

Consultation on Review of Consumer Protection Code

A Citizens Information Board Submission

1. Introduction

The Citizens Information Board (CIB) welcomes the opportunity to comment on the *Consultation Paper on Review of Consumer Protection Code*. The stronger focus on protecting vulnerable consumers in the Revised Code is significant and welcome.

The primary function of the CIB is the provision of information, advice and advocacy in the broad area of social services. The agency has a statutory role to assist and support people, particularly those with disabilities, in identifying and understanding their needs and options and in accessing their entitlements to public and social services. The CIB carries out its role by supporting the development of the nationwide network¹ of Citizens Information Services (CIS); (ii) the Citizens Information Phone Service (CIPS) and (iii) the Citizens Information Website (www.citizensinformation.ie). The CIB, since mid-2009 has responsibility for the nationwide Money Advice and Budgeting Service (MABS)². The Board also supports community and voluntary disability advocacy projects and is in the process of setting up a national disability advocacy service. The CIB provides services directly to the public in some instances but works mainly with the delivery partners above.

The CIB has a range of information publications relating to rights and entitlements (see www.citizensinformationboard.ie). Of particular relevance to the Consumer Protection Code is the publication, *Where to Complain: A Guide to Enforcement and Redress Bodies*.

Over 700,000 people use Citizens Information Services and services deal with over a million queries annually. Many of the queries from the public, not surprisingly, relate to the economic downturn and include issues relating to indebtedness and difficulties with loan repayments. MABS has experienced an increased demand for its services. In 2010, 21,653 new clients were seen by MABS staff across the country, an increase of 13.4% on the same period in 2009. The MABS helpline received 28,663 calls in 2010, a 15.4 % increase on 2009 figures.

The CIB has specific responsibility for supporting the provision of advocacy services for people seeking social services and/or asserting their rights, including consumer rights. Advocacy services, in this context, can range from helping people to understand information to helping them to seek redress.

In addition to the provision of information, advice and advocacy services, the CIB also has a role to: support, promote and develop the provision of information on the effectiveness of current social policy and services and to highlight issues which are of concern to users of those services. CISs and CIPS routinely report queries with a social policy dimension to the CIB in the form of Social Policy Records (SPRs), i.e., queries which refer to a situation where a citizen was unable to get a service

¹ There are 42 CISs providing information, advice and advocacy through 268 locations nationwide

² MABS are involved in advising and helping people in debt and financial difficulties and making representations on behalf of individual clients with creditors and with statutory agencies. There are 53 MABS Services operating from 60 offices and outreach clinics nationwide.

commensurate with need, including inadequate information from statutory agencies or financial institutions and inadequate redress mechanisms. There is evidence of particular difficulties for vulnerable groups, in particular, people experiencing over-indebtedness, older persons, people with disabilities, Travellers, and immigrants.

During the past two years, CISs, CIPS and MABS have experienced a substantial increase in the number of queries relating to over-indebtedness. People who have to borrow to survive on a daily basis and those trying to repay loan instalments on low income both face significant challenges in avoiding over-indebtedness.

This Submission makes some general points about the need to ensure that all consumer information is accessible, palatable and transparent. It also refers to the crucial role of independent advocacy in ensuring that the rights of vulnerable people are fully protected. Some of the specific questions raised in the Consultation Document are addressed based on the feedback from the CIB service delivery partners.

2. Access to Information

The complex sets of rules and procedures associated with financial products may leave the individual consumer in a weak and vulnerable position *vis a vis* the provider. People may have language, literacy or cultural difficulties and/or difficulties associated with poverty and social exclusion. It is also the case that many people can become overwhelmed and de-skilled by the vast amount of information associated with the terms and conditions seemingly inherent in financial products and services.

When faced with a need for information about financial products and services, it is likely that most people will choose to talk to another person. However, while talking to someone is often more effective than getting printed information, people forget much of what they are told. Printed information, on the other hand, has the advantage of being permanent. However, printed documents are frequently discarded or lost or become out of date. Therefore, providers of financial services and products should ensure that information is available at the point of contact/sale and that there is an appropriate balance between the various means of disseminating information – online, print and face to face.

Some people, including in particular those with disabilities, require additional assistance when faced with new decisions in respect of their financial choices. They may not have the confidence or skills necessary to critically assess information. They may be fearful and overwhelmed and need another person to steer them in the right direction. This requires that as much attention is given to people's ability to apply the information to their own individual circumstances as to its provision. While such assistance can be provided by relatives and friends and by voluntary/community organisations such as CISs and MABS, there is a primary responsibility on the agency providing the service to ensure that people are given whatever assistance they require to distil and comprehend information.

The CIB identifies four groups of people who are likely to be vulnerable and in need of additional consumer protection in the provision of finance-related information.

- Low-income citizens experiencing indebtedness
- Older adults with reduced or impaired coping capacity

- Adults with intellectual disabilities
- People with mental health difficulties who experience episodes of incapacity

3. Accessible Information

The way in which information is presented is of considerable importance in ensuring that there is absolute clarity and transparency on the part of the provider of financial products and services. In order to ensure that information is accessible to all groups, all providers of financial products and services should develop systems for ensuring that information is accessible. This requires that information is available in different formats, including Braille, large print or on CD³.

In the provision of information services to people with disabilities, there is a long tradition of engaging people with disabilities themselves in determining the most appropriate delivery methods for different categories of people with disabilities because of their greater understanding of the issues involved. This principle should underpin the information policies of all providers of financial services and products and should be referred to in the Consumer Protection Code.

People involved in selling financial services and products should receive training⁴ in:

- Communicating with people with different types of disabilities
- Developing an anti-ageist approach
- Dealing with people who have acquired hearing/sight difficulties in older age
- Facilitating people who may require additional time to absorb and understand the information provided
- Using a *Checklist* to ensure that all aspects of the product/service being offered are clearly understood by the consumer

4. Advocacy

Stated generally, advocacy may be regarded as having two key components:

- The empowerment of people to ensure that they can articulate their needs and have their voices heard, either through themselves or through someone acting on their behalf
- The safeguarding of vulnerable individuals, i.e. people who by themselves are unable to assert their legal and social rights and access their entitlements

The CIB believes that consideration should be given to including provision in the Code for people having access to an independent advocacy service. The role of independent advocates is particularly important in ensuring that the consumer is empowered to make informed choices appropriate to his/her financial and accommodation needs. In the case of people with reduced capacity, the availability of an independent advocate would facilitate the development and enhancement of supported decision-making which is provided for in Article 12 (3) of the UN Convention on the Rights of Persons with Disabilities and which is noted as a

³Reference to *Access to Information for All: Guidelines on Removing Barriers and Improving Access to Information for Everyone* (Citizens Information Board) http://www.citizensinformationboard.ie/publications/social/downloads/Accessible_Information_For_All.pdf; the National Disability Authority, *Code of Practice on Accessibility of Public Services and Information provided by Public Bodies* www.nda.ie and NALA publications (<http://www.nala.ie>).

⁴ This training may have to be accessed from other sources.

requirement in the Heads of Bill for the proposed Mental Capacity Legislation in Ireland.

5. Social Inclusion and Access to Financial Services

It is widely recognised that access to financial services is a key component in social inclusion⁵ and that some people, e.g., welfare dependent families and /or indebted households, may experience difficulties in securing access to financial services, including basic banking services. People who find themselves excluded from the range of financial services and products generally available to consumers are likely to be further marginalised in the current economic climate. The Consumer Code should acknowledge that reality and ensure that as far as possible people, for example, those with repayment arrears, are not denied a basic banking and short-term credit facility.

6. Redress and Complaints Mechanisms

The availability of transparent and easily accessible redress and complaints mechanisms is an important component of all financial products and services. The provisions set out in the revised Consumer Protection Code (Chapter 11), should ensure a more efficient response by financial providers to errors. However, vulnerable consumers may need assistance with:

- (i) How to complain and where to complain
- (ii) Paperwork and documentation
- (iii) Understanding their rights as consumers in respect of specific financial products/services
- (iv) Whether or not they would need the help of an advocate
- (v) Whether or not they need to seek legal advice
- (vi) If and how a complaint or error has been dealt with

7. Information and Communication Policies

All providers of financial and credit services should be required to have in place an information and communications policy which would include Guidelines on the following:

- (i) How to address any specific communication needs the consumer may have
- (ii) Ascertaining whether the individual would like to involve an independent advocate
- (iii) Protocols for communicating with vulnerable customers
- (iv) Protocols for recording the core content of conversations between staff/agents and the consumer and for providing this information to the consumer
- (v) Protocols for applying a *Checklist* to ensure that all aspects of the service/product being offered are fully understood by the consumer

⁵ Combat Poverty Agency (2006), *Financial Exclusion in Ireland*.

8. Consultation Questions

1. Do you agree with the indicative list of circumstances that could render a consumer vulnerable that have been included in the definition of 'vulnerable consumer'?

- The list might make specific reference to 'people with poor literacy skills'.
- As a general principle, the concept of vulnerability should be applied to individuals rather than to categories of people and each individual should be assessed in his/her own right irrespective of whether or not s/he is deemed to be in one of the vulnerable groups listed
- It should also be noted that people may be vulnerable at particular times because of life events such as bereavement, serious illness, loss of a business or marriage/relationship breakdown
- There is a need to acknowledge that people with reduced mental capacity have varying degrees of competency and to make provision for the concept of supported decision-making (see Section 4 above)

2. Do you think that the inclusion of a definition for a vulnerable consumer and the proposals and amendments outlined above will be effective in improving the level of care afforded to vulnerable consumers during the sales process? If not, please outline any further measures you think are necessary.

- Care needs to be taken to ensure that consumers are not discriminated against and excluded as a result of the initial categorisation of people into a particular group without full consideration of the individual's situation and capacity.
- More is required in the area of ensuring that the information provided is accessible, particularly for people with disabilities (see Section 3 above and Appendix 1)
- Effective implementation processes, structures and staff training modules are required in individual institutions to ensure the protection of vulnerable consumers

4. Do you agree with our proposal that the SFS should be used when assessing whether a mortgage is affordable for a consumer

- The Standard Financial Statement (SFS) clearly has much merit. However it needs to be implemented with some flexibility to cater for the variety of situations that exist, particularly in the case of those deemed to be 'vulnerable' consumers.

5. Do you think the proposed requirements in relation to the provision of information about products are adequate? If not, please set out how you think the requirements could be strengthened.

- Information should be presented in a range of formats to ensure that it is accessible to individuals with hearing difficulties, visual impairment and those with language or literacy difficulties and those who have an intellectual disability or impairment.
- Information should be provided both verbally and available in written form
- Provision should be made for offering the services of an independent advocate. This service should be offered in all situations where there is any question that the consumer is vulnerable and/or does not fully understand the service/product being offered.

6. In light of the developments at European level, do you think we should introduce requirements in relation to the presentation of information on investment products in a short 'Key Facts' Document?

- A 'Key Facts' Document on investment products should be an essential requirement for all providers. This should be written in Plain English and in a clearly understood format.

7. Is there any specific information that should be provided, either in a 'Key Facts' Document or otherwise, in respect of other types of product?

- The specific nature of the product being offered
- The potential risks and benefits, including the possibility of unforeseen developments
- Advantages, if any, over similar alternative products
- What the consumer may realistically expect (with particular references to any changes in conditions that might evolve)
- The name and contact details of a person that can be contacted if the consumer requires clarification on any aspect of the service
- The name and contact details of an independent advocate
- Details of complaints/redress mechanisms
- A Checklist

10. Do you think these requirements continue to be appropriate?

- The requirements setting out the information to be provided in relation to PRSAs are important and their inclusion in the Revised Code is to be very much welcomed.

12. Is the consumer information listed in Chapter 4, Provision 32 useful when identifying a target market?

- As already stated, this information should be provided in Plain English, easily understood and accessible formats

- Potential clients should be afforded as much opportunity as they need to ask clarifying questions.

13. Do you agree with the requirements outlined in Chapter 3, Provision 45? How often do you think that reviews of products should be undertaken?

- For customers deemed to be vulnerable at the time the product/service was purchased, an initial review should take place within one year and at 2-year intervals subsequently.

15. Do you agree with this proposal? If not, what specific issues arise in respect of appointments from entities other than insurance providers?

- The proposal that an appointment from any product producer may not be terminated based solely on target levels of business introduced is to be welcomed.
- Vulnerable customers are at a particular risk where there is any possibility of a conflict of interest on the part of the provider. The involvement of an independent advocate, as already referred to, would serve to ensure that the interests of both consumer and provider are better protected.

16. Do you agree with the proposal that a requirement to disclose remuneration from product producers should be imposed in circumstances where there are currently no requirements in place in this regard?

- Full transparency should be an integral component of any package. Therefore, the consumer should know or be able to easily find out the amount of remuneration associated with the successful sale of a product to him/her.

17. Do you think this approach to errors handling will reduce the incidence of errors and lead to an improvement in the way in which regulated entities handle errors involving consumer detriment?

- A key component of consumer protection is, as stated, preventing and eliminating errors. In this regard, the way errors are reported, documented and analysed is highly important. The reporting of and dealing with errors should, therefore, feed into a systematic and thorough process of composite analysis and policy response on the part of individual providers.
- The potential role of independent services in supporting people to lodge and process complaints should be referred to in the Code.

22. Do you think the restriction on the sale of products or services to protection policies only and the prohibition on the sale of protection policies on a first unsolicited contact will enhance consumer protection?

- The adequacy of this restriction should be strengthened in order to ensure that a person deemed to be vulnerable does not subscribe to a product that

s/he does not want.

23. Do you agree with the proposals in relation to arrears handling? If not, please set out your suggestions on appropriate measures.

- Arrears handling processes should be standardised across all financial entities.
- The Consumer Protection Code should set out a Standardised Protocol for Dealing with Arrears.
- Each provider should be required to develop a Service Code of Conduct based on the Standardised Protocol.
- The role of MABS should be clearly explained to consumers if they are being referred thereto by financial providers for advice and assistance. Such referrals should only be made if appropriate.

24. Do you agree with the proposal to prevent the closure of accounts in arrears cases?

- As already stated, access to financial services is an essential component of social inclusion. Therefore, the proposal to prevent closure of accounts is important. However, the situation must be monitored to ensure that closure does not take place de facto through the withdrawal of account facilities.

25. Do you agree with our definition of 'key information'?

- Key information provided should include:
 - The specific nature of the product being offered
 - The potential risks and benefits, including the possibility of unforeseen developments
 - Advantages, if any, over similar alternative products
 - What the consumer may realistically expect
 - The name and contact number of a link person
 - The name and contact number of an independent advocate
 - A Checklist

26. Do you think that we should go further than proposed? In particular, we would welcome your views with regard to the usefulness of small print in advertisements.

- The key issue from a consumer perspective is that all essential information about a product/service – cost, risks, value, compared to other similar products/services – should be as clear and transparent as possible in advertisements. Additional information provided in Small Print should, therefore, be used to supplement the core/essential information in the main text.

27. Do you think this proposal will provide clear and useful information for consumers? Do you think the method of presentation is suitable?

- The proposal for more clarity and transparency on Credit Card Statements would appear to enhance clarity and transparency and thereby enhance the rights of the consumer.

Inclusion of the Recommendations from the Review of the Intermediary Market

The CIB broadly welcomes the inclusion in the Code of the *Recommendations from the Review of the Intermediary Market*. The recommendations relating to transparency about the extent to which intermediaries are or are not independent are particularly welcome as are the recommendations in respect of disclosure of any remuneration associated with successful sale of a product.

6. Concluding Comment

As a general point, the CIB notes the challenge faced by the majority of citizens/consumers in understanding the complex set of legislative and regulatory provisions and related protections relating to financial services and products. The Consumer Protection Code should acknowledge that consumers may be at a clear disadvantage *vis a vis* the financial institution and have difficulty in applying the *caveat emptor* condition. This is particularly the case with vulnerable customers.