

ULSTER BANK GROUP SUBMISSION TO CBI ON CP54

1. Introduction

Overview of Ulster Bank Group

Ulster Bank was founded in 1836, it is part of the Royal Bank of Scotland Group ('RBS'). Across the Republic of Ireland and Northern Ireland, Ulster Bank employs approximately 6000 people who serve approximately 1.9 million customers through a 236-strong branch network. Throughout the changing market conditions, Ulster Bank continues to enjoy the strong support of its parent RBS (which itself continues to be supported by the UK government). As Ulster Bank celebrates its 175th anniversary this year in Ireland, the recent publication of the independently audited Customer Commitments has reinforced the Bank's promise to meet their customers' needs in a practical and supportive way.

Review of the Consumer Protection Code (CPC) Consultation Paper (CP) 54

Ulster Bank was actively involved in discussions during the consultation period and final drafting of the original CPC in 2006, both directly and in discussions with the Irish Banking Federation. Ulster Bank was also actively involved with the initial review of the CPC CP 47 consultation.

Within the short time period available, we have endeavoured to review the latest version of the Code as outlined in CPC 54.

We hope that our input and understanding of matters, insofar as they affect a key Irish financial institution which is part of a large international Group, will be of some help to you developing your thoughts and ultimately in shaping your final requirements.

2. Issues arising under the draft revised CPC CP54 (Section 2 issues)

We welcome and acknowledge the significant changes made in CP54, noting the significant amount of work which has been done in a relatively short space of time.

With regard to Section 2 of CP54 and your request for comments relating to specific issues, please see our comments below, per issue.

i) Basic Payment Account – Provisions 3.53 – 3.57

We have no comment on this at this time.

ii) Complaints Resolution – Provisions 10.7 – 10.12

We have no comment on this at this time.

iii) Unsolicited Contact – Provisions 3.31 – 3.38

For the purpose of this revised code, our running assumption with regard to Provision 3.33 is that this provision will apply to consumers who open accounts from the end of the transitional period after the date the revised code is effective from, and that existing consents obtained in compliance with existing Data Protection and Regulatory (e.g. existing CPC) requirements will remain valid unless and until that customer avails of a new account. We would appreciate if this was clarified in the final wording.

It is also unclear to what extent market research (i.e. not marketing specific products) may be curtailed or eliminated by the new requirements, particularly with respect to market research with persons who are not existing customers. This type of input is vital to our business, and helps promote competition in the market by revealing issues to us which may be acting as a barrier to new and existing customer availing of bank services and products or switching from another provider. We would therefore request some form of clarification that the new rules will not prohibit market research (with new and existing customers) being conducted.

iv) Provision of credit to SMEs – Section 2 preamble

We welcome your approach to SMEs and look forward to the consultation process regarding the amendments to the SME Lending Code. In this regard we would appreciate if the consultation process were to follow the order outlined earlier in this submission.

v) General Principles - Chapter 2

We have no comment on this at this time.

vi) Advertising - Chapter 9

We believe the extent of the effect of the revised requirements (as currently drafted) will not be fully understood until new marketing campaigns are designed under the new rules, and we are concerned that aspects of the new rules may make short advertising of certain products such as mortgages very complicated and difficult for the customer to understand. We also believe that some other areas with the proposed new rules where technical inconsistencies arise.

Provision 9.8 appears to be internally inconsistent. It is important for us to understand what information relating to the product or service is permissible to be included in the footnotes or small print. We would therefore request you to clarify this, as well as what constitutes “key information” (in the absence of any definition it is almost impossible to draw a line without fear of enforcement for non-compliance if your opinion was to differ to ours).

In respect of mortgage advertising, according to the direction from ODCA Direction under section 135(1) of CCA we are required to provide the following wording (this wording is usually provided in small print (except the risk warning below), but according to the proposed new rules within CP54, it will not be permitted to be put in small print if it directly relates to the product):

The following information must be provided in relation to printed advertisements for residential mortgage credit in newspapers, magazines, or other direct printed advertisements and on the internet:

- ***The maximum percentage of the value of the property (LTV) which will normally be advanced to borrowers (including any other criteria)***
- ***The maximum proportion of loan to income of the borrowers which will normally be provided (including any other criteria).***
- ***The cost per month of a typical €100 000 over a 20 year variable rate mortgage and the additional cost per month of a 1% rise in the interest rate of such a mortgage (this is referred to as a “typical example”), including the total cost of credit***
- ***A variable rate risk warning (This is in addition to the primary risk warning)***
- ***A description of how the breakage fee is calculated should be included on any advertising for a fixed rate mortgage. If interest or penalties apply for arrears on a mortgage, the amount of these should be stated.***

In addition, the effect of provision 9.11 and 9.12 in terms of the look and feel of advertising could be profound, with more emphasis on the warning than the product or service itself. It would also make sense for the provision to specifically reference the provisions in the CPC that it applies to.

Provision 9.9 requires qualifying criteria to be included in the main body of the advertisement. The extent of qualifying criteria concerned is not defined, and as a result this requirement will mean that advertising of some products (e.g. mortgages) on posters, online banner advertisement and, television will be severely restricted and practically impossible to do.

In respect of provision 9.20, the same query with regard to the extent of “key information” for the purpose of the restrictions on what may be included in footnotes and the need to give ‘key information’ also arise.

In respect of provision 9.23, an explanation for APR, for example, may be very simple (just saying “APR means Annual Percentage Rate) or very detailed (explaining what APR is). Our understanding is that this should simply be a case of saying what the acronym stands for with no further explanation, however if further explanation is required we would request that you should set standard wording for use across the industry.

In respect of provision 9.52 and 9.54, while we would understand the objective in providing a full-term CAR for any “pure deposit” element of a tracker bond where these funds could not be accessed until the end of the full tracker term, we believe that where a customer has full access to the funds in that smaller element at the end of that shorter period, providing a full-term CAR could be confusing to the customer. Consequently, we would suggest that provisions 9.52 and 9.54 be amended to only apply where the customer does not have full access to the “pure deposit” element at the end of the fixed period for those funds.

vii) Errors Handling – 10.1 – 10.6

We have no comment on this at this time.

viii) Claims Processing – 7.7 – 7.22

We have no comment on this at this time.

ix) Conflicts of Interest – 3.22 – 3.30

We have no comment on this at this time.

3. Issues arising under the draft revised CPC CP54 which require clarification.

Notwithstanding the fact that you said the rest of the CPC was not for consultation, there are a number of technical points we would like to raise for clarification that may necessitate amendment to the final rules.

We would also ask for clarification, in each section where it is a relevant issue, the extent to which you would expect any retrospective work to be conducted regarding existing customers. Our working assumption is that retrospective contact with customers will not normally be required – e.g. as outlined earlier, we do not believe it would be necessary to contact existing customers who have given marketing consent to date, even if we would be obtaining different consents going forward. Similarly we do not believe we would be required to contact existing joint account customers where we have one correspondence address on record, even if going forward we would be in apposition to take separate correspondence addresses.

Ch 3 Common Rules

Clarification regarding Provision 3.15 (e) & 3.16

These provisions seem to be contradict each other as regards 'charges'.

Provision 3.15(e) states that the Regulated Entity must 'provide the consumer with information in writing on: e) any charges to the consumer of exiting the bundle.'

However, Provision 3.16 states that 'Where a consumer wishes to exit a bundle, the regulated entity must allow that consumer to retain any product(s) in the bundle that the consumer wishes to keep, without penalty or additional charge, apart from the loss of any loyalty discount.

We are of the understanding that the “penalty or additional charge” provided for in 3.16 is any charge *in addition to* charges outlined in section 3.15(e), however we believe it would be beneficial if this was clarified in the final text.

Our understanding is that all of Requirements 3.46 to 3.52 are designed to only apply to product producers selling through intermediaries, and not to direct selling. If this is correct, can this be specified as an initial point in 3.46 for clarification purposes?

Ch 4 Provision of Information

Clarification regarding Provision 4.31

The extent of credit under 4.31 is unclear i.e. does it include personal loans, mortgages, credit cards and overdrafts, or only one or a subset of these?

Further the CBI Industry letter dated 2nd February 2011, entitled 'Dis-application of provisions contained in the CPC' relating to the Consumer Credit Regulations dis-applied existing CPC requirement 4.9, which is directly related CP54 provision 4.31.

We therefore seek clarity on the extent or appropriateness of provision 4.31.

Clarification regarding Provision 4.34

We seek clarity that this provision relates to 'personal loans' only and not overdrafts, credit cards or mortgages. In addition, we believe it would be appropriate to include an exclusion from the notification requirement for "reference rate" products (as also provided for in the Consumer Credit Regulations, and the basis of such interest rate changes is clearly set out in the respective loan documents accepted by the consumer when the loan was negotiated).

Clarification regarding Provision 4.39

As per 4.31 and 4.34 above, we seek clarity on the extent of lending products that this provision applies to.

4.4 Does this notice have to be to each individual consumer or would a newspaper notification suffice?

Clarification regarding Provision 4.62 and 4.67

With regard to Provision 4.62, for Tracker Bonds, we believe this information should be covered in the Key Features document (4.67), as opposed to an additional document.

Clarification regarding Provision 4.70

With regard to Provision 4.70, Ulster Bank does not structure our products whereby we benefit from any return above and beyond a cap level or indeed a participation level (i.e. 70% participation to the client; 30% to UB).

Therefore, such wording is not "relevant" to any of our products.

We suggest that, for clarity, the words "where relevant" are included in this provision.

Ch 5 Knowing the Consumer and Suitability

Clarification regarding Provision 5.9

With regard to Provision 5.1, 'Assessing affordability of Credit', this provision may be impossible to comply with. From a credit risk perspective, it may be difficult to ascertain, apart from normal credit underwriting criteria, what is deemed as foreseeable. For example, a young married couple with no family. Does this provision require us to factor in possible future child care costs or college education over the 25 year period of a mortgage? Would refusal of credit based on some possible future circumstance be deemed as being in the customer's best interest? We would seek more clarity on your expectations as to foreseeable information

Clarification regarding Provision 5.24

With regard to Provision 5.24, if the intention is for it to apply to all consumer interactions, we envisage considerable challenges in the monitoring and recording of such discussions, and would suggest the extent of this requirement is limited to specified customer interactions.

Clarification regarding Provision 5.27

It is not clear what would constitute "any assistance from the regulated entity in the choice of that product". Consequently it is not clear whether anything other than advised-based selling

is permitted. Our belief is that information-only selling should be permissible for all products which have a minimum of 100% capital security, as the risks involved do not warrant full advice selling in all cases., and in any event the customer may not wish to receive a full advisory service

As promoting the availability of a 100% capital secure tracker bond (for example), and providing information to the customer on it, might be seen to constitute “assistance in the choice of that product”, this would then require full blown advice to be given where this may not be necessary (or desired by the customer).

We would therefore request either clarity as to the extent of “assistance .. in the choice of”, or alternatively for certain capital secure products (or products under a specific limit – e.g. €15,000) the requirement would not apply, or the customer could choose not to receive advice (and sign a waiver in this regard if you believe that would be appropriate),.

Ch 6 Statements

Clarification regarding Provisions 6.3 (a) viii)

We would query the value of providing details of rates being applied to other similar accounts to customers who hold a term deposit account, as due to the nature of the product customers may not have access to their funds at the time the statement is provided. This should not be a requirement for term deposits.

Where bespoke / individually negotiated rates may be available, these should be explicitly excluded as it would be impractical to provide all such rates and impossible to provide a rate band.

Ch 8 Arrears Handling

Clarification regarding Provisions 8.14 and 8.3.

There is an element of inconsistency between Provision 8.3 (which requires us to seek to discuss the arrears) and Provision 8.14 (which restricts our ability to do so).

We believe that any restriction on calls should not apply unless and until a customer is engaging. Any other approach is detrimental to both the bank and the customer as an arrears situation can only be exacerbated further as long as the customer has not begun to engage in a meaningful manner.

Ch 12 Definitions

Clarification regarding ‘tracker bonds’

The definition of a tracker bond appears to cover any deposit in that it covers “any deposit that ... provides for a minimum payment, at the expiration of a specified period of time, of a specified percentage of the amount of capital invested by the *consumer* in the product”. This is presumably not correct and should be changed.

Clarification regarding the term ‘loan’, ‘credit card’ and ‘credit’

There is no definition of a ‘loan’ throughout the proposed CP54, loans and credit are mentioned a number of times and in some cases also includes credit cards (chapter 8 for example) but the distinction is not clear. We are currently working on the assumption that a loan is money lent to a consumer with an agreed repayment schedule (e.g. personal loan) unless otherwise mentioned in the CPC (as per the beginning of chapter 8), however a definition of credit, personal loan and credit card, and clear designation of the type of credit each relevant provision applies to, would be useful.

Clarification regarding the term ‘Mortgage’

It would be useful if mortgage was defined as a mortgage under the Consumer Credit Act, 1995.

Clarification regarding the term ‘arrears’

There is no definition of what is regarded as arrears. This is straightforward for fixed repayment lending, however may present problems in respect of running account credit (such as overdrafts or credit cards). We believe this matter should be discussed further with industry before final rules are confirmed.

Clarification regarding the term 'in writing'

There is no definition of the term 'in writing', which appears throughout the document. We are working on the assumption that 'in writing' will also include 'other durable medium (e.g. e-mail / internet form). This would also be in line with the legal protections of the E-Commerce Act.

We would also ask you to consider ensuring, where relevant reference are made to "in writing" requirements, that specific exemptions are provided for where the relevant communication is over the phone and in compliance with Distance Marketing of Financial Services Regulations.