



Consumer Protection Codes Division
Central Bank of Ireland
PO Box 559
Dame Street
Dublin 2

22nd July 2011

Dear Sir/Madam

Re: Consultation Paper 54 – Second Consultation on Review of the Consumer Protection Code

We welcome the opportunity to provide comments and recommendations to the Central Bank of Ireland on the proposals in the latest consultation paper. In addition to the Irish Banking Federation's submission which we fully support, we would like to draw to your attention to certain provisions which are of particular concern to us.

We understand what the Central Bank of Ireland is trying to achieve, and the desire to protect consumers is an objective we support wholeheartedly. Protecting consumers is particularly important in the type of difficult economic conditions we are experiencing now, when an increasing number of customers are likely to face potential financial difficulties. However we believe that a number of the measures proposed, which are certainly well intended, would have potential unintended consequences on customers.

Chapter 8 – Arrears Handling

We believe the measures in Chapter 8 – Arrears Handling will:

- Increase the overall level of arrears, interest and fees payable as a result;
- Increase the number of customers going into default;
- Increase the number of complaints – for example from customers who have gone into default without being aware of it; and
- Increase likelihood of uncooperative customers evading their responsibilities when dealing with their debt.

8.14 - Communications

Customers go into arrears on unsecured lending, such as credit cards, for a variety of reasons. When this happens, the primary purpose for contacting a customer is in their interests in order to bring long term resolution to the arrears situation; indeed this is something which is required by the Code (provision 8.3) Customer profile and preference often determines the most effective method of communication to ensure resolution of customer arrears. As such, currently we use a variety of channels (approved by each individual customer), to try and make contact with customers.

We note the rationale for introducing some of the measures in CP54 is to 'provide consistent protections for consumers who are experiencing difficulties with loan repayments'. However mortgages are very different to unsecured lending, including credit cards. These differences need to be recognised in this Code whilst drawing on the best practice elements of the mortgage arrears code. For example, in terms of a mortgage, the impact of sending a letter to a customer or leaving a message on their answer machine is far more likely to gain a response than a similar contact in

relation to an unsecured debt, as the implications of not repaying a mortgage are potentially far greater.

When we are able to contact customers, possible resolutions in a serious arrears situation include settlements and reduced payment programmes. Either approach is in the customer's best interests in order to bring closure to the issue. We have a process today where these outcomes can be considered by our customers; however, restricting our contact attempts with these customers, also restricts our ability to convey these options to them and this is clearly detrimental to their interests. Currently, more than half of our debt resolution outcomes require more than three contact attempts. The proposed restriction is likely to increase the number of customers who fall outside of the resolution population and may have a detrimental impact on the credit record of these customers, potentially leading to further arrears, and increased interest and fees.

In addition we believe that overall the measures contained in this section of the Code will increase the number of customers in arrears. This will make it more difficult for customers to obtain credit cards, loans, mortgages and other forms of financial products in the future. When a customer goes into arrears, their status is reported to the credit bureaux and will remain on customers' records, possibly affecting their ability to obtain credit for some time. Currently we make every effort to work with customers to postpone, and often head off altogether, this adverse reporting.

The limit in of three attempts to initiate contact in a calendar month (section 8.14), also risks causing detriment to those customers who have missed payments (or paid insufficient amounts) through lack of attention to their obligations. If we are unable to reach those customers, the situation could worsen for them rather than being addressed quickly and easily. Examples include customers with two accounts who pay the wrong account in error, leading to one account going into arrears and the other remaining up to date due to overpayment. Another example is customers who have annual subscriptions on their credit card accounts that they forget about.

Whilst many customers are prepared to address their financial difficulties and attempt to resolve the situation when they have fallen into arrears, unfortunately it is the case that some customers fail to cooperate. Placing restrictions on the amount of times we can attempt to contact these uncooperative customers, increases the risk of their uncooperative position continuing and we believe undermines the intention of sections 8.3 and 8.4 of the Code and the importance of customers engaging with their lender. Under the heading, Enhanced Consumer Protection 1.6, the CBI have stated that *'Once implemented, the revised Code will provide for a range of new and expanded consumer protection benefits over and above the protections contained in the current Consumer Protection Code, including: further protection for consumers with arrears through the inclusion of arrears handling provisions for loans, separate to those covered in the Code of Conduct on Mortgage Arrears, in order to provide consistent protections for consumers who are experiencing financial difficulties with loan repayments.* However the Code of Conduct on Mortgage Arrears (CCMA) makes reference to different provisions for uncooperative customers while the proposed Code does not.

We feel strongly that the provisions in section 8.14 of the Code should include a distinction between cooperative and uncooperative customers, as defined in the CCMA. This would benefit customers in terms of helping establish a relationship with their lenders (as emphasised in section 8.6 (f) where borrowers are encouraged to understand the importance of engaging with their lenders). This is also reinforced in section 8.4 where an emphasis is placed on communication with the customer to understand the reason why the arrears have occurred.

For these reasons we believe that section 8.14 regarding limits on unsolicited contacts per calendar month should apply to cooperative customers, defined in a similar way as in the CCMA, For



customers who are not cooperating, attempts to contact should be proportionate and not excessive (as per section 8.13). Adopting the distinction between cooperative and uncooperative customers would increase the positive impact of the provisions of the Code. Consumer protection would be achieved by preventing excessive contact and resolution of the arrears situation in a proportionate manner, with the prevention of defaults and ultimately a better credit record for the customer.

An unintended consequence of limiting contact attempts with customers may be the increased use of alternative methods of debt recovery, in particular debt recovery litigation. We do not believe it is in the interests of either the individual customer or the public interest to limit lender discretion in dealing with customers, with the result that this may increase litigation on the part of lenders.

4.25 Information about Products

We are concerned that the requirements proposed under 4.25 will result in consumers being inundated with unnecessary pre-sale information. For example, the provision currently states that: *'Before offering, arranging or recommending a product, a regulated entity must provide information to the consumer in writing about the main features and restrictions of the product to assist the consumer in understanding the product'*. Customers may not be interested in buying a product but the Code does not allow us to determine this before we send out the information required in 4.25. In a telesales environment, we feel that consumers should be given basic information and if they express an interest in the product, then information as specified in 4.25 should be sent, however currently the provision would not allow us to even offer a product to the consumer prior to the documentation being sent to them.

Chapter 9 – Advertising

A number of the proposed requirements in Chapter 9 are likely to hamper the ability to advertise effectively and competitively. It is suggested that as in the case of consumer credit advertisements governed by the CCR the requirements in relation to the display of the Representative Example that this be 'clear concise and prominent' might also be used as the benchmark for format requirements of warning notices (9.12)

In addition, the proposed requirements in 9.1 may hamper any effective web based banner advertising as the regulatory disclosure would take up the majority of the banner. We suggest that in this instance it could be clarified that the existence of the regulatory disclosure statement in the substantive part of the advertisement on the click through option on the banner should suffice.

General

In addition to all of the points made above, we would welcome some further clarification around the proposed Code. As worded currently, we believe there is some ambiguity around how the provisions could be implemented and, as such, some further explanation is required. Specific queries are set out in the Annex to this letter.

Alternative Approach

We believe there are alternative ways of meeting the consumer protection aims of the Central Bank and honouring the principles of the Code for the benefit of the consumer. As an alternative to the proposed provisions in the Code we would welcome the Central Bank's views on the following:

- Regulated firms should be able to attempt to contact a customer within reasonable parameters and frequency until such a time as contact leads to disclosure of the customer's circumstances and, as a consequence, ability and arrangement to repay (where appropriate).

- Where multiple phone numbers have been provided by the customer as contact options, then an attempt on each of these numbers should collectively, count as one attempt rather than multiple attempts. The reason for this is that customers has provided these contact details and may in fact have changed their preferred telephone contact details without updating the financial institution.
- The objective of the contact with the customer is to seek to agree an approach going forward and to outline a solution in terms of actions for both parties, including agreement on next contact time lines and updates required.
- If contact is not established with the customer at the agreed date and time as outlined in the previous conversation, firms are able to attempt to contact the customer within reasonable parameters and frequency. Contact attempts should be proportionate and not excessive.
- Where a customer advises a firm not to contact them by phone, the firm respect their request and correspond instead with a proviso that telephone contact may re-commence if an adequate response to written correspondence is not forthcoming within a reasonable time.
- Internal controls around frequency of contact to be established and self monitored. These controls to be shared with the regulator.

We feel very strongly on these issues and would like to work with you to honour the fundamental principles of the Code in the best interest of our customers, which we feel could be improved in the underlying rules of the Code as it stands. We would welcome an opportunity to discuss the points made in this letter with the Central Bank and are available at your convenience should you like to discuss.



Bryan Kelly

Business Finance Officer

MBNA Europe

Copy: Fergus McTiernan



Specific Queries

- Provision 3.35 of the Code states: A *regulated entity* may only make a personal visit or telephone call to a *personal consumer* between 9.00 a.m. and 7.00 p.m. Monday to Friday (excluding bank holidays and public holidays), except where:
 - a) The purpose of the contact is to protect the *personal consumer* from fraud or other illegal activity, or
 - b) The *personal consumer* requests, in writing, contact at other times or in other circumstances, or
 - c) The contact is permitted at other times under the Consumer Credit Act 1995.

There is some confusion on whether this now only applies to post CCR agreements due to the disapplication of section 46 of the CCA 1995 and the possibility that this may now mean having different calling hours for customers depending on when the credit agreement was completed.

- The Code emphasises the importance of the lender discussing and agreeing an approach with the customer (8.3) but then limits the degree to which this engagement can be facilitated (8.14). This does not appear to be consistent and we would welcome clarification on which provision takes precedence.
- Extra traffic will be put through MABS as a result of the Code, we would welcome further information on the measures which will be put in place to deal with these queries in a timely manner.
- The code mentions that contact should be 'proportionate and not excessive' (8.13). We would welcome clarification on what is meant by this. The wording seems to indicate that there is a level of subjectivity to the number of contact attempts, however the Code (8.14) seems to dictate otherwise
- We believe the provisions of the Code will lead to a significant number of cases where there will be no contact with the customer whatsoever before a default is registered. If we arrive at a scenario where no contact has been made with customers and a default is imminent, it is not clear whether the expectation is that we continue to adhere strictly to the Code or make all efforts possible to contact the customer before the default is registered. We would welcome further clarification on this.
- We expect the provisions of the Code to lead to increased complaints from customers stating that we did not take enough action in preventing them acquiring a default. We would welcome clarification from the Central Bank on how such situations will be viewed and the approach the Central Bank intends to take.