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Re: Themed Inspection – Certain Out of Order Activity Fees on Current Accounts

Dear

I refer to the recently completed Themed Inspection on Certain Out of Order Activity Fees on Current Accounts, which focussed on the application of surcharge interest, referral fees and unpaid fees ('the charges') to current accounts in five credit institutions (banks). The main aim of the theme was to assess if the charges applied to unauthorised overdrawn accounts, were applied within the approved limits under Section 149 (12) of the Consumer Credit Act 1995, as amended, and in accordance with the terms and conditions pertaining to the current account. We also examined if the information requirements of the European Communities (Payment Services) Regulations 2009 ('PSD') were complied with in respect of the charges and we examined customer complaints. While examining technical compliance, the inspection also sought to consider the way in which the charges were applied to customer accounts.

While it was found that the charges were applied within the approved limits under Section 149 (12) of the Consumer Credit Act 1995, as amended, in the banks reviewed, the Central Bank had concerns regarding the way in which the charges were being applied in some instances. The charges were applied in accordance with the product terms and conditions, and each bank complied with the information requirements of the PSD.

Arising from the theme, there were a number of issues identified which have given the Central Bank cause for concern. The Central Bank requests that each bank consider the issues detailed below to ensure that similar issues have not arisen and that there are appropriate controls and monitoring of those controls, to ensure that they do not arise going forward.

1. Actions Taken

It was found that the way in which the charges are applied varied across the banks examined. The following cases show where action was taken to prohibit practices that were not acting in the best interests of consumers. While the practices identified have been addressed on a case by case basis as required, the Central Bank would look very unfavourably on such practices and will consider appropriate action in the event that these practices are identified elsewhere in the future.

Surcharge Interest

One bank applied a minimum amount of surcharge interest each month. Once the amount of surcharge interest accrued on the account was €0.01 or more, a minimum amount of €2.54 was applied per fee month. We do not consider the application of a minimum surcharge interest amount to be best practice. We considered this to be an unfair and penal charge. The bank concerned has been directed under Section 149 of the Consumer Credit Act 1995, as amended, to desist from applying surcharge interest in this way. Changes to systems, terms and conditions and brochure ware needs be carried out so the Central Bank has agreed an implementation date early in 2012.

Referral Fee & Unpaid Fee Applied Jointly

Two banks sometimes applied both a referral fee and an unpaid fee when an item was unpaid. While both charges are approved under Section 149 of the Consumer Credit Act 1995 (as amended) and were not in conflict with each bank's terms and conditions we considered it unfair to charge customers twice for one item. Both banks have been directed under Section 149 of the Consumer Credit Act 1995, as amended, to desist from applying referral fees in this way going forward and to amend the terms and conditions of relevant current accounts without delay. Changes to systems, terms and conditions and brochure ware needs be carried out so the Central Bank has agreed an implementation date early in 2012.

Application of Referral Fee

One bank applied a referral fee based on whether sufficient funds were in the current account at the time of presentation of the debit item, as opposed to whether there were sufficient funds in the current account at close of business, as appears to be the industry practice. We considered that this was not in customers' best interests, as in some cases customers would lodge money to the current account during the business day and the account would be in credit at close of business, but yet the referral fee would still be applied. The bank concerned has been directed under Section 149 of the Consumer Credit Act 1995, as amended, to desist from applying the referral fee in this way going forward, and to apply the referral fee based on the close of business position of the current account. Changes to systems, terms and

conditions and brochure ware needs be carried out so the Central Bank has agreed an implementation date early in 2012.

Complaints Handling

One bank's handling of a customer complaint was particularly poor in terms of compliance with the Code and its approach to dealing with complaints in general was unsatisfactory. This bank has been requested to carry out a review of its complaint handling process in light of how this complaint was handled.

Inadequate complaints handling by banks has been identified as an issue on previous themes and is an area which is critical in ensuring that customers' interests are protected. Banks should ensure that their own internal controls are robust and include regular reviews and/or sampling of complaint handling procedures, to ensure that their complaint handling procedures are in accordance with the Code.

2. Best Practice

It is our expectation that banks treat their customers fairly, and accordingly during this theme, we identified some areas for improvement. Some practices such as not applying surcharge interest unless the total exceeds a set limit, not applying an unpaid item fee where the value of the item unpaid is less than €20, or detailing on the customer statement the item that generated an unpaid item fee were identified in some banks, but were not widespread. Such practices would be helpful to customers, especially those in vulnerable financial positions and we request banks to review these practices and advise us when they have been implemented.

2.a Fees on Feeder Accounts

It was identified that some banks require customers to hold a feeder account to service a loan account and that in some instances, unpaid fees were applied to the feeder account where the customer had lodged insufficient funds to the feeder account to service the loan. We would draw your attention to the revised Consumer Protection Code which prohibits charges being applied to feeder accounts where the customer uses the feeder account for the purpose for which it was opened. Accordingly, you should now identify current accounts that are feeder accounts and implement appropriate system changes in order to ensure that you will be compliant with the Consumer Protection Code.

2.b Buffer Limit on Unpaid Fees

It was identified that one bank does not apply an unpaid item fee where the value of the item unpaid is less than €20, which we consider to be an example of best practice. We consider it to be good practice not to apply an unpaid fee where the value of the unpaid item is less than the value of the unpaid fee and would request banks to incorporate this into their charging structure

2.c Improved Information in Statements

Only one bank provided details on the customer statement of the item that generated the unpaid fee. It is clearly in customers' interests that this information is provided and all banks are now requested to include this breakdown in customer statements going forward. We consider that this would be in accordance with the information requirements of the PSD. Here is an example of how this information could be presented:

Date	Particulars	Debit	Credit	Balance
7 Jan 11	Unpaid Item DD 52.00 <i>Name of Direct Debit Originator</i>	10.00		5.00

3. Assisting Customers

We would encourage all banks to enhance the ways in which they assist customers to avoid incurring out of order activity fees, particularly in the current economic climate. Where banks identify customers who are repeatedly incurring such fees, banks should be proactive in contacting those customers, not only to advise of the fees that have been applied, but with a view to putting a long term solution in place that is beneficial to the customer. Banks should consider not just advising customers of the possibility of in-branch discussions, but actively inviting customers to the branch to discuss their financial situation with a named individual. We would view balance alert systems to be of particular benefit to customers, giving them greater control over their finances and enabling them to avoid out of order activity fees before they are incurred. While out of order activity fees individually may not appear to be high to customers, where such fees are incurred repeatedly they can accumulate quickly into a significant sum of money, and banks should also consider ways in which they could bring the accumulated total of such fees to the attention of customers, perhaps on a quarterly basis. For example, as part of the quarterly fee advice, banks could include a line saying, "*Did you know that this quarter you incurred €75 in out of order activity fees?*", followed by advice on how such charges can be avoided.

The points raised in this letter are relevant in relation to all products. Issues raised in this industry letter may be considered during the conduct of other inspections.

If you have any queries regarding the above, please contact Ms Mary McEvoy on (01) 224 4512.

Yours sincerely

A handwritten signature in black ink that reads "Sharon Donnery". The signature is written in a cursive style with a large initial 'S' and a long, sweeping tail on the 'y'.

Sharon Donnery
Head
Consumer Protection – Banking & Policy