Consumer Protection Code for Licensed Moneylenders

Shop Direct Ireland Ltd

Response to consultation paper (CP33) on proposed Consumer Protection Code for Licensed Moneylenders

Shop Direct Ireland Ltd (SDI) is a licensed moneylender, holding licence number L000081/07. SDI welcomes the opportunity to comment on the proposed Consumer Protection Code for Licensed Moneylenders.

This response is divided into two parts. The first part deals with the general regulatory framework applicable to licensed moneylenders. The second part deals with specific comments on points in the draft Consumer Protection Code for Licensed Moneylenders.

Part 1.

Regulation of Moneylenders.

1.1 The current regulatory regime for licensed moneylenders, primarily under the Consumer Credit Act 1995, is based very much on the assumption that moneylenders will be operating a traditional moneylending business, namely relatively low value loans, repayable over fairly short fixed periods at comparatively high rates of interest, with, in the vast majority of cases, repayments being collected from the customer at their home, often on a weekly basis.

1.2. The Report on the Licensed Moneylending Industry published by the Financial Regulator in March 2007 ("the 2007 Report") noted that this traditional model is still a very common feature of the market, with 67% of moneylenders surveyed still advancing credit only in the form of money/cash, and 82% collecting repayments on a door-to-door basis. This traditional moneylending model is essentially a “home credit” model. However, the 2007 Report commented that *"the moneylending industry is evolving and the traditional view of a moneylender collecting repayments door to door on a weekly basis, although still significant, is not the only type of moneylender currently operating in the State."*

1.3 The 2007 Report also noted that the overwhelming view of moneylenders is that increased competition from banks, credit unions and other licensed moneylenders will be the major factor impacting on their business over the next 5 years and that only 15% of the traditional “home credit” moneylenders expected their business to expand. By contrast, amongst the non-traditional moneylenders, such as those operating nationally, home shopping companies, lenders in specialist sectors and lenders taking payment by direct debit, 64% expected their businesses to expand. SDI believes that this expansion of non-traditional moneylenders, together with further evolution in the non-traditional moneylending market, will be heavily influenced by increased use of the internet.

1.4 Applying the existing moneylending regulatory regime, aimed as it is at the traditional “home credit” model of lending, to non-traditional moneylenders (such as SDI) is not straightforward. A regulatory framework which has been drafted with a particular, relatively narrow type of product or circumstance in mind, but which then has to be applied to different products or circumstances, will inevitably inhibit the development of new products and stifle innovation. Given the degree of competition expected from other sources over the next 5 years, it is in the interests of both consumers and moneylenders that there is as much flexibility as possible to allow moneylenders to develop new products and to maximise the use of new channels, especially the internet. This is particularly the case for consumers who may otherwise struggle to obtain access to credit facilities.

1.5 If it is accepted that the regulatory regime should facilitate product development, innovation and increased competition, rather than effectively forcing licensed moneylenders to operate within constraints originally designed for the traditional home credit market, there are two alternative approaches:

- Retain the existing regulatory framework, designed for the traditional home credit business model, but apply it only to the traditional home credit model. Activities which are currently within the definition of moneylending but which are not the traditional home credit model, would require their own framework, drafted in less specific and more generic terms to allow for a wider variety of products, such as revolving credit, direct debit payments, store card type facilities, and the use of the internet and distance selling;

- Increase the flexibility of the current moneylending regime, recognising that the sector is evolving, so that the framework becomes tailored less specifically to the traditional operating methods of the home credit business model, and allows for greater variety of product, customer contact and communication whilst retaining similar levels of protection for consumers.

From the above two options, the second is probably the easier to enact, although it is recognised that this will require primary legislation. Within the next two years, it is expected that changes to the Consumer Credit Act 1995 (as amended) (the "**Consumer Credit Act**") will be required to implement the recently adopted Consumer Credit Directive, and it is suggested that this opportunity be taken for reviewing and updating the moneylending provisions of the Consumer Credit Act to introduce this greater flexibility, and to ensure that the evolution of the moneylending market (identified by the Financial Regulator) is not constrained by its legal framework.

In the context of the draft Consumer Protection Code for Licensed Moneylenders it is also important that the Code does not focus too heavily on the traditional "home credit" model, and recognises that non-traditional moneylenders, offering products such as revolving credit, store card and other retail linked facilities, potentially at much lower rates than those usually associated with the traditional "home credit" model, and making extensive use of the internet and distance selling, will also fall within its scope. These lenders may also adopt more sophisticated funding methods than those usually associated with traditional home credit lending. A number of the comments below reflect this.

Part 2.

Comments on the draft Consumer Protection Code.

Scope: – it should be made clear that the Code only applies to a licensed moneylender when acting as a licensed moneylender, and providing moneylending products or services. It should not apply to activities which are undertaken by a licensed moneylender which are outside the scope of moneylending, such as supplying goods without providing any associated credit (i.e. acting as a pure retailer). To do so would create an uneven playing field between the regulated entity and non regulated retailer competitors. From a drafting perspective, there are numerous references to "products or services the subject of this Code", but nowhere does the Code state which products or services are actually subject to the Code. This needs to be corrected by clarifying that the Code applies to services or products which fall within the definition of "moneylending" in the Consumer Credit Act

Definition of "consumer": We are concerned at the extremely wide definition of "consumer", especially when compared with the definition of "consumer" contained in the Consumer Credit Act, which is the principal piece of legislation with which moneylenders' systems, processes and procedures have been designed to comply. If a different definition is adopted for the Code, moneylenders will have to adapt to what will amount to a three tier level of regulation, namely: (1) customers to whom both the Consumer Credit Act and the Code apply; (2) customers who are

not covered by the Consumer Credit Act, but to whom the Code applies; and (3) customers who fall outside both the Consumer Credit Act and the Code. This is unnecessarily burdensome for moneylenders, and will mean that they must introduce a significant level of complexity into their systems and processes so that they are able to distinguish between the different categories. This will add to their costs. Furthermore, the very wide definition of "consumer" would have the effect of applying the Code to any party dealing with a moneylender other than a corporate body with a turnover in excess of €3m. This is a huge extension of the scope of regulation for moneylenders. Unless there is strong evidence to suggest that the wider categories of persons included in the proposed definition for the Code (i.e. partnerships, sole traders, unincorporated bodies and corporate bodies with turnover not exceeding €3m) require the protection of the Code in the context of moneylending, we would strongly request that the Code adopts a definition of "consumer" which is consistent with the current definition under the Consumer Credit Act (as amended in 2004). In this respect, we note that the first element of the proposed definition corresponds with the definition in the Consumer Credit Act as originally enacted, and not as subsequently amended in 2004. The current Consumer Credit Act definition is "…*(a) a natural person acting outside the person's business, or (b) any person, or person of a class, declared to be a consumer in an order made under sub-section (9)"*.

We would also question why Chapter 1 refers to "customers" whereas, with one or two exceptions, the remainder of the Code applies to "consumers". The application of the Code should be limited to consumers, as defined for the purposes of the Consumer Credit Act. Finally, we would welcome clarification around when someone is a "potential consumer" for the purposes of the Code. Arguably it could be construed as someone who *may* become a member of a credit union, or a corporate body whose turnover *may* reduce below €3m, but this cannot possibly be the intention.

Chapter 1 – Paragraph 1: Paragraphs 1 and 2 of the General Principles require the moneylender to act "in the best interests of its customers". This is partly elaborated on in paragraphs 11 to 17 of Chapter 2. Paragraph 7 of the General Principles states that the moneylender must seek to avoid a conflict of interest; a principle which we fully support. However it appears to us that requiring a moneylender to act in the best interests of its customers conflicts, or may conflict, with the duty of the board of directors of a company to act in the best interests of the company. In the event of a conflict, which duty shall prevail? We therefore believe that the duty should be limited to that contained in Chapter 1, paragraph 7, (seeking to avoid conflicts of interest), and that in Chapter 1 paragraphs 1 and 2 the references to the best interests of customers should be deleted.

Chapter 2 – **Paragraph 1:** We would suggest that prominence can be achieved by methods such as position and colour as well as boxes, bold type and font size, and that the methods of showing prominence quoted in the Code should be an example, rather than prescriptive.

Chapter 2 - Paragraph 2: What type of 'assistance' is required? Is it sufficient to draw the customer's attention to the terms and conditions of the credit? SDI operates on a distance selling basis, with no face to face interaction with customers, and is therefore reliant on its literature and website to explain its products.

Chapter 2 - Paragraph 3: In what circumstances will the proposed notice with regard to the "high cost nature" of the loan be required, and what form will this take? It is not correct to assume that all moneylending agreements will be "high cost". The 2007 Report found that some moneylending agreements are at rates of interest as low as 10.2%. The 2007 Report used APRs of 44%, 160% and 110% to illustrate the total cost of credit for short term loans. However, all of these APRs are considerably in excess of the rate at which SDI lends. As the non traditional moneylending market evolves it is likely that the number of products which are offered at rates comparable with credit card or store card rates, or with traditional bank loan rates, will increase. It is not appropriate to include any form of warning statement regarding a high APR on an agreement that happens to be classified as a moneylending agreement simply because, for instance, the agreement was

concluded away from the lender's business premises. However, if all that is required is a prominent statement of the APR, with no separate “warning” notice, this is not a concern.

Chapter 2 - Paragraph 4: For clarity, the requirement to provide statements should be *not less frequently* than monthly for customers paying weekly, and quarterly for customers paying monthly.

Chapter 2 - Paragraph 5: For businesses operating nationally with many thousands of customers (quite possibly in excess of 100,000), the requirement for registered post is unduly onerous. Notice should be required to be given in writing, which, for customers who have been transacting electronically via the internet (a rapidly growing number), should include the facility for notice to be provided by e mail or secure account pages on websites.

Chapter 2 – Paragraphs 11 to 17: We would comment generally that the provisions on Knowing the Consumer and Suitability are potentially a recipe for litigation, as no matter how careful the moneylender is to provide the required recommendation appropriate to that consumer, that consumer may well subsequently in hindsight argue that another recommendation may have been better. There will often be an element of subjectivity in such questions, and this creates an opportunity for customers to raise very dubious claims as a negotiating tactic in seeking to have the debt written off or reduced.

We would also point out that moneylenders are currently at a significant disadvantage to Credit Institutions for the purposes of gathering information on their customers and determining suitability, as they do not have access to the information held by the Irish Credit Bureau. In the interests of creating a level playing field, moneylenders should only be subject to the same obligations as Credit Institutions under these provisions of the Code if they have access to the same levels of information on their customers.

It should be clarified that the moneylender is not obliged to compare the products it offers with those offered by competitors or other finance providers in determining suitability, and need only assess suitability from its own range of products.

For moneylenders offering either a single product or a limited range of products, it is essential that the process for clarifying that the customer has specified the product and the provider, and has not received any advice, is simple and definitive. A simple statement to that effect on the terms of the moneylending agreement should be sufficient. Adding complexity to documentation or overloading the customer with information, for what will often by simple products, will only bring increased costs to lenders (which ultimately will be passed on to the customer) for little or no benefit to the customer.

Chapter 2 - Paragraph 12: To avoid any doubt, it should be clarified that an ongoing running account is to be regarded as one single service.

Chapter 2 – **Paragraph 15:** What is envisaged in the context of distance selling and internet? Will a simple statement to the effect that the customer confirms the information provided is accurate suffice?

Chapter 2 – Paragraphs 18 to 23: We would welcome clarification that all the provisions on unsolicited contact apply only to personal visits or telephone calls (i.e. references to unsolicited contacts in paragraphs 19 to 23 mean unsolicited contacts as described in paragraph 18), and the provisions would apply only to visits to the customer’s residence, and would not apply to, for instance, marketing activity in public places such as airports, or the use of temporary stands or exhibitions to attract customers.

Chapter 2 – Paragraphs 24 and 25: It is costly to require a moneylender to have two sets of business stationery, one for use when dealing with services on which the moneylender is

regulated by the Financial Regulator and the other for use when dealing with services that are not. Please could the Financial Regulator clarify if a disclosure statement can be used on all business stationery, regardless of the regulated/unregulated service it relates to if it is made clear in the disclosure statement to which service(s) the disclosure statement relates? Furthermore, SDI is regulated as an insurance intermediary, and currently includes a regulatory disclosure statement to that effect. What form will the statement take for moneylenders who are regulated in more than one capacity?

Chapter 2 - Paragraph 31: Is there a justification for extending the record keeping obligations beyond those already contained in the Consumer Credit Act? If the obligations are extended it should be made clear that the consumer records listed in paragraph 31 should only contain the items listed therein *"where relevant"*. Please confirm that the retention of such records electronically is permitted.

Chapter 2 - Paragraph 34: It must be recognised that this is an onerous requirement which will require changes to automated systems. This will be costly and will require time. The suggestion that the name and address of a *local* MABS office be provided is not realistic in the context of any moneylender operating on anything other than a very small scale, all of whose customers live in the same locality. For a moneylender operating on a larger scale, covering more than one locality, the only feasible option is to provide a central contact point or website address for an advice or counselling service.

It is not unusual for customers who go into default by two or more payments to bring their account back up to date, and then repeat the process. To avoid doubt, it should be made clear that the obligation to supply details of relevant counselling and advice services will only apply once during the currency of an agreement, and not every time a customer misses 2 consecutive payments.

Chapter 2 - Paragraph 38: There should be no requirement for a moneylender to inform a customer of an assignment of a moneylending agreement if the moneylender retains a role in servicing the agreement or collecting payments. Such circumstances often occur in securitisation and other funding structures. This has been recognised in the new Consumer Credit Directive, which contains at Article 17 a similar requirement for notice to be given, but excludes situations in which "*the original creditor, by agreement with the assignee, continues to service the credit vis a vis the consumer."* A similar exception should be made to paragraph 38.

Shop Direct Ireland Ltd.

15th May 2008