



national consumer agency
gníomhaireacht náisiúnta tomhaltóirí

putting **consumers** first

National Consumer Agency submission to the Central Bank of Ireland's second consultation paper: 'Additional Consumer Protection Requirements for Debt Management Firms'

1. Introduction

1.1. The National Consumer Agency ('Agency') welcomes the opportunity to comment on the Central Bank of Ireland's ('Central Bank') Consultation Paper 82¹ - '*Second Consultation on Additional Consumer Protection Requirements for Debt Management Firms*' ('CP82'). This response builds on the Agency's submission of February 2014² to Consultation Paper 75³ - '*Consultation on Additional Consumer Protection Requirements for Debt Management Firms*' ('CP75'). The Agency is happy to comment in an effort to ensure strong regulations are imposed and robust protections are in place for consumers.

2. General Observations

2.1. Purpose of Consultation

2.1.1. The Agency notes the information provided under Section 3.2 of the paper and understands the Central Bank is no longer seeking responses, on that which is contained, under Section 1 of the paper. Despite this, there are some issues that the Agency feels have not been addressed adequately by the Central Bank, which it would like to take the opportunity to revisit.

2.1.2. While the Agency is aware that it may not be possible to respond to each individual submission on CP75, it is noted that CP82 does not confirm how many debt

¹ <http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP82%20Second%20Consultation%20on%20Additional%20consumer%20protection%20requirements%20for%20debt%20management%20firms/Consultation%20Paper%2082.pdf>

² <http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP75/CP75%20%20NCA%20Response.pdf>

³ <http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP75/Consultation%20Paper%20CP75%20FINAL.pdf>

management firms are currently in operation in Ireland or the number of consumers seeking assistance from such firms. The Agency reiterates its proposal that once the new regulatory regime is in place, this information should be collected, collated and monitored, to help in an accurate assessment of this growing market.

2.2. Section 1.1 - Scope of Debt Management Services

2.2.1. Under Section 1.1 of CP82, the Agency notes that ‘the services covered by the legislation, mainly comprise debt advice and negotiation and do not include the holding of client funds or making of payments on behalf of a consumer.’ The Agency therefore seeks clarity in relation to the inclusion of requirement 13.2(e) which states, *“A debt management firm must not provide debt management services to a consumer unless the consumer has signed an agreement which clearly specifies - whether or not the debt management firm is authorised to hold client funds and make payments on behalf of the consumer to his/her creditors”*.

2.3. Section 1.2 - Advertising of Debt Management Services

2.3.1. Under section 1.2 of the paper, the Agency welcomes the inclusion of the risk warning cautioning the consumer that they may still have outstanding debt following the completion of the debt management process.

2.3.2. The Agency has concerns that the proposals regarding the inclusion of definitions on terms such as ‘free’ and ‘non-profit’ under advertising were not taken on board. The Agency provided evidence, in its response to CP75, that this became a problem in the UK. The Agency is of the view that where companies are citing themselves as ‘non-profit’ organisations and maybe charging high fees for their services - the inclusion of definitions of these terms in the code would provide clarity.

2.4. Section 1.3 - Transparency of Fees for Debt Management Services

2.4.1. The Agency is satisfied with the proposed amendments listed under this section, particularly the inclusion of section 13.17, which will enable consumers to review details of the charges they have paid to a debt management firm.

2.4.2. In response to CP75 the Agency sought clarification, on the difficulty with the breakdown of charges, in the event a firm is providing money transfer facilities along with debt management services. The Agency is still unclear as to why such difficulty would arise, as money transfer facilities would fall within the scope of the Payment Services Directive. The Agency considers a clear and transparent fee structure needs to be in place, where a company offers two or more distinct services. The Agency

believes a structured process which clearly sets out the breakdown of fees for consumers is essential.

- 2.4.3. The Agency notes this section refers to “*revised provisions 13.1, 13.2, 13.15, 13.17, 13.18 and 13.24 for details of the requirements regarding fees*”. The Agency sees no difference between provision 4.5 of CP75 and 13.15 of CP82. To this end, the Agency requests clarification on this revision.

2.5. Section 1.5 – Review of Debt Management Arrangements

- 2.5.1. The Agency notes there is still no reference to consumers who may be acting in the capacity of guarantor. Where there are fundamental implications for an individual, e.g., the actual or potential consequences of a guarantee being invoked, the Agency is of the opinion that these should be clearly set out in the paper.

2.6. Question 1: Do you agree with the approach we now propose taking with regard to client leads? If not, please explain why.

- 2.6.1. The Agency agrees with the new approach being proposed. Furthermore the Agency believes that a lead generator firm’s role, collecting information to sell to debt management firms, can ultimately offer no value to consumers seeking debt management services. As such, the Agency is in favour of the inclusion of provision 13.6 prohibiting a debt management firm from paying a lead generator firm for client referrals.

- 2.6.2. The Agency also agrees with provision 13.7, which no longer allows firms to contact consumers directly without specific consumer consent. The Agency suggests the provision be reworded slightly, for the purpose of enhanced transparency and clarity - “... for his or her details, to be referred to that specific debt management firm”.

2.7. Question 2: Do you agree with the approach that we now propose taking with regard to credit as a means of paying fees for debt management services? If not, please explain why.

- 2.7.1. The Agency disagrees with the approach the Central Bank proposes to take and reiterates the proposals of our response to CP75. The Agency believes that the process of consumers paying for such services through credit could potentially be detrimental and should ultimately be prohibited.
- 2.7.2. The Agency reinforces, that where consumers cannot feasibly afford to pay for debt management services, they should be referred to free or charitable organisations for

support and advice. On closer review of this issue, the Agency supports the stance taken by another respondent to CP75, which indicated that where a consumer may not understand a fee structure, this process may leave them even more vulnerable.

- 2.7.3. The Agency also supports an argument put forward by a respondent to CP75, that in some instances, paying for debt management services with credit can undermine price transparency.
- 2.7.4. Although the Agency strongly suggests that the payment of these services through credit be prohibited, if it is decided to continue as set out in CP82, the Agency would agree with and encourage the inclusion of provision 13.4 and 13.5. In particular that which is set out under provision 13.4. A debt management firm should under no circumstances be allowed to either recommend or arrange credit or in any way assist consumers in arranging such credit for the sole purposes of paying for debt management services.

2.8. Question 3: Does the approach that we now propose provide sufficient protection for a consumer?

- 2.8.1. The Agency is in favour of the proposal to include a five day cooling off period after the statement of suitability is provided to consumers. The Agency believes five days will afford consumers sufficient time to review and absorb the information provided in the statement.
- 2.8.2. The Agency has concerns about provision 13.19, allowing the consumer to waive their right to this cooling off period under exceptional circumstances. In this regard, the Agency seeks clarity in respect of the statement contained in section 2.3, "*a creditor may impose a deadline for accepting their offer*" and query whether this would potentially impact a consumer's decision to waive the five days. If this is the case, the Agency believes that this could possibly put the consumer under additional pressure, effectively placing them in a position, whereby they have no other choice but to waive this right.

2.9. Question 4: Do you agree that the above protections are appropriate and adequate to ensure transparency and control for the consumer in relation to the progress being made to resolve their problem? If you disagree, please provide reasons.

- 2.9.1. The Agency agrees with the inclusion of the new provisions. The Agency suggests provision 13.22 be updated to include a statement to the effect that the frequency of updates provided to the consumer should be 'by agreement with the consumer'.

2.10. General Comments on Provision in CP82

2.10.1. The Agency notes the removal of point (c) “the status of the consumer’s debt position as at the end of the 6 month period to which the statement relates” from provision 5.1 of CP75, which is now provision 13.24 in CP82. The Agency is of the view that this is valuable information for consumers and requests clarification on why it is deleted. The Agency suggest re-inserting this point.

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