



FINANCIAL REGULATOR  
*Rialtóir Airgeadais*

Consumer Protection Code for  
Licensed Moneylenders

March 2008

Consultation Paper | CP33

# Current statutory code of practice for moneylenders

The Interim Code of Practice for Moneylenders ("the Interim Code") was introduced in December 2003. The Interim Code comprises 7 general principles stating our broad expectations as to how moneylenders should deal with their customers. The Interim Code was imposed on a temporary basis until such time as a final code of conduct for moneylenders was introduced.

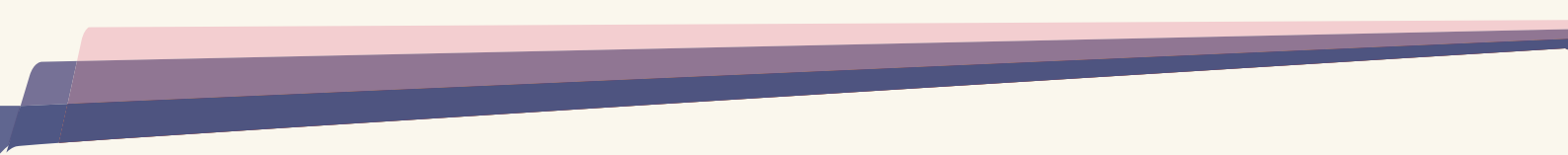
## Reason for this consultation

Our purpose is to help consumers make informed financial decisions in a safe and fair market and to foster sound dynamic financial institutions in Ireland. We do this by helping consumers to make informed choices through the provision of information to educate them and through developing and enforcing codes of conduct/practice, which seek to ensure that financial service providers act in a fair and transparent way.

In February 2005, the Financial Regulator published Consultation Paper CP10 entitled "Consumer Protection Code". CP10 sought the views of the financial services industry, its customers and consumer representative groups on a draft Consumer Protection Code ("the Code"). CP10 asked respondents to consider which rules, if any, should apply to moneylenders having regard to their customer base, which does not always have access to the same services from other financial services providers. The question was based on the following facts:

- moneylenders are already subject to detailed statutory obligations set out in the Consumer Credit Act, 1995 (as amended) ("the Act");
- the number of customer complaints in relation to moneylenders is very low;
- the loan amounts provided by moneylenders are generally small; and
- regulation can have a disproportionate impact on the cost to moneylenders of providing services.

13 responses to this question were received. The main thrust of the arguments in favour of not applying the Code to moneylenders was that the provisions of the Act adequately cover the sector and the sums borrowed are relatively small. As such, any measures that might have an impact on the cost of delivery of services would have a disproportionate effect on the cost of services provided by moneylenders. However, there was a strong view from the submissions that the exclusion of moneylenders from the Code would mean that their customers could not avail of the protections that the Code could give them and the service levels it requires from other regulated entities. While it was stated that customers of moneylenders should have the same level of protection as other borrowers, it was also stated that whatever provisions may be introduced should not restrict a person's access to this form of credit.



The Financial Regulator considered the submissions and published its decision in a public response to CP10 in December 2005. The public response stated as follows:

"The provisions of the CCA provide a significant level of protection to customers of moneylenders. On balance, we believe that this level of protection should be supplemented by the Code. Rather than exempting them from the Code we will apply the General Principles to Moneylenders. We will be conducting a review of the moneylending market in 2006 and any other provisions of the Code that we might apply to moneylenders will be considered as part of that review."

In line with the above, the Financial Regulator's Strategic Plan for 2008 – 2010 commits to having an updated code of conduct for moneylenders in place by December 2008. This commitment is given under High Level Goal 1 – "We will set and monitor standards for financial service providers in dealing with their customers."

# Review of the licensed moneylending industry

The Financial Regulator conducted a review of the licensed moneylending industry in 2006 and reported on its findings in March 2007 (in a document titled "[A Report on the Licensed Moneylending Industry](#)" ("the Report")). The objective of the review was to gain a greater understanding of the moneylending industry and to determine whether it was appropriate, necessary and reasonable to change current regulatory policies. The review covered numerous topics, including interest rates, attitudes towards credit, customer satisfaction etc. The Report concluded as follows:

- "Loans offered by moneylenders are relatively expensive.
- Consumers appear to choose moneylenders as a source of credit despite the interest rates being charged. However, although very aware of the weekly amount due to a moneylender, consumers are less aware of the rates being charged and the potential financial savings from shopping around. We will review the current Interim Code of Practice for licensed moneylenders, with a specific emphasis on increasing transparency, helping consumers make informed decisions and enhancing the consumer protection framework.
- Overall, consumers that used licensed moneylenders as a source of finance are happy with the service provided despite the fact that it is a relatively expensive form of credit.
- The introduction of an interest rate ceiling for moneylenders may not achieve the objectives of lowering the cost of credit for consumers.
- Not all consumers have access to other sources of credit. The Combat Poverty Agency has recently completed research on the area of financial inclusion and the Financial Regulator is considering the policy implications on foot of that research. We are also working with relevant agencies and Government departments to seek to foster access to financial services."

# This Paper

This paper has two parts. Part 1 sets out the key influences in drawing up the draft Consumer Protection Code for Licensed Moneylenders ("the draft Code") and considers issues surrounding its enforcement and compliance. It also sets out the scope of the draft Code. Part 1 also informs you on how to make your submissions.

Part 2 of this paper contains the draft Code. We are seeking your views on its content.

## Your views

**We are seeking your views on the content of the draft Code as set out in Part 2 of this paper. In the interests of creating a level playing field, the draft Code has been based, in so far as possible and practicable, on the Consumer Protection Code, while also taking account of the legislative provisions applying to moneylenders, particularly in the Act. As such, we would appreciate it if you would give reasons for any proposed addition or deletion of a provision to/from the draft Code.**

# Part 1

## Key influences

The Financial Regulator is a principles based regulator and the draft Code reflects that position. By setting out principles, we are stating our broad expectations as to how moneylenders should interact with their customers. These principles should be reflected in all aspects of the moneylender's business dealings with customers. The draft Code comprises general principles and more detailed rules designed to enhance understanding of and compliance with those general principles. In all circumstances, the overriding obligation on moneylenders is to adhere to the letter and spirit of the general principles.

The draft Code is based on the Consumer Protection Code, which became fully effective on 1 July 2007. The draft Code comprises the same provisions, where feasible and practicable, that apply to other sectors of the financial services industry, whilst endeavouring to take account of the unique nature of moneylending business. It also contains some provisions that are specific to the moneylending sector, again because of the unique nature of that business.

We have taken account of existing regulatory provisions in the Act, which apply to the moneylending industry, when drawing up the draft Code.

We have also been guided in drawing up the draft Code, by the Government's six core principles for better regulation i.e. necessity, effectiveness, proportionality, transparency, accountability and consistency.

# Scope

The Consumer Protection Code for Licensed Moneylenders will apply to all moneylenders licensed under the Act. Reference to a 'moneylender' refers to a moneylender licensed under the Act, its officers, employees and persons authorised to engage in the business of moneylending on behalf of the licensed moneylender.

The Consumer Protection Code for Licensed Moneylenders will not restate, unless absolutely necessary, any provisions provided for in consumer protection legislation.

# Enforcement and Compliance

A code can only be effective when it is properly enforced and compliance with it is monitored regularly. The Financial Regulator monitors compliance with consumer protection codes through themed inspections and mystery-shopping exercises, as we believe this represents the best and most efficient use of our resources. In the first instance, relevant themes and suitable financial service providers for inspection are determined. These are determined by market concerns, which are identified through our contacts with consumers, the Financial Services Ombudsman, consumer complaints and other feedback from consumers, previous inspections/visits to regulated financial service providers and other sources. We will bring the general findings of these inspections in to the public domain by publishing them on our website and in our annual report. This themed approach does not preclude focusing our resources on a particular financial service provider where there are persistent or serious problems. Our aim is to improve the overall level of compliance and to ensure that financial service providers are, at all times, acting in the best interests of their customers.

Failure to comply with the provisions of a statutory code or other applicable consumer protection laws will be subject to possible sanction under the Financial Regulator's Administrative Sanctions Procedure. An outline of this procedure is available at [www.financialregulator.ie](http://www.financialregulator.ie).

The approach outlined above will also be used for monitoring compliance by licensed moneylenders.



# Making your Submissions

The closing date for submissions is **Friday 16 May 2008**. We welcome submissions from all interested parties. You can comment on the draft provisions or can suggest items for inclusion that are not already included. Please make your submissions in writing and if possible, by e-mail or on disk. You can post them, fax them or email them to us.

When addressing any requirement in the draft Code, please indicate the specific requirement you are referring to. If you are raising an issue that is not included in the draft Code, please state 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 of 16 May 2008. For this reason we would ask you not to include any 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 the submission at all. Despite the approach outlined above, we make no guarantee not 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 '**Consumer Protection Code for Licensed Moneylenders**' and send it to:

**Consumer Protection Codes Department**  
**Irish Financial Services Regulatory Authority**  
**PO Box 9138**  
**College Green**  
**Dublin 2**

**E-mail:** moneylendercode@financialregulator.ie

**Fax:** 01 6710659

## Part 2

# Draft Consumer Protection Code for Licensed Moneylenders

## Legislative Basis

This Code is issued by and in the name of the Irish Financial Services Regulatory Authority ("the Financial Regulator") under section 117 of the Central Bank Act, 1989.

## Scope

This Code applies to moneylenders licensed under the Consumer Credit Act, 1995 (as amended) ("the Act").

The supervisory framework for moneylenders comprises the statutory obligations under the Act, together with the requirements of this Code. Where a requirement of this Code conflicts with a requirement of any voluntary code to which the moneylender has subscribed, the requirement of this Code must apply. Moneylenders should also be aware of other statutory obligations pertaining to their business activities, in particular, the Data Protection Act, 1988, the Data Protection (Amendment) Act, 2003 and the Criminal Justice Act, 1994.

Throughout this text, reference to a 'moneylender' refers to a moneylender licensed under the Act, its **officers**, **employees** and **persons** authorised to engage in the business of moneylending on behalf of the licensed moneylender.

## Other Matters

The provisions of this Code will come into effect on a date to be specified by the Financial Regulator.

Moneylenders are reminded that they are required to comply with this Code as a matter of law.

All references to the business of moneylending throughout this Code also include the provision of advice.

The Financial Regulator has the power to administer sanctions for a contravention of this Code, under Part IIIC of the Central Bank Act, 1942.

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 moneylender, which is addressed to the **consumer** public or a section of it, the purpose being to advertise a product, service or moneylender the subject of this Code, excluding name plaques, sponsorship material and a prospectus drawn up in accordance with the Prospectus Directive (2003/71/EC);

"**advertised product or service**" means the product or service that is the subject of an **advertisement**;

"**associated undertaking**" means an **associated undertaking** within the meaning of Regulation 34 of the European Communities (Companies Group Accounts) Regulations 1992;

"**business day**" means any day except Saturday, Sunday, bank holidays and public holidays;

"**certified person**" has the meaning assigned to it by section 55 of the Investment Intermediaries Act, 1995;

"**charge**" means any cost or fee which a **consumer** must pay in connection with a product or service provided by a moneylender;

"**complaint**" refers to an expression of grievance or dissatisfaction by a **consumer**, either verbally or in writing, in connection with:

- a) the provision of a product or service to a **consumer** by a moneylender; or
- b) the failure of a moneylender to provide a product or service to a **consumer**;

"**connected party**" shall, except where otherwise stated, include a partner, **officer**, controller, **associated undertaking, related undertaking** or subsidiary undertaking, **employee** or **person** authorised to engage in the business of moneylending on behalf of a moneylender, including any **associate** of the **person** concerned;

"**consumer**" means any of the following:

- a) a natural **person** acting outside their business, trade or profession;
- b) a **person** or **group of persons**, but not an incorporated body with an annual turnover in excess of €3 million (for the avoidance of doubt a **group of persons** includes partnerships and other unincorporated bodies such as clubs, charities and trusts, not consisting entirely of bodies corporate);
- c) incorporated bodies having an annual turnover of €3 million or less in the previous financial year (provided that such body shall not be a member of a **group** of companies having a combined turnover greater than the said €3 million); or
- d) a member of a credit union;

and includes where appropriate, a potential '**consumer**' (within the meaning above);

"**customer**" means any **person** to whom a moneylender provides or offers to provide a service the subject of this Code, and any **person** who requests such a service;

"**employee**" means a **person** employed under a contract of service or a **person** otherwise employed by a moneylender;

"**group**" includes a company, its parent and its subsidiaries and any **associated undertaking** or **related undertakings**;

"**officer**" in relation to a moneylender, means a director, chief executive, manager or secretary, by whatever name called;

"**outsourced activity**" is where a moneylender employs another person (other than a natural person who is an **employee** of the moneylender under a contract of service) to carry out an activity on its behalf;

"**person**" means a natural person or a legal person;

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

"**related undertaking**" means:

- a) companies related within the meaning of section 140(5) of the Companies Act 1990;
- b) undertakings where the business of those undertakings has been so carried on that the separate business of each undertaking, or substantial part thereof, is not readily identifiable; or
- c) undertakings where the decision as to how and by whom each shall be managed can be made either by the same **person** or by the same **group of persons** acting in concert.

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# CHAPTER 1

## GENERAL PRINCIPLES

A moneylender must ensure that in all its dealings with **customers** and within the context of its licence, it:

- 1 acts honestly, fairly and professionally in the best interests of its **customers** and the integrity of the market;
- 2 acts with due skill, care and diligence in the best interests of its **customers**;
- 3 does not recklessly, negligently or deliberately mislead a **customer** 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 **customers** information relevant to the product or service requested;
- 6 makes full disclosure of all relevant material information, including all **charges**, in a way that seeks to inform the **customer**;
- 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 **customer**;
- 10 ensures that any **outsourced activity** complies with the requirements of this Code;
- 11 without prejudice to the pursuit of its legitimate commercial aims, does not, through its policies, procedures, or working practices, prevent access to basic financial services; and
- 12 complies with the letter and spirit of this Code.

# CHAPTER 2

## COMMON RULES FOR MONEYLENDERS

### GENERAL

- 1 A moneylender 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**.

### PROVISION OF INFORMATION TO THE CONSUMER

- 2 A moneylender must assist a **consumer** in understanding the product provided, including all related interest payments and **charges**.
- 3 A moneylender must, prior to entering into an agreement with a **consumer**, disclose all the fees, costs and interest in a clear manner and prominently indicate the high-cost nature of the loan on all loan documentation.
- 4 A moneylender must, where it collects repayments by way of direct debit, issue monthly statements to **consumers** who pay weekly and quarterly statements to **consumers** who pay monthly.
- 5 A moneylender must give adequate notice to affected clients by registered post or by hand, where it proposes to withdraw its services. A moneylender must ensure that any outstanding business is properly completed.
- 6 A moneylender must, where applicable, inform **consumers** of the amount and order in which payments will be allocated to different outstanding balances at different borrowing rates.
- 7 A moneylender must ensure that, where it intends to record a telephone conversation with a **consumer**, it informs the **consumer**, at the outset of the conversation, that it is being recorded.
- 8 A moneylender must ensure that, where it communicates with a **consumer** using electronic media it has in place appropriate arrangements to ensure that secure transmission of information to, and receipt of information from, the **consumer**.
- 9 A moneylender must ensure that all printed information it provides to **consumers** is of a print size that is clearly legible.



## PRESERVATION OF A CONSUMER'S RIGHTS

- 10 A moneylender must not, in any communication or agreement with a **consumer** (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 **consumer** 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 **consumer** in connection with the provision to that **consumer** of financial services; or
  - c) any liability owed to a **consumer** 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 CONSUMER

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

This requirement does not apply where the **consumer** has specified both the product and the product provider and has not received any advice.

- 12 A moneylender must gather and record details of any material changes to a **consumer's** circumstances before providing that **consumer** with a subsequent product or service.
- 13 A moneylender must ensure that, where a **consumer** refuses to provide information sought in compliance with this Code, the refusal is noted on that **consumer's records**.
- 14 A moneylender must maintain a list of its **customers** who are **consumers** and the subject of this Code.
- 15 A moneylender must endeavour to have the **consumer** certify the accuracy of the information he/she has provided to the moneylender. Where the **consumer** declines to do so, the moneylender must note this on the **consumer's records**.

## SUITABILITY

- 16 A moneylender must ensure that, having regard to the facts disclosed by the **consumer** and other relevant facts about that **consumer** of which the moneylender is aware, any product or service offered to a **consumer** is suitable to that **consumer**.

This requirement does not apply where the **consumer** has specified both the product and the provider and has not received any advice.

- 17 Before providing a product or service to a **consumer**, a moneylender must prepare a written statement setting out the reasons why a product or service offered to a **consumer** is considered to be suitable to that **consumer**.

The moneylender must give a copy of this written statement to the **consumer** and retain a copy.

This requirement does not apply where the **consumer** has specified both the product and the provider and has not received any advice.

## UNSOLICITED CONTACT (COLDCALLING)

- 18 When contacting a **consumer** other than an existing **customer**, a moneylender may make an unsolicited contact to a **consumer**, who is an individual, by way of a personal visit or telephone call, only if:

- a) the **consumer** has signed a statement, within the previous 6 months, giving the moneylender permission to make personal visits or telephone calls to him/her; or
- b) the **consumer** has a listing in the business listing section of the current telephone directory, classified telephone directory or in trade/professional directories circulating in the State; or
- c) the **consumer** is a director of a company, or a partner in a firm with an entry in one of the directories listed in b) above; or
- d) the **consumer** is the subject of a referral, received from an entity authorised to provide financial services in Ireland, another entity within the same **group**, a solicitor, a **certified person** or an existing **customer**.

In relation to d) above, such a referral must be followed up by an indication to the **consumer** by the moneylender that the referral has been made and asking for consent to proceed.

- 19 A moneylender must ensure that, where it makes an unsolicited contact on foot of a referral, it retains a **record** of the referral.
- 20 An unsolicited contact made to a **consumer**, other than an existing **customer**, may only be made between 9.00 a.m. and 9.00 p.m. Monday to Saturday (excluding bank holidays), unless otherwise requested by the **consumer**.
- 21 When making an unsolicited contact in accordance with this Code, the representative of a moneylender must immediately and in the following order:
- a) identify himself or herself by name, the name of the moneylender on whose behalf he/she is calling and the commercial purpose of the contact;
  - b) inform the **consumer** that the call is being recorded, if this is the case;
  - c) disclose to the **consumer**, the source of the business lead or referral supporting the contact; and
  - d) establish if the **consumer** wishes the call to proceed; if not, the caller must end the contact immediately.
- 22 A moneylender must abide by a request from a **consumer** not to make an unsolicited contact to him/her again.
- 23 A moneylender must not reach a binding agreement with a **consumer** 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.

## **DISCLOSURE REQUIREMENTS**

- 24 A moneylender must include its regulatory disclosure statement:
- a) on its business stationery (including moneylending agreements, repayment books and authorisation cards);
  - b) in all **advertisements**;
  - c) in all catalogues, brochures etc; and
  - d) on all electronic communications with **consumers** including on the home page of its website, if any.

The regulatory disclosure statement must take the following form:

**"[Full legal name of moneylender (and trading name(s), if applicable)] is regulated by the Financial Regulator."**

- 25 A moneylender must not use the regulatory disclosure statement on any business stationery, **advertisement**, catalogue, brochure or electronic communication in connection with a product or service for which the moneylender is not regulated by the Financial Regulator.
- 26 The regulatory disclosure statement must not be presented in such a way as to appear to be an endorsement by the Financial Regulator of the moneylender or its products or services.

## **ERRORS**

- 27 A moneylender must:
- a) speedily, efficiently and fairly, correct an error in any **charge** or price levied on, or quoted to, a **consumer** in respect of any product or service the subject of this Code;
  - b) where it 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 **consumers**, 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

28 A moneylender 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 moneylender will acknowledge each **complaint** in writing within 5 **business days** of the **complaint** being received;
- b) the moneylender will provide the complainant with the name of one or more individuals appointed by it 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 moneylender 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 moneylender will attempt to investigate and resolve the **complaint** within 40 **business days** of having received the **complaint**. Where the 40 **business days** have elapsed and the **complaint** is not resolved, the moneylender will inform the complainant of the anticipated timeframe within which the moneylender hopes to resolve the **complaint** and of the **consumer's** right to refer the matter to the Financial Services Ombudsman and will provide the **consumer** with the contact details of the Financial Services Ombudsman; and
- e) the moneylender 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 moneylender will also inform the complainant of the right to refer the matter to the Financial Services Ombudsman and will provide the **consumer** with the contact details of the Financial Services Ombudsman.

- 29 When a moneylender receives a verbal **complaint**, it must offer the **consumer** the opportunity to have the **complaint** treated as a written **complaint**.
- 30 A moneylender 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 moneylender's response(s), any other relevant correspondence or **records** and the action taken to resolve each **complaint**.

## CONSUMER RECORDS

- 31 A moneylender must maintain up-to-date **consumer records** containing at least the following:
- a) a copy of all documents required for **consumer** identification and profile;
  - b) the **consumer's** contact details;
  - c) all information and documents prepared in compliance with this Code;
  - d) details of products and services provided to the **consumer**;
  - e) all correspondence with the **consumer** and details of any other information provided to the **consumer** in relation to the product or service;
  - f) all documents or applications completed or signed by the **consumer**;
  - g) copies of all original documents submitted by the **consumer** in support of an application for the provision of a service or product; and
  - h) all other relevant information concerning the **consumer**.

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. **Consumer records** are not required to be kept in a single location but must be complete and readily accessible.

## UNSOLICITED CREDIT FACILITIES

32 A moneylender must not offer unsolicited pre-approved credit facilities.

## ARREARS AND GUARANTEES

33 A moneylender must have in place, procedures for the handling of arrears cases.

34 A moneylender must advise **consumers** who have defaulted on their repayments, upon the second default/missed payment during the currency of a moneylending agreement, of relevant credit counselling services, and the contact details for such services e.g. name and address of a local Money Advice & Budgeting Services' office.

35 A moneylender must ensure that, where a loan is being advanced subject to a guarantee, the guarantee outlines 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 the borrower does not. Before you sign this guarantee, you should get independent legal advice.**

36 A moneylender must notify the guarantor in writing if the terms of the loan agreement change.

## DEBT COLLECTION

37 Where a moneylender engages the services of a third party to collect debts on its behalf, the moneylender must have in place a contractual arrangement which seeks to ensure that its **consumers** are treated in accordance with the provisions of this Code and the relevant provisions of the Act.

38 A moneylender must inform an affected **consumer** that his/her moneylending agreement has been assigned to a third party as soon as practicable after assigning the moneylending agreement.

## COMPLIANCE WITH THIS CODE

- 39 A moneylender must have adequate systems and controls in place to ensure compliance with this Code.
- 40 Where the Financial Regulator requires a moneylender to provide information in respect of the moneylender's compliance with this Code, such moneylender is thereby required to 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.
- 41 Where the Financial Regulator requires information in respect of a moneylender's compliance with this Code, and the Financial Regulator is of the opinion that a meeting with personnel of the moneylender is necessary in order to procure such information in a satisfactory manner, the moneylender must use its best endeavours to arrange for appropriate personnel to participate in such a meeting in order to provide the required information to the Financial Regulator.
- 42 A moneylender must, upon being required by the Financial Regulator to do so, provide to the Financial Regulator **records** evidencing compliance with this Code for a period prior to such requirement as the Financial Regulator may specify (up to a maximum period of 6 years).



# CHAPTER 3

## ADVERTISING

### GENERAL REQUIREMENTS

- 1 A moneylender must ensure that all its **advertisements** are fair and not misleading.
- 2 An **advertisement** must not influence a **consumer's** attitude to the **advertised product or service** of the moneylender either by inaccuracy, ambiguity, exaggeration or omission.
- 3 The name of the moneylender 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 **consumer** 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 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.
- 9 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**.
- 10 A recommendation or commendation may not be used without the consent of the author and, if the author is an **employee** of the moneylender or a **connected party** of the moneylender, or has received any payment from the moneylender or a **connected party** of the moneylender for the recommendation or commendation, the **advertisement** must state that fact.
- 11 Comparisons or contrasts must be based either on facts verified by the moneylender, 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.
- 12 Where an **advertisement** includes an annual percentage rate, the **advertisement** must clearly state if the underlying interest rate is fixed or variable.
- 13 An **advertisement** for a loan must, if displaying the annual percentage rate and the term, display the total cost of credit.



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