

Consumer Protection Code for Licensed Moneylenders
Consumer Protection Codes Department
Irish Financial Services Regulatory Authority
PO Box 9138
College Green
Dublin 2
15th May 2008

Re: Draft Consultation Consumer Protection Code

I wish to make the following submissions to the consultation process;

Consultation Process

There has been a marked gap in the inputs to the construction of this consultation paper, i.e. licensed moneylenders have not been asked to contribute to the drawing up of the consultation paper. Skipping the consultation stage of existing licence holders has resulted in many key flaws in the draft code, most notably the fact that the draft code is in essence a "copy and past" exercise of the Aug-06 Consumer Protection code which applies to large financial firms, resulting in largely inappropriate draft code on the grounds of proportionality and suitability to the industry sector. Large scale rules and regulations when applied to small business does not result in increased protection of the consumer. By seeking the input of existing licence holders, this would have been highlighted at an earlier stage and a more appropriate level of consumer protection proposed.

It is very difficult for small business to interact with the financial regulator who is more accustomed to dealing with large institutions who's level of legal and professional competencies match the regulatory demands. The financial regulator makes little effort to be small-business friendly, in contrast, the UK Financial Services Authority has a dedicated small firms section and regulatory structure.

Provision of Information to the Consumer Part 5

This provision is unequal to the Consumer Protection Code Aug-06. The draft code states that notice must be given by registered post however the existing consumer protection code Aug-06 states that at least two months notice must be given but no requirement for registered post. This inequality is mystifying when one considers an example of a firm that holds customers funds on deposit only having to give two months notice however a firm that has lent money to a customer must make notification by registered post.

Knowing the Customer

This section will cause considerable burden of administration and paperwork on a small business sector who's size and resources are inappropriate to match the

requirements. This could result in price increases to match level of administration under the new draft code. In addition the text and information detailed in the proposed section is advanced and unclear to the sectors activities. Since it is almost a direct copy of the code that is applied to very large firms (e.g. credit institutions), it is written to address their requirements and is an overly heavy regulatory requirement when the size of the loan is considered.

Suitability

This regulation is not required for "basic banking services" (CPC-Aug'06) which includes current account overdrafts which charge variable interest for an open ended time period. The regulator should clarify why suitability statements are not required for "basic banking services" but are required under this draft, for small fixed loans for short durations. There is considerable inequality in applying the suitability test in such manner.

Arrears and Guarantees part 34

The proposal is not equal to all providers of credit under the Consumer Credit Act 1995, as no other provider is subject to this or any similar requirement. Secondly, the provision is not justified when the Financial Regulators Report on Moneylending Industry published in Mar-07 reports that 84% of customers have no difficulties in making repayments.

The reports findings state;

"A significant majority of customers do not have difficulties in making repayments to their moneylender"

In addition the report finds that lenders have an average customer satisfaction rating of 89% furthermore 80% of respondents scored lenders 8 or higher out of 10. This overwhelming evidence shows that customers and lenders are capable of working through temporary arrears to the customers satisfaction. The requirement is clearly totally unnecessary and would only serve to increase the administrative burden and costs on the sector.

Disclosure Requirements 24 (c)

The regulator should clarify why clause (c) exists in the proposal but does not apply to large financial institutions covered by the consumer protection code Aug-06.

Critical Absences

The following items are missing from the proposed code;

1. Information provided to customers should include the following warning;
"Warning: If you do not meet the repayments of your loan, your account will go into arrears. This may effect your credit rating"
2. Information provided to customers should include the following warning;
"Warning: You may have to pay charges if you pay off a fixed-rate loan early"

Not included in Draft Code

The issue of non-licensed Moneylending has been ignored by the financial regulator and the problem is not even measured to see what resources are required to enforce the law. The financial regulators approach of leaving the matter to the Gardai is an abdication of its responsibilities to the tax payer. In other financial sectors the regulator issues warnings about firms that operate without appropriate authorisation, however the same warnings are not issued regarding illegal moneylenders. The draft code proposes new additional layers of administration and sizable bureaucratic burden, yet nothing is promised or delivered regarding the problem of illegal moneylending.

Conclusion

1. The draft code excluded existing licence holders from contribution to the proposals.
2. Administration costs and bureaucracy will increase substantially under the draft proposals therefore driving up the cost of credit further
3. The draft code is creating unnecessary administration, specifically Part 34 which is justified when the regulators own report into the industry (Mar-07) show very high levels of customer satisfaction.
4. There are several instances of unequal regulations under the draft code
5. The draft code does not propose any additional warnings to consumers regarding credit ratings or paying a fixed loan early.
6. There is no undertaking by the regulator to investigate illegal moneylending which does not comply with any regulations such as those proposed in the draft.
7. The draft is not a product of any suitability or proportionality test of what is required to improve the industry sector. "Copy and paste" regulatory proposals are clearly unsuitable in this instance.
8. The draft code does not address the distinct operational and size differences between finance companies who are licensed as moneylenders and traditional de-facto moneylenders also regulated in the same category.

Yours Sincerely,



Shane O'Connor
Director