

Joint Submission on CP35

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11th February, 2009

Credit Union Code
Consumer Protection Codes Department
Financial Regulator
P.O. Box 9138
College Green
Dublin 2

**Re: Savings & Loans – Our Voluntary Standards, December 2008
Consultation Paper | CP35**

This is a joint submission in response to CP35 from Comhar Linn INTO Credit Union Limited, Dubco Credit Union Limited and Lucan District Credit Union Limited. Our three Credit Unions have a combined membership of 45,000 and total assets of €300m. We are not affiliated to a credit union representative body and therefore wish to engage with the Financial Regulator directly on this matter.

In June of 2008, we made a detailed submission on CP32 Voluntary Consumer Protection Code for Credit Unions (March 2008). CP35 continues this consultation process. We share most of the views expressed by credit union stakeholders in their submissions on CP32 and have been further informed by them. Unfortunately, it appears that the Financial Regulator has chosen to largely ignore these views in pursuit of a framework that refuses to fully recognise the *“special structure and voluntary ethos of the Credit Union Movement”*. In this regard, the Regulator has failed to achieve its own objective and cannot expect the support of Credit Unions for this Code as drafted.

We now believe this process should be abandoned in favour of an alternative approach. We remain ready to engage with you in a meaningful consultation process to develop and implement agreed changes to how credit unions operate. We would be happy to meet with you to discuss our submission.

Our Boards of Directors fully subscribe to standards, voluntary and statutory, as a means of ensuring a consistent service to all members. However, these standards must be necessary and relevant. Their impact must be proportionate. Accountability should be clearly defined and the consultation process must be open, transparent and accessible to all. Our difficulties with the Voluntary Code (aka Our Voluntary Standards) and the current consultation process are as follows.

1. NON-STATUTORY CODE / STANDARDS

What is proposed is a voluntary code / standards for credit unions, yet the development is being driven by the Financial Regulator as if it were a statutory code. In the introduction to CP32 the Financial Regulator states *“at this stage there is no legal basis to support the imposition of a statutory Consumer Protection Code for Credit Unions in respect of their Core Services”* but then states *“in the event of a general review of credit union legislation taking place, the Financial Regulator will be seeking to have the Code written into such legislation”*. Our reading is that the voluntary status of any resulting Code is only temporary. It is not a reflection of a differentiated approach to regulating credit unions or recognition of the voluntary ethos of the Credit Union Movement. More correctly, it should be referred to as a Non-Statutory Code. Using the word voluntary is misleading, as it is not the Regulator’s intention that the Code should be optional.

This Code has not been developed by the Credit Union Movement. It has been drafted by the Financial Regulator who has engaged in public consultation. It is not voluntary in the same way as the Irish Banking Federation’s Bank Account Switching Code introduced in 2005. Credit Unions haven’t asked for this Code and most feel it is unnecessary given their unique relationship with their members and the absence of overcharging and mis-selling scandals that have brought about the need for a statutory Consumer Protection Code applying to other financial institutions. Many of the provisions are simply not relevant to credit unions.

We are concerned that the Code for credit unions is being pursued due to a commitment by the Financial Regulator in CP10 and pressure being exerted by credit unions’ competitors who perceive that credit unions have an unfair advantage by not having to adhere to the same costly consumer protection measures they face. Credit Unions are not banks. Credit Union savings and loans services are not complex. In fact, most credit unions offer a single savings and loans product at a single rate of return or rate of interest. Their simplicity, transparency and lack of bureaucracy are what appeals to savers and borrowers.

The case for a statutory Consumer Protection Code for credit unions core services has not been made or debated. This should take place as part of a broader review of the legislative framework governing credit unions. A Voluntary Code is ill-timed.

2. THE CONSULTATION PROCESS

There appears to have been very limited consultation with credit unions, their representative bodies and other interest groups (e.g. Credit Union Managers Association) before CP32 was published. We welcomed the opportunity to raise issues and were awaiting the Financial Regulators response. It is unacceptable to our credit unions the Financial Regulator has opted not to publish a response to the CP32 submissions or accede to requests for a Regulatory Impact Assessment. This is in clear contrast to the process for CP10 and the Consumer Protection Code applying to the broader market for financial services, including non-core services provided by credit unions.

CP35 has been published without responding to the submissions on CP32 or engaging in further consultation and clarification. The Financial Regulator appears unwilling to outline its views or the bases for additions, omissions and changes to CP32 incorporated in CP35. While the Financial Regulator asks that submissions identify the chapter, paragraph and section numbers, there are no linkages drawn between CP32 and CP35. The two documents are nearly impossible to compare. We contend that the consultation process to date hasn't been open or transparent. Openness and transparency extends beyond the publication of submissions. Consultation is a two-way process. Having gone to the trouble of raising issues, asking questions and seeking clarifications on CP32, we expect answers.

We further question, the Financial Regulators commitment to real consultation in not issuing CP35 to all credit unions it regulates and giving such a short timescale for volunteer Boards of Directors to respond. Our understanding is that only parties who made submissions on CP32 were contacted. We appreciate the two week extension for submissions but we feel that a copy of CP35 and an invitation for submissions should now be sent to all credit unions. CP35 is a new consultation paper and the Financial Regulator has an obligation to inform credit unions of its contents.

If the Financial Regulator decides to proceed with the current process, it should publish a response to CP32 and issue it with a copy of CP35 to every credit union in the State inviting submissions within a realistic timescale. The response should outline the rationale for the Code and address requests for a Regulatory Impact Assessment.

3. CREDIT UNION REGISTERED RULES

In addition to the Credit Union Act 1997 (as amended), credit unions are governed by their registered rules which are binding on each credit union and all its members under Section 15 of the Act. Not alone do members own and control their financial co-operative, their relationship with the credit union is uniquely governed by a set of registered rules that have statutory force.

There appears to be a significant degree of overlap between the contents of the draft Code and provisions that already exist in the Credit Union Act 1997 (as amended) and Credit Unions' Registered Rules. The Act and Rules cover:

- Lending limits
- Making and approval of loans
- Written notice of loan approval
- Appeals against non-approval of loans
- Lending limits
- Credit agreements
- Remedies for debts from members
- Receipting of money
- Receipt for repayment of secured debt
- Share and deposits limits
- Dividends on shares, interest on deposits
- Joint accounts
- Conflict of interest
- Disputes and complaints
- Qualifications for membership and non-exclusion of new members
- Money laundering provisions
- Applicable requirements and Regulatory approval for the provision of additional services

Loans are a core service. By law, under Section 38 of the Credit Union ~Act 1997 (as amended), the rate of interest credit unions can charge on loans is capped at one per cent per month on the amount of the outstanding loan balance. The rate of interest is the only charge that may be imposed when making a loan and the rate of interest charged on any class of loans granted at a particular time must be the same for all loans of that class. In other words charging is transparent and members are treated equitably.

Rather than developing a Code that does not have a legal basis and confusing members by producing a Code (i.e. second set of rules), the Financial Regulator should consider using the existing framework governing the relationship between credit unions and their members. Credit Union Registered Rules could be amended to incorporate the changes required under the draft Code. This would place the provisions on a statutory basis using an existing framework that recognises the unique structure and voluntary ethos of credit unions. As rule amendments have to be notified to members and approved by them in general meeting, the provisions would be democratically introduced and have the support of the consumers they are meant to protect. Detailed rules could be supplemented by a Member Services Charter, for information purposes. This would list the general principles, refer to the rules and give contact details for further information (e.g. Financial Regulator, Financial Services Ombudsman). Has this approach been considered?

4. RELEVANCE OF CP35 PROVISIONS

On reviewing CP32 and CP35, we consider many of the provisions are irrelevant to credit unions or seek to introduce a level of bureaucracy and

recording that it unnecessary and unjustified. They seek to protect consumers based on perceived risks rather than actual risks. They are informed by occurrences in other financial institutions and show little understanding of how credit unions operate or relate to their members.

Some of the requirements under Chapter 3 are particularly onerous, being costly to administer and of dubious benefit to members. These include the requirement to provide a written statement as to the reasons why a loan is being offered. This approach may be required for other institutions with a range of loans with different interest rates, charges and terms and conditions. Loan products provided by credit unions are simple. They are less complex than products that have been exempt from CPC as so called “basic banking products or services” such as overdrafts and current accounts that can have 50+ charges attaching to them.

The general principles, provision of information and advertising provisions show merit where they apply to credit unions. The treatment of core services as anything other than “basic products” when compared with other deposit-takers and lenders is an unreasonable and unjustified regulatory burden. Compliance will be costly, apart from adversely impacting on the service to members and the reasons why they choose to deal with their credit unions.

5. SAVINGS PROTECTION SCHEME

Last autumn, the Government provided a Guarantee to members that their savings would be secure up to €100,000 in credit unions. The announcement by the Department of Finance on 20 September 2008 stated *“it is intended that the guarantee that has now been announced for credit institution savers would act as a backstop to an approved SPS scheme for credit unions”*, pending the introduction of a statutory scheme.

We welcome the Government’s Guarantee as credit unions do not have a statutory compensation scheme. The Commencement Order for Section 46 of Credit Union Act 1997 (as amended) came in effect on 1 August 2001. It is a source of grave disappointment that the Credit Union Movement still doesn’t have a statutory Savings Protection Scheme open to all credit unions registered in the State. The most basic level of protection to be afforded to credit union members should be the security of their savings. It cannot be ignored. We note the reference to participation in a compensation scheme has been removed from the ‘Terms of Business’ in CP35.

It is time for the Financial Regulator to put a statutory Savings Protection Scheme in place for the protection of members’ savings. The Financial Regulator has the legal basis to proceed with this aspect of consumer protection. If an accommodation cannot be reached to include the existing stabilisation fund, a separate scheme must be established without delay.

6. COMPLIANCE BURDEN

Consistently in independent market research credit unions have the highest levels of public satisfaction and trust. The ethos of credit unions is to provide cost effective services to their owner members. In general, credit unions have a limited product range, easily understood with transparent pricing.

It appears to us that the Financial Regulator is determined to apply to credit unions, consumer protection measures designed to stamp out market abuse and bad practices in other sectors of the financial services industry. This is happening because credit union competitors have requested it and the Financial Regulator has agreed to it. Whether or not these provisions are relevant to credit unions or should apply to credit unions has not been considered. The cost burden, impact on services and the ability of volunteer run organisations to implement these provisions has not been considered. The willingness of the Financial Regulator to address these issues through a Regulatory Impact Assessment has not been addressed or conceded. These matters must be addressed.

Without reference to costs or the adverse impact on service to members, CP35 requires:

- additional documentation, form filling and signatures by the credit union and the member
- unspecified changes to computer systems
- additional written communications with members
- increased regulatory reporting
- formalised recording of interactions with members that will result in additional paper records and a reduction in the flexibility of credit unions to respond to members' requests

CP35 shows little knowledge or regard for the "special structure and voluntary ethos" of credit unions or the members they serve. It fails to take account of the need for less bureaucracy in dealing with members who have literacy issues or are socially and economically disadvantaged.

Unlike other deposit-takers/ lenders and their customers, credit unions and their members have congruent interests. The structure of credit unions prevents the imbalance of power that is commonplace elsewhere, where customer suspicion and mistrust are reinforced by corporate behaviour models that continuously throw up scandals.

In CP10, the Financial Regulator states "credit union members are entitled to the same protections afforded customers of other financial services providers". We would argue that the existing structure and ethos of credit unions has demonstrably shown that members have greater levels of protection and have little need of the types and scale of provisions imposed on other financial services providers. Our credit unions are happy to introduce further safeguards for members where it can be shown that members need protecting (i.e. an actual risk to members, a history of complaints from members or malpractice by credit unions).



FINANCIAL REGULATOR
Rialtóir Airgeadais

Savings & Loans
Our Voluntary Standards

December 2008

Consultation Paper | **CP35**

The Consultation Process

The closing date for submissions is 30 January 2009.

We welcome submissions from all interested parties. Please make your submissions in writing and, if possible, by email or on disk.

When addressing any issues raised in this Consultation Paper the corresponding chapter and paragraph number should be used to identify the section being referred to. Where the issue being raised is not included in the Consultation Paper please indicate 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 for receiving submissions has passed. For this reason we would ask you not to include 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 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 'Credit Union Code' and send it to:

Consumer Protection Codes Department
Financial Regulator
P.O. Box 9138
College Green
Dublin 2

Email: creditunioncode@financialregulator.ie

Fax: 01 410 4969

Our observations, questions and points for clarification are in blue and suggested amendments are in red. Reference should also be made to the points in our previous submission on CP32.

Our feedback on the specific provisions of CP35 should not be viewed as acceptance of the need for this Code or agreement with it subject to the changes identified. We believe the current approach to the development and implementation of the Code is seriously flawed. Our feedback is for the purpose of assisting the Financial Regulator to understand the nature and operation of our Credit Unions.

Declaration

Following a public consultation process, the Financial Regulator has drawn up these voluntary Standards in consultation with the Credit Union Movement.

While these Standards are voluntary in nature, we have chosen to adopt them to demonstrate to you that we hold you, our members, to be at the core of our credit union and that our core services are driven by your needs.

In developing these Standards we have tried to ensure that members' interests are addressed. The intent of this document is to:

- reinforce the unique and close relationship between our credit union and our members; and
- to set out Standards that will ensure a consistent and high level of service for all credit union members.

The Financial Regulator will maintain a register of credit unions that have agreed to adopt and to be bound by these Standards, which will be available at www.financialregulator.ie.

If a non-statutory or voluntary Code is to be introduced then it should be for each credit union to decide whether or not it wishes to adopt the Code and inform its own members accordingly. We do not see a role for the Financial Regulator and believe a register would not be appropriate.

DEFINITIONS

In this document:

“**advertisement**” means any commercial communication usually paid for by a **credit union**, which is addressed to the **member**, public, or a section of it, the purpose being to advertise a product, **service** or **credit union** the subject of this code, **excluding name plaques and sponsorship material**;
These exclusions are included in the definition of advertisement in the CPC and should equally apply to Credit Unions who engage in local sponsorship.

“**business day**” means any day except Saturday, Sunday, bank holidays and public holidays;
This definition is used for setting response times for complaints and notifications of impending deductions of charges. It is suitable for banks that are open Monday through Friday. If days that a credit union is closed are considered business days, they may have limited time to respond. “Working Days” or simply days (i.e. calendar days) would be more suitable for credit unions. Amendments are suggested to the relevant sections of this document. We note that days are used for advice on maturity of fixed term deposits in Chapter 2 Paragraph 4(iii) and for advice on increases in charges in Chapter 5, Paragraph 4(ii).

“**charges**” means any cost or fee which a **member** must pay in connection with a product or **service** provided by a **credit union**;

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

- a) the provision of a product or **service** to the **member** by a **credit union**, or
- b) the failure of a **credit union** to provide a product or **service** to the **member**;

“**core service**” means savings or loans;

“**credit union**” means a **society** registered as such under the Credit Union Act 1997, (as amended), including a society deemed to be so registered;

“**employee**” means a **person** employed under a contract of **service** or a person otherwise employed by a **credit union**;

“**inducement**” means any gifts or rewards (monetary or otherwise) provided to a **credit union** or its **officers** or **voluntary assistants**.

“**member**” means a member of a **credit union**;

“**officer**” in relation to a **credit union**, includes a chairman (or president), vice chairman (or vice president), treasurer or secretary, a member of the board of directors or of a principal committee or supervisory committee, **employee**, **credit officer** or credit control officer, but does not include an auditor;

The omission of credit officer and inconsistency with the definition under the Credit Union Act 1997 (as amended) was brought to the attention of the Financial Regulator by one of the CP32 Submissions.

“outsourced activity” is where a *credit union* employs another *person* (other than a natural person who is an *employee* of the *credit union* 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;

“service” means **“core service”**.

Product and service are used extensively throughout CP32 and CP35. A definition of product is required.

“terms of business” means the document in which a *credit union* sets out the basis on which it will conduct business with members.

“voluntary assistant” means a *member* of the *credit union* who, although not an officer of the *credit union*, is engaged in any way (but without remuneration), in the operation of the *credit union*.

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CHAPTER 1

General Principles

1. We will act with due skill, care and diligence in your best interests.
2. We will not recklessly, negligently or deliberately mislead you as to the real or perceived advantages or disadvantages of any product or *service* that we offer you.
3. We will ensure that all of our *advertisements* are fair and not misleading.
4. We will employ effectively the resources and procedures, systems and control checks that are necessary for compliance with these Standards.
5. We will seek to avoid conflicts of interest when providing *services* to you.
Should this read products and services?
6. We will not exert undue pressure or influence on you.
7. We will ensure that any *outsourced activity* meets these Standards.
8. We will take reasonable steps to ensure that neither we, nor any of our *officers* or *voluntary assistants*, offer, give, solicit or accept, any *inducement* likely to conflict with any duties of the recipient or of the recipient's employer.

The format of the general principles has been changed from “A Credit Union must....” to “We will.....” This appears to have been done to appease submissions that were unhappy with the former phrasing for a voluntary Code. However, the replacement wording now displays the incongruity of the Financial Regulator speaking in the first person plural for regulated entities.

We also note the ambiguity (but Freudian honesty) in the title of CP35. The cover reads Savings & Loans – Our Voluntary Standards published by the Financial Regulator December 2008. There isn’t a mention of Credit Union or Member on the cover.

When compared with CP32 there are fewer general principles, as these have been dispersed throughout the document. The impact of what remains is greatly lessened. For example why has the principle to comply with the letter and spirit of the Code been dropped?

CHAPTER 2

Provision of Information

1. We will ensure that, in all our dealings with you, we make full disclosure of all relevant material information, including all *charges*, if any, in a way that seeks to inform you. This means that all information will be clear and easily understood, the font size will be clearly legible and key information will be highlighted to you.

(i) We will supply information to you on a timely basis. In doing so, we will have regard to the following:

- a) the urgency of the situation; and
- b) the time necessary for you to absorb and react to the information provided.

This provision is highly subjective and open to challenge. In terms of accountability, who determines the urgency of the situation and the time required, the member or the credit union? If the credit union doesn't respond within the timescale expected by a member, is this provision grounds for complaint.

(ii) Where we intend to amend or alter a *service* that we provide, where that change will have a negative impact on *charges* / rates applied to your savings / loans account, we will give you notice, at least one month in advance, of the amendment being introduced.

The manner in which notice should be given is not specified. Is it direct to each member, notice in the credit union or on its web site, is a public notice in a newspaper sufficient? This provision would seem to indicate that credit unions must provide a month's notice to members where they intend to increase lending rates or reduce deposit rates as both would have a negative impact on rates. The equivalent provision in the CPC (page 12) is far more nebulous and reads "Where a regulated entity intends to amend or alter the range of services it provides, it must give notice to affected consumers at least one month in advance of the amendment being introduced." A similar provision, arguably present in paragraph 6(iii) (CP35 page 9) should apply to credit unions as changes in interest rates are covered in paragraph 3 (CP35 page 8). On that basis the provision above could be deleted in its entirety.

(iii) We will ensure that, where applicable, documents conferring ownership rights are returned to you in a timely manner or are held for safekeeping under an agreement with you. These documents include, but may not be limited to, those provided as security against a loan, e.g. property deeds, share certificates etc.

(iv) We will ensure that, where we intend to record a telephone conversation with you, we will inform you at the outset of the conversation.

(v) We will acknowledge, in writing, the receipt of a properly completed direct debit mandate or payroll deduction mandate from you in relation to a savings or

loan product provided by us. This may take the form of providing you with a ‘tear off’ from the mandate.

(vi) We will ensure that, where we have the means to communicate with you using electronic media, we will have appropriate arrangements in place to ensure the secure transmission of information to you and receipt from you.

(vii) We will provide you with the terms and conditions attaching to any **share**, deposit or loan products, before you enter into a contract for that product, or before the cooling-off period (if any) expires.

Shares relate to the ownership rights of members and the rights and obligations attaching to them are included in the provisions of the Credit Union Act 1997 (as amended) and the Credit Union’s Registered Rules. It is incorrect to treat them as a product in the same way as deposits and loans. To do so, doesn’t recognise the unique structure of credit unions.

2. Statements

(i) We will, at least annually, issue you with statements of transactions on your share and / or deposit accounts with a balance in excess of €20, unless otherwise agreed with you in writing.

Does this mean that a member can opt not to receive a statement or waive his/her right to receive one? Is there a requirement to issue a statement where there has been no member transactions on the account?

This statement will:

- a) include details of the dividend or interest rates applied to the account(s) during the period covered by the statement;
- b) be issued to your **last known nominated** postal address, or be made available to you electronically if you so request and we have the facility to do so; and

Nominated address allows work location to be used as a correspondence address rather than the member’s home address.

- c) where tax is deducted from a dividend or interest paid, provide information on the tax deducted or inform you how you may obtain a certificate detailing the tax paid.

3. Changes in Interest Rates

(i) We will ensure that when we announce a change in interest rates, the notification states clearly the date from which the change will apply.

(ii) Where we change the interest rate on deposit accounts, we will update our information **services**, including telephone helplines and websites as soon as the change comes into effect.

Is this a requirement for credit unions to notify and announce all interest rate changes on savings and loans products? If it is, then the nature of the notification and the notice period needs to be specified. Paragraph 1(ii) is not clear enough. The requirements should be outlined here. Above, it seems strange that there is a requirement to update changes of interest rates on deposit accounts with no mention of interest rates on loans.

What is the position if a credit union currently doesn't provide rate information on its web site to avoid regular maintenance and updating, Is there now an obligation on all credit unions to provide rate information online and to keep it updated?

4. Accounts

(i) We will ensure that any funds lodged by you to your share, deposit or loan Account **in person at the credit union office** are credited to your account on that day. **Many credit unions operate school savings scheme and collections at other offsite locations where it is not practical to upload or input lodgements on the system on the same day. Lodgements are also accepted electronically from members bank accounts (e.g. Standing Orders) where there is a delay due to clearing cycles or receipt of bank statements before processing the lodgements on the credit union's system. Credit Unions can only give the assurance above for lodgements made in person at the credit union office.**

(ii) We will make available to **prospective deposit account holders** and existing deposit holders, **at least annually**, details of the different interest rates, if any, that are being applied to our other deposit accounts.

We believe it is important that members be made aware of the full range of deposit products and interest rates at account opening. Existing deposit holders should be advised of products and rates at least annually through their statements, in the annual report or on the credit union's web site.

(iii) We will ensure that at least 10 days before the maturity of a fixed-term deposit that you hold, which has a minimum term of 1 year, we will alert you about its impending maturity.

Note that days is used rather than "business days".

5. Joint Accounts

(i) Before you open a joint account, which permits full access and use of funds in the account by either named party, we will **warn you of the consequences advise you of the features** of opening and operating such a joint account.

Joint accounts are a legitimate account type. "Warn you of the consequences" is very negative. Credit Unions should "advise you of the features".

(ii) We will ascertain from the account holders of a joint account any reasonable limitations that they wish to impose on the operations of the account, **within the law and the scope of the credit union's operating procedures and systems. Any limitations will be agreed in writing by all parties.**

The credit union should be in a position to operate restrictions or limitations and ensure they are agreed in writing. This would particularly apply to limitations beyond the normal account signatory and monetary limits that might apply.

6. We will ensure that, in all our dealings with you, we make full disclosure of all relevant material information in a way that seeks to inform you.

(i) We will draw up our *terms of business* and provide them to you before we provide you with your first *service*. The *terms of business* will set out the basis on which we provide our *services* and will include at least the following:

- a) the legal name, address, and contact details of our *credit union*;
- b) our regulatory status and the name of the regulatory authority which currently regulates our *credit union*;

- c) a description of the *services* that we provide;
- d) a summary of our *complaints* procedure;
- e) any other information that we consider is important and relevant for you.

We note that reference to participation in a compensation scheme has been dropped from the list of items to be included in the Terms of Business.

- (ii) We will provide our *terms of business* to you as a stand-alone document or as part of our ‘welcome pack’.
- (iii) Where we make a material change to the *services* we provide, and you are affected by that change, we will provide you with details of the change as soon as possible, but no later than the publication of our next Annual Report.

CHAPTER 3

Responsible Lending

(This section applies to the provision of loans only.)

Currently, credit unions operate under severe restrictions when it comes to lending. They service many sectors of society that other lenders do wish to service or will only service at exorbitant rates of interest. There is no evidence that credit unions lend in any way other than responsibly. There have been no credit union lending or overcharging scandals. Credit Unions deserve to be supported in the work they do and not have provisions that are clearly necessary for banks and other lenders applied to them. We would respectfully suggest that any changes affecting lending as outlined below would only take place in the context of a review of credit union legislation promised by Government. Some of the changes suggested throughout CP35 would be costly to implement and adversely affect the services provided to members. The Financial Regulator and Government has a responsibility to show that any proposed changes are necessary, proportionate and justified. This would require a Regulatory Impact Assessment.

1. We will gather sufficient information from you to enable us to provide a loan that meets your needs. This information may be gathered in your application to become a *member* and / or your loan application form.
 - (i) The level of information gathered will be appropriate to the nature and complexity of the loan being sought by you, but must be to a level that allows us to provide a professional *service*.
 - (ii) We will endeavour to have you certify the accuracy of the information you have provided to us. Where you decline to do so, we will note this on your *records*.

2. Based upon the loan application process, we commit to offer loans to you that meet your needs and that we consider you will be able to repay.

- (i) Before providing a loan to you, we will prepare a written statement setting out the reasons why the loan offered is being offered to you. A representative of our *credit union* will sign a copy of this statement, which must be countersigned by you. A copy of this document will be given to you to keep. This statement may be set out in your loan application form or credit agreement.

A “reasons why” statement may be appropriate for lenders offering a range of products at different rates, charges and terms where there is a possibility that the lender due to a profit motive, or otherwise, may not act in the best interests of the borrower. Such circumstances do not apply in credit unions, therefore this provision is bureaucratic and unnecessary. However, if it is the view of the Financial Regulator that the statement is necessary and it is included in the loan application or credit agreement, what form would the statement have to take and would separate signatures be required?

- (ii) We will not offer you a loan unless you have requested it.

What constitutes an offer of a loan? Credit Unions do not issue letters of offer to members. A successful loan application is followed by a signed credit agreement. Is direct marketing of loans considered an offer? Is the existence of a pre-

approved credit limit, where the member is still required to make a loan application, in compliance with this provision?

(iii) Prior to a loan being approved, we will explain to you the effect, if any, of missing any of the scheduled repayments.

(iv) We will not make the **sale approval** of a loan contingent upon you purchasing repayment protection insurance.

The ethos of credit unions is not to SELL products and services but to respond to the needs and requests of their members. There is no sale or letter of offer. Loan applications are either approved or not approved.

3. Debt Consolidation

(i) Where a loan is offered to you for the purpose of consolidating **other** loans or credit facilities **from other lenders**, we will provide you with a written indicative comparison of the total cost of continuing with the existing facilities and the total cost of the consolidated facility on offer, **based on the information about your other borrowings that is available to us. Where this information is not publicly available, we will calculate this comparison based on information supplied by you.**

Credit Unions provide top-up loans which involve the consolidation of the outstanding balance on any existing loan. This provision should only relate to consolidation of debts from other lenders. Even then, the member may not disclose the purpose of the loan as debt consolidation, or provide information on the APR, charges, outstanding balance, surrender value or unexpired terms of other loans. It is also unreasonable to assume that this information is publicly available, as evidenced by the Financial Regulator's Cost Surveys.

4. Arrears and Guarantees

(i) If the terms of your loan agreement change, and the loan has been guaranteed by a third party, we will notify the guarantor in writing.

The Guidance Note on Credit and Credit Control for Credit Unions (October 2007) issued by the Office of the Registrar of Credit Unions, specifies that a new credit agreement is required "where the repayment terms and conditions have been altered from the original or previous terms and conditions". In these circumstances, the guarantee on the original loan is ineffective and the Guarantor should be asked if he/she is willing to provide a guarantee for the rescheduled loan.

(ii) We have in place procedures for handling arrears cases.

(iii) During the loan application process, we will provide you with an outline of the action and remedies, which we may take in the event of default by you.

(iv) If you default on your repayments, we ~~will~~ **may** advise you of relevant credit counselling services and the contact details for such ~~a services. e.g. name and address of a local Money Advice & Budgeting Services (MABS).~~ **This requirement** does not infringe on our legal right to pursue arrears.

This provision does not apply to credit institutions, nor should it. Many credit unions see it as their responsibility to provide financial counselling, budgeting and money management services to their members and they are very effective at doing this. The referral should be discretionary, not an obligation or a requirement. Reference to one named service (e.g. MABS) should be deleted.

5. Warnings

(i) We will ensure that all warnings required by these Standards are prominent, i.e.

that 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*.

The word ‘predominant’ may be better than ‘normal’

(ii) The following warnings will be included in any document, application form or *advertisement* for the specified product or *service*:

Warning for Borrowers: If you do not meet the repayments on your loan, your account will go into arrears. This may affect your credit rating.

Warning for Guarantor: As a guarantor of this loan, you will have to pay off the loan, the interest and all associated charges, if any, if the borrowing member does not. Before you sign this guarantee you should seek independent legal advice.

Warning for Debt Consolidation: This new loan may take longer to pay off than your previous loans. This means you may pay more than if you paid over a shorter term.

This warning should only be required in the event of consolidation of loans from other lenders. It should not apply to top-up loans.

Warning for Deposits: Past performance is not a reliable guide to future performance.
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This provision (CP32 page 27) does not appear in CP35. The warning should only apply to deposit products with terms of greater than one year.

CHAPTER 4

Handling Complaints

The procedure for handling complaints is detailed in the Credit Union's Registered Rules. The timescales for handling and responding should be included as part of this procedure. The timescales need to be extended slightly to take account of the limited opening hours, staffing levels and dependence on voluntary input in credit unions.

1. We will ensure that we act honestly, fairly and professionally in the best interests of our members. In this regard we will ensure that we correct errors and handle *complaints* speedily, efficiently and fairly. We will maintain an up-to-date *record* of all *complaints* subject to the *complaints* procedure. This *record* will contain the details of each *complaint*, our response(s), any other relevant correspondence or *records* and the action taken to resolve each *complaint*.

(i) We will have in place a written procedure for the proper handling of *complaints*. This procedure need not apply where the *complaint* has been resolved to your satisfaction within **10 days** ~~5 business days~~, provided however that a *record* of this fact is maintained. At a minimum this procedure must provide that:

- a) we will acknowledge each *complaint* in writing within **10 days** ~~5 business days~~ of the *complaint* being received;
- b) we will provide you with the name of one or more individuals appointed by us to be the your point of contact in relation to the *complaint* until the *complaint* is resolved or cannot be processed any further;
- c) we will provide you with a regular written update on the progress of the investigation of the *complaint* at intervals of not greater than **30 days** ~~5 business days~~

30 days is to allow voluntary Boards of Directors to make / agree updates and decisions on complaints at their regular monthly board meetings. The Regulator needs to take account of the unique structure of credit unions.

d) should the *complaint* not be resolved to your satisfaction or in accordance with these Standards, we will inform you of your right to refer the matter to the Financial Services Ombudsman, or the District Court where relevant, and will provide you with the contact details of such Ombudsman; and

e) we will advise you in writing, within **10 days** ~~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. We will also inform you of your right to refer the matter to the Financial Services Ombudsman and will provide you with the contact details of such Ombudsman.

(ii) When we receive a verbal *complaint*, we will offer you the opportunity to have the *complaint* treated as a written *complaint*.

CHAPTER 5

Common Standards for all Credit Unions

1. General

- (i) We will ensure that the name of a product or **service**, which we provide is not misleading in terms of the benefits that the product or **service** can deliver.
- (ii) We will ensure that all instructions from you, or on your behalf, are processed properly and promptly and that the date of both the receipt and transmission of the instructions is recorded.
- (iii) We will ensure that, where we accept an instruction from you that is subject to any condition imposed by you, we **will** maintain a **record** of the condition to which the instruction is subject.

Can the Financial Regulator provide examples of conditional instructions relevant to credit unions to justify this provision? To comply with this condition, the credit union would either have to make a voice recording of the instruction or confirm any verbal instruction in writing to the member. Alternatively, credit unions will ask for all such instructions in writing from the member. This would be both burdensome and inefficient. In addition, there are no parameters on the type of instructions to which this provision might apply. We note that the provision itself is conditional on the credit union accepting the instruction that is subject to a condition. We assume that the credit union has the option not to accept an instruction from a member if it is unhappy with the condition attached to it.

- (iv) We will not charge you a fee for any optional extra(s) offered in conjunction with a product or **service**, unless you have positively indicated that you wish to purchase the optional extra(s).

Does this provision debar credit unions from deducting the cost of death benefit insurance from savings / dividend unless the member opts to purchase this optional extra? Is a decision of members in general meeting making the product and deduction mandatory, binding on all members?

2. Access

- (i) We will not deny any **person member** access to **membership of our credit union services** within the parameters of the Money Laundering guidelines.

Unlike banks, only members can avail of services in credit unions. Once admitted, members rights to access services is governed by law. The legislation has provisions in relation to non-exclusion and non-discrimination.

3. Unsolicited Contact (Coldcalling)

- (i) When contacting a **member** we will only make unsolicited contact with you, by way of a personal visit or telephone call, if:
 - a) we have, within the previous twelve months, provided you with a product or **service** similar to the purpose of the unsolicited contact;
 - b) you hold a product, which requires us to maintain contact with you in relation to that product;
 - c) you have given your consent in writing to being contacted in this way;
- (ii) Unsolicited contact, made in accordance with these Standards, will only be

made between 9.00 a.m. and 9.00 p.m. Monday to Saturday (excluding bank holidays and public holidays), unless otherwise requested by you.

(iii) When making an **unsolicited** contact in accordance with these Standards, a representative of our **credit union** will immediately and in the following order:

- a) identify himself or herself by name, the name of our **credit union** on whose behalf he/she is calling and the purpose of the contact;

Several submissions on CP32 expressed concern about this section and its impact on debt recovery activities. Our interpretation of the provision is that contact with members for debt recovery purposes is covered by 3(i) b) above.

- b) inform you that the call is being recorded, if this is the case; and

- c) establish if you wish the call to proceed; if not our representative will end the contact immediately.

(iv) We will abide by a request from you not to make an **unsolicited** contact with you again, **with the exception of contact required in connection with an existing product. This provision is reasonable in the context of sales calls (note credit unions don't sell) but it also means that a member can request not to be contacted by telephone or visit in respect of an outstanding debt. 3(i) (b) could include an exception clause.**

(v) We will not reach a binding agreement with you on the basis of an **unsolicited** contact alone.

4. Charges

CP35 and this provision relates to core services. We note that current accounts are exempt under CPC. What is the position for credit unions operating money transmission accounts (akin to bank current accounts) where members incur a flat fee and/or transaction charges? Such services require regulatory notification under Section 48 of the Credit Union Act 1997 and are therefore not core services.

Where applicable,

(i) We will provide you with details of all **charges**, including third party charges, which we will pass on to you, prior to providing a **service** to you. If these **charges** cannot be ascertained in advance, we will advise you that such **charges** will be levied as part of the transaction.

(ii) If you are affected by any increase in **charges**, or the introduction of any new **charges**, we will advise you of this increase at least 30 days in advance of the changes taking place.

(iii) In each statement provided to you, we will detail all **charges** applied during the period covered by that statement.

(iv) Where **charges** are accumulated and applied periodically to your account(s), we will advise you, at least **10 days business days** before the deduction of **charges** and provide a breakdown of these **charges**, except where these **charges** total an amount of €20 or less.

We note the reference to days in (ii) and business days in (iv). Days is more suitable for credit unions.

5. Errors

(i) We will speedily, efficiently and fairly, correct errors in any charge or price levied on, or quoted to, you in respect of any product or **service** that is the subject of these Standards.

(ii) Whether you are a current or former **member** of our **credit union** who has been

affected by a charging or pricing error, **once discovered and quantified** we will notify you in a timely manner of any material charging or pricing error that has impacted negatively on the cost of the *service* or the value of the product provided.

The timeliness should be related to the discovery and quantification of the error as it relates to the individual member.

CHAPTER 6

Advertising

This whole section reverts to “the credit union must....” rather than “we will.....”. This makes the document incoherent. It is difficult to ascertain the rationale for many of the requirements as they are perceived to relate to credit unions, therefore we are unable to comment on them. We question their necessity and remain to be convinced that they are justified.

General Requirements

1 An *advertisement* must not influence a *member's* attitude to the advertised product or *service* or the *credit union* either by inaccuracy, ambiguity, exaggeration or omission.

2 The name of the *credit union* publishing an *advertisement* must be clearly shown in all *advertisements*.

An advertisement is defined as a commercial communication usually paid for by a credit union. Groups of credit unions engage collectively in local and national advertising. Such advertising can be generic or relate to a product with common pricing. It would be impractical for the names of all credit unions to appear on the advertisement.

3 The nature or type of the advertised product or *service* must be clear and not disguised in any way.

4 An *advertisement* must be designed and presented so that any reasonable *member* knows immediately that it is an *advertisement*.

Commercial features are paid advertising but it is not certain that a ‘reasonable member’ would be aware of this. In common with other providers, can credit unions advertise by way of commercial features?

5 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.

6 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*.

7 An *advertisement* that uses promotional or introductory rates must clearly state the expiry date of that rate and provide an indication of the rate that will apply thereafter. This requirement does not apply to *advertisements* for loans where the promotional rate is for a period that does not exceed 1 year.

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 forecast contained in an **advertisement** must not be misleading at the time it is made and any assumptions on which it is based must be reasonable and stated clearly.

10 An **advertisement** must not be misleading in relation to:

a) the **credit union's** independence or the independence of the information it provides;

What does this mean?

b) the **credit union's** ability to provide the advertised product or **service**;

c) the scale of the **credit union's** activities;

d) the extent of the resources of the **credit union**;

e) the nature of the **credit union's** or any other **person's** involvement in the advertised product or **service**;

f) the scarcity of the advertised product or **service**;

g) past performance or possible future performance of the advertised product or **service**.

11 An **advertisement** that promotes more than one product must set out clearly the different features of each product in such a way that a **member** could distinguish between the products.

12 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**.

13 A recommendation or commendation may not be used without the consent of the author and, if the author has received any payment from the **credit union** for the recommendation or commendation, the **advertisement** must state that fact.

14 Comparisons or contrasts must be based either on facts verified by the **credit union**, 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.

15 It is not necessary to display the required warnings set out in this chapter if the **advertisement** does not refer to the benefits of a product but only invites a **member** to discuss the product or **service** in more detail with the **credit union**.

Lending

16 Where an **advertisement** includes an annual percentage rate, the **advertisement** must clearly state if the underlying interest rate is fixed or variable.

17 An **advertisement** for a loan for a specified term must, if displaying the annual percentage rate and the term, display the total cost of credit.

18 **Advertisements** for the consolidation of two or more debts must, where sample figures are offered in the **advertisement**, indicate the difference between the total cost of credit of the consolidated loan and the total cost of credit of the individual debts that are the subject of consolidation.

Savings & Investments

19 Where an interest rate for a deposit account is displayed in an **advertisement**, it must clearly state the following:

- a) whether the rate quoted is variable or fixed, and if fixed, for what period;
- b) the relevant interest rate for each term quoted together with the equivalent annual rate for each rate quoted, and each rate should be given equal prominence;
- c) the minimum term and / or minimum amount required to qualify for a specified rate of interest, if applicable; and
- d) if any tax is payable on the interest earned.

20 Information about the past performance of the **advertised** product or **service** or the **credit union** must:

- a) be based on a product similar to that being advertised;
- b) not be selected so as to exaggerate the success or disguise the lack of success of the advertised product or **service**;
- c) state the source of the information;
- d) be based on actual performance;
- e) state clearly the period chosen, which must be related to the term of the product being advertised; where that term is open-ended, the longest term available should be included;
- f) include the most recent period;
- g) indicate, where they arise, details of transaction costs, interest and taxation that have been taken into account; and
- h) state, where applicable, the basis upon which performance is quoted.