outside the person's business or with persons declared to be consumers under section 2, subsection 9 of the Act. It will not, for example, apply to incorporated or unincorporated entities.

Moneylenders should be aware that if they lend money to persons, other than 'consumers' as defined in the Act, this activity may constitute a regulated activity that falls within the scope of the CP Code.

General Principles

What the submissions say

Some respondents put forward various arguments and comments in relation to the introduction of General Principles requiring moneylenders to act in the best interests of their consumers.

Our response

Acting in the best interests of consumers is fundamental to consumer protection. For this reason, we have decided to introduce the same General Principles for moneylenders as are in place for other financial service providers. The requirement to act in the best interests of consumers must be taken in the context of the products that the

moneylender has to offer. As is the case for all other regulated financial service providers, this does not mean that a moneylender must offer its services without charge or recommend its competitors' products.

Provision of information to the consumer

What the submissions say

One submission suggested that it is unreasonable to require moneylenders to issue statements (for consumers who pay by direct debit), because agreements are for fixed terms and the repayments can be seen on the consumer's bank statements. It was also suggested that this would result in an extra administrative burden on moneylenders.

Our response

Whilst we agree that loans from moneylenders can be for fixed terms, not all moneylending loans operate in this manner, e.g. loans which are operated by way of running accounts (see footnote 1 above, which sets out the definition of a 'running account'). Furthermore, the Act requires moneylenders to supply each borrower with a repayment book, which shall be separate to the moneylending agreement, and in which repayments can be recorded. In practice, some moneylenders, which have no face-to-face contact with their consumers (including those who opt to pay by way of direct debit) have used periodic statements as a method of meeting this obligation. We have therefore decided to retain this provision, which reflects the business practice of some moneylenders.

Notice of withdrawal of services

What the submissions say

One respondent queried the requirement to notify clients of a moneylender's intention to cease providing credit facilities. The thrust of the argument against the introduction of this provision was that consumers could be encouraged to default on their loans if they are made aware of the moneylender's intention to cease trading.

Our response

Most licensed moneylenders tend to have very regular contact with their consumers. However, we believe that moneylending is not necessarily an ongoing service as such, i.e. the service ceases when the loan is repaid, unlike, for example, branch facilities provided by a larger financial services provider. We have therefore decided to delete this provision from the ML Code.

Knowing the consumer

What the submissions say

The industry submissions tended to focus on the costs associated with gathering and recording information, which they argued is disproportionate for providers of small value loans. On the other hand, consumer groups argued that the exemptions from these provisions should be dropped, because they felt that consumers in this sector needed greater protection.

Our response

We are satisfied that the requirement to gather an appropriate and proportionate level of information about a consumer in relation to the product being sought is a fundamental part of any relationship between a firm and its consumers. We believe that because moneylenders currently gather some information about prospective consumers (as required under the Act), they will not incur disproportionate extra costs in gathering a 'sufficient' level of information to enable them to recommend a product appropriate to each individual consumer. Furthermore, it will not be necessary to gather this information each time a moneylender enters into a credit agreement with a consumer e.g. where the moneylender has an ongoing relationship with that consumer. However, moneylenders must ensure that this information is up-to-date at all times.

We do not feel that the exemption should be removed as we are striving for a level playing field, insofar as possible, in respect of regulated lenders. We have therefore decided to retain this provision, as worded in CP33.

Suitability

What the submissions say

Some respondents argued for the abolition of the suitability requirement, while others argued in favour of deleting the exemption from this requirement. One industry respondent argued that modern credit markets work on the basis that consumers apply for loans and lenders grant those loans if they believe that there is a reasonable chance of being repaid. The submission went on to say that suitability requirements are likely to seriously erode those market efficiencies.

Our response

We are of the view that the imposition of requirements relating to suitability on financial service providers is a key consumer protection measure. We see 'suitability' as encompassing more than eligibility or affordability and it is therefore not just an assessment by a lender of its likelihood of being repaid. The assessment must be consumer-focussed and must take account of the consumer's individual needs and circumstances, while reflecting the products and services offered by the moneylender. These provisions currently exist for other regulated lenders. The requirements relating to suitability will therefore remain in the ML Code.

Unsolicited contact (cold-calling)

What the submissions say

A number of submissions highlighted the distinction between 'cash' lending (e.g. cash loans) and 'non-cash' lending (e.g. goods on credit etc.). In particular, arguments were made about the practical implications of imposing this provision on non-cash lenders, due to the manner in which that specific type of business is conducted.

Our response

In our opinion, consumers are less at risk of cold-calling in relation to 'non-cash' loans than for cash loans. We have therefore decided to exempt 'non-cash' lending from the provision relating to permitted

unsolicited contacts (i.e. Common Rule 17). We have considered the practical implications of imposing this provision on non-cash lenders and are aware of the possibility that it could drive a number of these licensed moneylenders out of the industry, as they would no longer be able to effectively generate business. Our decision is based on a number of other facts also:

- the Act contains detailed provisions in relation to a credit-sale agreement (which covers this form of lending). In particular, consumers are entitled to a statutory cooling-off period during which time they can opt not to proceed with the credit;
- the General Principles of the ML Code require moneylenders to act honestly, fairly and in the best interests of their consumers and they are also prohibited from exerting undue pressure or undue influence on a consumer;
- all credit must be 'suitable' to the individual consumer's needs and circumstances under the ML Code; and
- the moneylender will still be required to comply with the provisions relating to permitted contact times, abiding by a request from the consumer not to contact him/her again etc. (i.e. moneylenders will be required to comply with Common Rules 18 – 22, where they make an unsolicited contact).

Consumer records

What the submissions say

The arguments against the introduction of this provision centred around costs to the moneylending sector.

Our response

Moneylenders are currently required, by law, to keep detailed records in relation to all moneylending agreements entered into with consumers. Whilst we appreciate that the provisions in relation to consumer records are quite specific, we are of the opinion that the majority of these records should already be maintained by moneylenders. As a result, we do not believe that it will result in excessive extra cost to the sector to comply

with this provision. These records can be kept electronically if preferred. We have decided to retain this provision.

Arrears and guarantees/Provision of information on debt counselling services

What the submissions say

Whilst this provision was generally welcomed, a number of respondents questioned the proposed timing of giving the information on debt counselling services to consumers (i.e. we had initially proposed that it be given upon the second missed payment). The industry respondents argued that consumers regularly miss a number of payments during any loan period and that this is an accepted fact within the industry.

Our response

We agree with the arguments in relation to the timing of the provision of this information, however, we feel that it is important that consumers, who consistently demonstrate difficulty in meeting their repayments, should be given information on services that are available to help them manage their finances.

We have therefore amended the provision to require information on debt counselling services to be provided to a consumer prior to entering an agreement and again upon the sixth missed payment, consecutive or otherwise, during the currency of an agreement.

Compliance with this Code

What the submissions say

It was argued that the introduction of provisions relating to demonstrating compliance with the ML Code would result in a fundamental change to the way the home credit sector functions. It was also argued that the requirements would result in more intrusive questioning of consumers.

Our response

We acknowledge that some moneylenders offer unique lending services, such as home collection, short-term, low value loans etc. However, as stated above, we believe that all consumers of lending services are entitled to the protections of a consumer protection code. As the ML Code will be a statutory code, it is imperative that moneylenders be able to demonstrate compliance with it. Otherwise, it would be very difficult for the Financial Regulator to assess compliance with the statutory provisions contained in it. It has therefore been decided to retain this provision.

Appendix 1

1. National Carways (Ireland) Limited;
2. Corrib Finance Limited;
3. Maddens Finance Limited;
4. Shop Direct Ireland Limited;
5. Practical Finance Limited;
6. Marlboro Trust Limited;
7. Consumer Credit Association of Ireland;
8. Money Advice & Budgeting Services ndl;
9. Department of Social & Family Affairs; and
10. Consultative Consumer Panel.



FINANCIAL REGULATOR
Rialtóir Airgeadais

PO Box No 9138
College Green,
Dublin 2, Ireland

T +353 1 410 4000

Consumer help-line

lo call 1890 77 77 77

Register of Financial Service Providers help-line

lo call 1890 20 04 69

F +353 1 410 4900

www.financialregulator.ie

www.itsyourmoney.ie

Information Centre: 6-8 College Green, Dublin 2

© Irish Financial Services Regulatory Authority.