



FINANCIAL REGULATOR
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Consumer Protection Code Clarifications

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Consumer Protection Code Clarifications

Since the introduction of the Consumer Protection Code ('the Code') in August 2006, the Financial Regulator has offered assistance to regulated entities and industry representative bodies on a range of queries relating to the content and implementation of the Code. Given that full implementation of the Code is required from 1 July 2007, the Financial Regulator wishes to highlight and provide clarity on a number of commonly raised issues.

SCOPE¹

Pension Schemes

The Code applies to the provision of pension products, including PRSAs. Retirement annuity contracts are a particular type of insurance contract, and as such, they fall within the remit of the Code. The Code does not apply to revenue approved occupational pension schemes that are the responsibility of the Pensions Board.

Where a pension scheme is constituted in trust the trustees are considered to be consumers for the purposes of the Code.

Mortgage Introducers

A person, other than a mortgage lender or credit institution, who, in return for commission, introduces consumers within the meaning of the Consumer Credit Act 1995, to an intermediary who arranges, or offers to arrange for a mortgage lender to provide the consumer with a loan, must

¹ A word or expression that is used in this document and is also used in the Code shall have the same meaning as in the Code unless the contrary intention appears.

be authorised as a mortgage intermediary under the Consumer Credit Act 1995, as amended.² Accordingly the Code applies to this activity.

Customer v Consumer

The General Principles of the Code apply to all 'customers.' This is a wider term than 'consumers' as it encompasses all of the clients of a regulated entity, whether wholesale or retail. A regulated entity must apply the General Principles in all its dealings with customers and within the context of its authorisation. The remainder of the Code applies to consumers (except where customer is specifically mentioned) as defined in the Code.

COMMON RULES

Contingent Products

Common Rule 4: "A regulated entity must not make the sale of a product or service contingent on the consumer purchasing another product or service from the regulated entity."

Common Rule 4 seeks to prevent regulated entities from making the purchase of a product or service dependant on the purchase of an additional product or service from the same regulated entity. For example, a consumer should not be refused a loan on the basis that he does not wish to purchase payment protection insurance. Once the consumer has purchased the original requested product a regulated entity is free to offer additional products to the consumer.

Recording Telephone Conversations

Common Rule 17: "A regulated entity must ensure that, where it intends to record a telephone conversation with a consumer, it informs the consumer, at the outset of the conversation, that it is being recorded."

² The definition of "mortgage intermediary" in Consumer Credit Act 1995 was amended under the Central Bank and Financial Services Authority of Ireland Act 2004 to include any person that provides mortgages, mortgage advice or introductions to mortgage intermediaries.

Common Rule 17 seeks to ensure that consumers are aware that their telephone conversations may be recorded. It is up to each regulated entity to decide the manner in which they inform consumers of the recording.

Secure Transmission of Information

Common Rule 20: "A regulated entity must ensure that, where it communicates with a consumer using electronic media, it has in place appropriate arrangements to ensure the secure transmission of information to, and receipt of information from, the consumer."

Common Rule 20 requires that a regulated entity ensure that any consumer information it receives or transmits is secure within its own systems. When information is transmitted to a consumer, a regulated entity must ensure that the security of the information is not compromised by the regulated entity's transmission system.

Know the Consumer, Suitability & Issuing Receipts

Compliance obligations under the Know the Consumer, Suitability and receipt provisions are the primary responsibility of the regulated entity that has the point-of-sale relationship with the consumer.

Disclosure Requirements

Common Rule 39: "A regulated entity must include a regulatory disclosure statement:

- a) on its business stationery;*
- b) in all advertisements; and*
- c) on all electronic communications with consumers including on the home page of its website, if any.*

We have received a number of queries and requests for clarification as to whether Common Rule 39 (c), which requires regulated entities to include a regulatory disclosure statement "on all electronic communications with consumers", extends to SMS messages. For reasons of practicality, we propose to address this issue in the following way:

In instances where the purpose of an SMS message is to provide information, other than for the purposes of advertising or marketing, to a consumer with whom there is an existing relationship, the disclosure statement is not required to appear in the SMS message. However, the inclusion of the regulatory disclosure statement remains obligatory for all SMS messages communicated for the purposes of advertising and marketing irrespective of whether there is a pre-existing relationship.

Disclosure Statements in connection with unregulated Products/Services

Common Rule 40: "A regulated entity must not use the regulatory disclosure statement on any business stationery, advertisement or electronic communication in connection with a product or service for which the firm is not regulated by the Financial Regulator."

Many regulated entities provide services that do not require authorisation by the Financial Regulator, e.g., accountancy services, auctioneering services. Common Rule 40 was included in the Code to seek to avoid situations where a consumer is inadvertently misled about the regulatory status of a service that does not require authorisation from the Financial Regulator. As such, where more than one service appears on a regulated entity's business stationery, advertisements or electronic communications it must be clear to the consumer which services are regulated by the Financial Regulator.

Consumer Records – Electronic/Scanned Documents

Common Rule 49: "A regulated entity must maintain up-to-date consumer records containing at least the following:

- a) a copy of all documents required for consumer identification and profile;*
- b) the consumer's contact details;*
- c) all information and documents prepared in compliance with this Code;*
- d) details of products and services provided to the consumer;*

- e) *all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;*
- f) *all documents or applications completed or signed by the consumer;*
- g) *copies of all original documents submitted by the consumer in support of an application for the provision of a service or product; and*
- h) *all other relevant information concerning the consumer.*

A regulated entity may retain documentation and records electronically where such documentation is readily accessible and capable of being reproduced in a legible form.

Fees, Commissions & Other Rewards

Common Rule 50: *"A regulated entity may only pay a fee, commission, or other reward or remuneration only to a person that is:*

- a) a regulated entity;*
- b) a certified person;*
- c) an individual for whom a regulated entity has taken full and unconditional responsibility;*
- d) an entity specifically exempt by law from requiring authorisation;*
- e) an authorised "credit intermediary" (within the meaning of the Consumer Credit Act 1995); or*

- f) a financial services provider operating in the State in accordance with freedom of services or establishment provisions of EU law."*

Under this rule regulated entities may only pay fees, commissions or other rewards to, *inter alia*:

- i) other regulated entities who hold an authorisation to engage in the specific activity in question, or
- ii) persons specifically exempt by law from requiring authorisation by the Financial Regulator.

BANKING PRODUCTS/SERVICES

Annual Statements

Chapter 3, Provision 1: *"A credit institution must, at least annually, issue statements of transactions on all accounts with a balance in excess of €20, unless otherwise agreed with the consumer in writing."*

This provision refers to current and deposit accounts.

Timely Lodgements of Funds

Chapter 3, Provision 8: *"A credit institution must ensure that any funds lodged by a consumer to its account directly or via a deposit agent, are credited to that account on that day."*

We acknowledge that cheques or other instruments can take a number of days to clear. Funds lodged in this manner should be credited to the account once they are cleared.

LENDING

Debt Consolidation

Chapter 4, Provision 10: *"Where a mortgage is offered to a consumer for the purpose of consolidating other loans or credit facilities, the regulated entity must provide the consumer with a written indicative comparison of the total cost of continuing with the existing facilities and the total cost of the consolidated facility on offer."*

This requirement is designed to enable consumers to assess the possible cost of consolidating existing debts into a mortgage. It is important that a consumer understand all of the implications of consolidation. In certain cases assumptions may have to be made but these should be reasonable and justifiable. This provision applies to all consumers as defined in the Code.

Arrears Management for Residential v Commercial Mortgage Lending

Chapter 4, Provision 11: *"Where a mortgage is in arrears, the regulated entity must inform the consumer in writing of the status of the account as soon as possible after it becomes aware of the arrears. This information must include:*

- a) the date the mortgage fell into arrears;*
- b) the number and total of payments missed;*
- c) the amount of the arrears interest charged to date;*
- d) the interest rate applicable to the arrears, and details of other fees and charges used to calculate the arrears interest amount.*

For the purposes of provision 4.11, reference to 'a mortgage' can be restricted to residential mortgages.

Mortgage Documentation

Chapter 4, Provision 14: *"Before a mortgage can be drawn down, a mortgage intermediary must submit to a mortgage lender a signed declaration that such mortgage intermediary has had sight of all original supporting documentation including bank statements, P60/certificate of earnings and other supporting documentation evidencing the consumer's identity and ability to repay."*

The Financial Regulator expects that the requirement in this provision be carried out for each mortgage application. A once-off universal declaration from a mortgage intermediary to the lending institution confirming that they undertake to see all original documentation is not sufficient to ensure compliance with this provision. The confirmation must be forwarded to the lender in respect of each application.

INSURANCE

Warranties & Endorsements

Chapter 5, Provision 2: "A regulated entity must express clearly in the quotation documents any warranties or endorsements. These sections in the quotation documents must not be detailed in smaller print than other information provided in the documents."

If the detail of warranties and endorsements on policies appear in the terms and conditions of the policy, it is only necessary to give a summary of the main warranties/endorsements at quotation stage under provision 5.2. However, the information given must be to a level that enables the consumer to make an informed choice.

Loss Adjustors

Chapter 5, Provision 17: "Where there is a requirement to engage the services of a loss adjuster and/or expert appraiser the regulated entity must inform the claimant of the contact details of the loss adjuster and/or expert appraiser it has appointed to assist in the processing of the claim and that such loss adjuster and/or expert appraiser acts in the interest of the regulated entity."

For the purpose of Provision 17, the Financial Regulator views loss adjustors and/ or expert appraisers as independent professionals who provide a service to regulated entities when assessing a claim.

Client Premium Accounts

The premium handling requirements set out in the Code apply to any entity that falls under the definition of "insurance intermediary" as defined by the Code. In this respect such insurance intermediaries must operate a designated "Client Premium Account" to lodge all funds received in respect of a premium or premium rebates.

Claimants

For the purposes of claims processing, a claimant can be a person, other than the policyholder, who makes a claim on a policy of insurance. It is our view that all consumers are entitled to information and assistance when making a claim, whether that person is the policyholder or another claimant.

Premium Rebates

Chapter 5, Provision 30: *"A regulated entity must transfer a premium rebate to a consumer within 5 business days of the rebate becoming due."*

Chapter 5, Provision 32: *"An insurance intermediary must transfer a premium rebate to a consumer within 5 business days after receiving payment of such rebate amount from a regulated entity or being notified by a regulated entity that such premium rebate is due to the consumer, as applicable."*

From the time a regulated entity, whether insurer or intermediary, has a premium rebate for a consumer it has to return it to that consumer within 5 business days.

ADVERTISING

Warning Statements – Consumer Credit Act 1995 v Code Provisions

The Financial Regulator does not seek to duplicate warning statement requirements in the CCA and the Code. As such, if an information document under the CCA were also considered to be an advertisement for the purposes of the Code, then compliance with the CCA would also result in compliance with the Code, where the relevant warning appears in both the CCA and the Code.

Interest Rates quoted in Advertisements

Chapter 7, Provision 26: "Where an interest rate for a savings or deposit account is displayed in an advertisement, it must clearly state the following:

b) the relevant interest rate for each term quoted together with the equivalent annual rate for each rate quoted, and each rate should be given equal prominence..."

For reasons of clarity and for comparative purposes for consumers the use of acronyms for interest rates in advertisements for savings and investment products should be consistent. As provision 7.26 refers to the equivalent annual rate, it is our view that the appropriate acronym to describe this rate is AER or EAR. The acronym CAR is only referred to in the Code in relation to tracker bonds.

Legal Notice

This document does not represent, nor shall it be taken as representing, an alteration or amendment of the Code. Instead it represents the Financial Regulator's understanding of certain provisions of the Code as and from its date of issuance. This document does not constitute legal advice, nor does the Financial Regulator represent to any person that it so provides such advice. It is the responsibility of all Regulated Entities to ensure their compliance with the Consumer Protection Code. Nothing in this document should be taken to imply any assurance that the Financial Regulator will defer the use of its enforcement powers where a suspected breach of the Code comes to its attention.



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