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Welcome to Moneylender News



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Welcome to the second edition of Moneylender News. Many of you will have recently renewed your moneylender's licence and others will be due to apply for renewal in the coming months. This marks an opportunity to take time to review the culture in your firm and ask yourself if you are 'getting it right for consumers'.

This includes taking a professional approach to meeting your regulatory obligations, and in this edition of Moneylender News we highlight a number of important obligations to be borne in mind. As important however is that your firm promotes a culture of positive consumer outcomes at every level from the board and senior management, right to the frontline delivery of consumer services, if there is to be trust and confidence in the financial service you provide.

This edition contains topical updates and compliance information on:

- A Culture of Getting it Right for Consumers
- Complaints Handling
- The appointment of Non-Executive Directors
- Overcharging
- Section 99 of the CCA

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A Culture of Getting it Right for Consumers

The Central Bank's [Consumer Outlook Report](#) published and circulated to all licensed moneylenders in February 2015 highlighted how a firm's 'culture' is central to acting in the consumer's best interest and achieving positive consumer outcomes. As you know from our last newsletter 'Culture' is one of the 'Cs' in our 5 Cs Consumer Protection Framework along with Confidence, Challenge and Compliance. This means looking out for the best interests of your consumers.

Of particular concern in the context of licensed moneylending, for example, is the issuing of additional loans to consumers who have not repaid, or cannot repay, an existing loan, leading them into a continuous spiral of debt. It is important that staff and agents at all levels of a firm are fully informed of the potential negative effects that this may have on a consumer. To achieve this, firms should aim to foster, embed and maintain a culture which promotes responsible lending practices that benefit consumers.

This is an area which the Central Bank will be focusing its attention on and we will take steps to ensure compliance where breaches are discovered, including, but not limited to the consideration of the use of our enforcement powers. This may expose a firm and persons concerned in its management who participate in the contraventions to financial penalties and other sanctions.

Reminder – Collecting on Moneylending Agreements

A valid moneylender's licence is required in order to collect on moneylending agreements (including any benefit to such agreements) unless the person or firm is doing so under the authorisation and on behalf of an existing licensed moneylender.

Consumer Complaints Handling Requirements

The Consumer Protection Code for Licenced Moneylenders (the "ML Code") defines a complaint as being *"an expression of grievance or dissatisfaction by a consumer, either verbally or in writing, in connection with:*

- a) the provision of a product or service to a consumer by a moneylender; or*
- b) the failure of a moneylender to provide a product or service to a consumer".*

Provisions 27-29 of Chapter 2 of the ML Code set out the procedural requirements that a moneylender must adhere to when handling such complaints. This is an important area for you to focus on, as these are cases where your customer was so unhappy with the service they received that they have taken the step to voice their grievance or dissatisfaction to you. As well as dealing with the individual complaint in an honest, fair and professional manner, as required by the ML Code, complaints are an opportunity for you to learn more about your customers' experience and apply the lessons learned across your business.

The minimum procedure that moneylenders must adhere to when dealing with consumer complaints need not apply where a complaint has been resolved to the complainant's satisfaction within 5 business days. However, a record of this fact must be maintained by the firm. The procedure applies to all complaints received i.e. by agents and centralised units, if applicable.

All complaints, including those resolved within 5 business days, must be included in the figures reported to the Central Bank during the annual renewal application process.

Licensed moneylenders are required, under provision 39 of the ML Code, to have adequate systems and controls in place to ensure compliance with the complaints handling requirements outlined above and in respect of all other requirements imposed under the ML Code. This includes being able to demonstrate compliance when required to do so by the Central Bank.



Reminder – Non-Executive Directors

It is important that firms are aware that the role of **Non-Executive Director** is a Pre-Approval Controlled Function (PCF) role and that any persons being appointed to this or any PCF role must obtain written approval from the Central Bank **prior** to being appointed. The Central Bank has taken supervisory action against licensed moneylenders for non-compliance with this requirement in the past 12 months and will continue to do so in the future.

Overcharging: Total Amount Repayable

Sections 102 and 112 of the Consumer Credit Act, 1995 (the “CCA”) provide protections to consumers from incurring any extra charges on their moneylending agreements. Under section 102, moneylenders cannot pass on to the consumer any costs of arranging or negotiating the provision of credit. In addition, moneylenders are prohibited under section 112 from charging consumers any extra charge (other than legal costs) in the event of default or missed payments. If a moneylender does increase the rate of charge in the event of default, the agreement will be deemed unenforceable.

In order to avoid breaching either of the above provisions and the terms of your licence, it is important to remember the significance of the ‘total amount repayable’ as stated on the consumer’s moneylending agreement. The consumer must **never** be required to pay more than the ‘total amount repayable’ stated on the credit agreement, regardless of the amount of time over which the loan is actually repaid (unless charging for legal costs in accordance with section 112).

FinCoNet

FinCoNet, the international organisation for financial consumer protection regulators, publishes three newsletters each year. The newsletters, including the most recent edition from September 2015, can be viewed [here](#). Recent newsletters covered topics such as the Portuguese experience of the effect of interest rate caps and how the Financial Conduct Authority (FCA) in the UK has challenged firms to review their approach when dealing with vulnerable customers.

Section 99 of the CCA

All licensed moneylenders should already be aware that section 99 of the CCA prescribes that moneylenders must not withhold any amount of a new loan from a consumer for the purposes of repayment of an existing loan. It is essential that all moneylenders and any agents acting on their behalf are aware of this provision and that they fully understand it. Licensed moneylenders must have sufficient internal systems and controls in place to ensure that section 99 of the CCA is being fully complied with and that they can monitor and demonstrate compliance with same. Furthermore, if issuing a subsequent loan, a comprehensive creditworthiness assessment must be undertaken.

We want your views!

Thank you to all firms who have renewed their moneylender’s licence using the new application form circulated in advance of this year’s annual licensing round. We hope that the updated form made the application process more streamlined for firms. The Moneylending Unit has received some feedback from moneylenders on the updated form and would welcome more feedback (both positive and negative) or any suggestions that any firm wishes to provide.