CP 10 – IFSRA CONSUMER PROTECTION CODE

SUBMISSION of FREE LEGAL ADVICE CENTRES LTD

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1. Introduction

One of the core priorities of FLAC's current strategic plan is to strengthen consumer protection in relation to the extension of credit and other financial services, together with advocating comprehensive law reform in the related and growing area of consumer over-indebtedness. To this end, FLAC works closely with the Money Advice and Budgeting Service (MABS) to ensure the delivery of free services to consumers, especially those on low incomes and in financial difficulties. We have also developed constructive relationships with IFSRA and representatives of the credit industry to further these objectives.

FLAC welcomes the publication of this draft code following the consultation process undertaken by the Authority to which it made a previous submission and welcomes the opportunity to make further observations prior to the adoption of the Code.

The issues commented upon in this submission are taken in the alphabetical order under which they fall in the consultation paper. This submission takes the approach of selecting areas of particular concern to this organisation and in which it has relevant experience.

2. Issues relating to application of the Codes

Enforcement and compliance (Page 4)

This section of the Code (final paragraph, page 4) which states that *'failure to comply with the provisions of the code and other applicable consumer protection laws will be subject to* ***possible*** *sanction under the administrative sanctions programme currently being developed'* is of concern.

It is our firm view that unless tough sanctions are in place to deal with breaches of consumer protection codes, the considerable work involved in assembling them may be compromised. There is nothing more effective to ensure future compliance than sanctions for present non-compliance. We accept that there will be many entities who will comply for reasons of good customer relations and competitive advantage, but there will be many who will take short cuts unless the regulator has the teeth to challenge them.

It is notable in this respect that as the Code is being assembled, the administrative sanctions programme is only at development stage and the Financial Services Appeals Tribunal, a further wing of the infrastructure relating to financial services in Ireland and

the body to which regulated entities can appeal against an administrative sanction, remains to be set up.

Finally, it is also worth asking how many prosecutions have been brought by the Regulatory Authority under the legislation that it has responsibility for monitoring since it was set up. For example, the Consumer Credit Act 1995 provides for a wide range of criminal offences. These include failure to comply with the advertising and documentary requirements in relation to credit, hire purchase and housing loans; breach of the rules in relation to communications with consumer or failure to adhere to the terms of licences or authorisations granted by the Authority. It is our experience that there are more than occasional breaches to meet the terms of such requirements on the part of the credit industry. What sanctions are being applied in these circumstances?

Private Customers (Page 5)

We would broadly agree with an approach that does not attempt to restrict the protection of the codes to consumers acting in a personal capacity alone, but would also include customers who may avail of a product as a sole trader or in a small company context without access to the professional advice, in-house or otherwise, that a large concern with significant resources might have.

This section of the CP refers to a 'professional customer' and the EU definition of same, but does not include the definition or state where it can be accessed. It is submitted that this is an omission in relation to seeking an informed comment on this issue.

To whom should the Code apply? (Page 6)

The opening sentence of this section states that "*The Code will apply to all financial services providers when operating in the State*"

It is our view that every entity providing financial services in the State, whether deposit taking or not, should be regulated by the Regulatory Authority and should be covered by the Code. However, we are not so sure that this is presently the case. It appears that a twilight zone may have emerged or continued since the passing of the CBFSAI Act 2004, in that although there is residual power for the Minister to add entities by regulation, there may be many outside the general remit of the Authority. For example, IFSRA appears to oversee the activities of many **finance houses** for the purposes of the consumer credit legislation, insofar as they are defined by statutory instrument to be credit institutions for the purposes of that Act. However, will they be regulated entities for the purposes of the Code? Similarly, **mortgage lenders who are non-deposit taking** may be regulated under the CCA, but are they subject to general regulation by the Authority?

It is submitted that the protection of consumers from predatory lending practices requires the uniform application of standards such as the Code to all providers of financial

services, whatever their nature. Any gaps that may exist in this respect should be closed as soon as possible.

Moneylenders (Page 6)

We would broadly accept that the regulation of licensed moneylenders under the consumer credit legislation is tight and that there may be certain provisions of the Code that may not necessarily be suitable in moneylending situations. It is also broadly accepted that moneylending agreements involve high cost credit, including high rates of interest and collection charges and collected credit is, by its nature, expensive. The question of access to credit is an issue that has justifiably received much attention recently and it is often said that customers of licensed (and indeed unlicensed moneylenders) avail of these services because their credit options are extremely limited. As such, we would question to what extent, for example, the rules in the Code in relation to knowing the customer (e.g. written factfind) and suitability (e.g. written statement of reasons for recommended product) are appropriate in this instance.

It is suggested that the Regulator's efforts in this area might be better concentrated on examining alternative sources of credit for those on low incomes, as well as revisiting the issue of the proposed costs of credit in any moneylender's licence application. Whilst there are varying opinions as to whether a maximum interest rate should apply (the maximum becomes the minimum etc), it might be useful to examine achieving a greater proximity in the rates charged by the variety of licensed operators.

Credit Unions (Page 7)

It is difficult to answer the question to what extent the Code should immediately apply to credit unions, given the now very diverse nature of credit unions and the widely varying amounts of loans provided by them.

Some of the loans now been offered by some credit unions are quite large and often unsecured and it is questionable what credit checking takes place in advance to assess ability to repay. It is arguable, therefore, that the rules in the Code in relation to *'knowing the customer'* and *'suitability'* (Common Rules 18 – 25), for example, should apply as soon as the Code is introduced, even though these are core services. This is particularly the case, given the readiness of some credit unions to use the Committal Order (i.e. imprisonment) process in the legal system to enforce the payment of judgment debts. If failure to repay can result in such potentially catastrophic consequences for the borrower, the least that might be expected from the credit union's perspective is an assessment of the customer's suitability for the loan and his/her ability to repay it.

3. Issues in relation to the structure of the Code

Unsolicited contact (Page 9)

The restrictions on unsolicited contact in relation to personal visits or oral communications to existing customers (as defined) or potential customers (as defined) are generally welcome. It is our general view that if a person wishes to avail of a financial service, there is sufficient information through advertising and other forms of information to enable them to take the initiative themselves. Unsolicited contact, on the other hand, may serve to put undue pressure on people and for a variety of reasons, including human weakness, a customer may avail of a service that they neither need nor that will benefit them.

Some points of concern, however, occur in relation to this section.

No restriction on mail communications or electronic communications is provided for within it. Chapter 4 (at page 35) under the heading of unsolicited credit facilities does propose to prohibit *'unsolicited pre-approved credit facilities'* in writing. However, this would appear to allow any service provider to send unsolicited literature to a person's address, providing information in relation to credit products and how they might be accessed, provided the facility is not **pre-approved**. It is our view that the provisions of the Code might be easily circumvented accordingly.

Throughout this section, there appears to be a blanket exemption allowed for in the case of the sale of protection policies. The term 'protection policy' is not defined but if, for example, payment protection insurance policies provided in connection with credit agreements to cover inability to pay due to illness or redundancy come under this heading, it is possible that a vulnerable consumer could be persuaded into availing of such a facility which s/he may neither need nor can afford by a cold call approach.

Handling complaints (Page 10)

The common rules in relation to the handling of complaints (Numbers 47 – 50, pages 27 – 29) seem to be comprehensive and if adhered to would provide a customer with a timely method of processing their grievance with any regulated entity. The maximum period of eight weeks to process a complaint is in line with the timeframe set out in regulations recently made in relation to making a complaint to the Ombudsman for Financial Services. Under these regulations, a customer must make a complaint to the provider of the financial service which the provider has eight weeks to attempt to resolve prior to a right to complain to the Ombudsman accruing.

Certifying information (Page 11)

We would broadly agree that soliciting and verifying information from customers on their circumstances and their needs may be necessary in order to attempt to ensure that a suitable product is offered. However, we believe that there should be a corresponding

obligation on, for example, providers of credit, to ensure that the information is responsibly used and not merely an academic exercise prior to the provision of a potentially unsuitable product or a facility that may put the customer's finances under an intolerable strain.

Although it is accepted that this measure may *'raise the customer's awareness of the importance of supplying correct information'*, there are many instances where the creditor's awareness of using the information responsibly also needs to be urgently raised.

Financial Access (Page 11)

We look forward to the results of the research currently being undertaken by the Regulatory Authority and the Combat Poverty Agency in relation to barriers of access to financial services. The existence of the money laundering regulations is said to have been used by institutions to deny access to a bank account and, by extension, access to other financial services to some consumers. It is clearly unacceptable in a society that depends heavily for its economic prosperity on the availability of credit, that certain consumers by reason, for example, of their race or nationality or their perceived social status should be discriminated against in this manner, whilst credit and other financial services are provided liberally (and in some cases too liberally) to others whose ability to repay may be questionable.

General principle 11 and common rules 1 and 2, whilst worthy, remain aspirations which will be very difficult to police in the absence of more specific guidelines. It is tempting to argue that some financial institutions are currently forcing many consumers into using technology and excluding others who do not have access to technology, as the repackaging of branches to attract commercial customers and the withdrawal of staff at counters appears to continue apace. Whether highly profitable institutions could be argued to have a social responsibility to ensure that services are delivered in a variety of ways to suit the needs of their customers as well as the economic interests of their shareholders would make for an interesting debate. The potential development of a more detailed Code in this area is worth exploring.

Voluntary Codes (Page 12)

In brief, we see no reason why voluntary codes operating successfully from the industry's standpoint (such as the switching code) should not be incorporated into the statutory code. However, we reiterate our concern outlined on Page 1 of this submission in relation to enforcement of these standards in general.

New Measures (Page 12)

Chapter Three (Banking Products and Services)
Again, by way of brief comment, any rules that increase the transparency and scope of the information that must be provided to consumers in relation to existing products and services are welcome.

Obligations to provide details of impending closures of branches so that customers can make alternative arrangements, to pass on in a timely manner either cuts or increases in applicable interest rates so that customers can consider their options and to inform customers annually how bank charges may be mitigated, all appear to enhance the aim of providing the consumer with sufficient information to benefit from competition between credit institutions.

Chapter Four (Loans)

Unsolicited credit facilities
We welcome the proposed restrictions on unsolicited pre-approved credit facilities but note that the restriction specifically applies to ***customers***. Is this intended to apply, therefore, to existing customers only, leaving the way open to approach potential customers with pre approved loans such as a credit card facility? If this is the case, we would be concerned. In our view, there should be nothing to prevent an institution robustly advertising and promoting its products, but the choice to initiate a credit bargain should be that of the consumer.

We also welcome the prohibition on increasing a customer's credit card limit without their consent, a suggestion made in our previous submission on what the Code might contain. Again, in our view, the initiative to seek an increase in the limit should come from the customer, particularly in light of the huge increase in the use of credit cards in Ireland in the past decade and the high levels of indebtedness that can result.

Non mortgage personal lending
We agree that the effect of missed payments should be explained to a customer and this information should be highlighted in the loan approval document. In addition, whilst the Consumer Credit Act 1995 obliges an institution to set out the costs and penalties to which the borrower may be exposed in the event of default, too often this information is buried in the small print of the agreement. In our view, in common with the rest of the information that a lender must include, costs or penalties should be clear on the front page.

We reiterate the anomaly pointed out above in relation to the non-application of the Code to finance houses. Default rates of interest on the hire purchase agreements provided by the main finance houses run between 1.5% to 2% interest per month. We believe that this information should be made very clear to the prospective hirer prior to signature of the agreement and should be prominent on the front page.

In relation to contacts for the purpose of Section 46 of the CCA 1995, there is an anomaly in that section that provides for a separate written signature of consent where the consumer consents to visits or telephone communications to his/her employer or members of his/her family by the creditor, but only needs to consent (i.e. no specific signature is required) to visits or telephone calls to him/herself at the place of work or residence.

In our view, the Code should provide that all consents of this nature require the signature of the consumer separate from any other term of the agreement. Equally, the Code should also address consent to other forms of communication such as text messaging and electronic mail that Section 46 does not currently cover.

Mortgages

We are strongly of the view that mortgage refinancing/equity release products should carry comprehensive details of the nature of the product and the potential consequences of failure to meet payments. We agree that independent legal advice should be sought but do not believe that this should substitute for a transparent explanation of what is at stake.

In particular, where a number of short term loans are being consolidated into a longer term loan, it should be specifically pointed out that although the cost of credit will generally decrease in the short term, the borrower will have longer to pay. Equally, the difference between an unsecured and a secured loan and the differing legal consequences of default should be clearly explained to the customer.

Chapter Five – Insurance Products and Services

Payment Protection Insurance

We believe that the Code should specify that payment protection policies sold to borrowers in association with consumer credit or hire purchase agreements should come in the form of a separate written agreement, setting out the relevant terms and conditions, and requiring the written signature of both parties. Provision for a cooling off period should be made and the insurer should be required to certify that an examination of the suitability of the product for the customer has been carried out by reference to the amount of credit borrowed, the cost of the insurance relative to the amount borrowed and the income of the customer.

Finally, we would argue that a customer should not be facilitated to borrow the money to pay for these insurances at the equivalent rate of interest set out in the original loan agreement.

FOR FURTHER INFORMATION IN RELATION TO THIS SUBMISSION PLEASE CONTACT:

Paul Joyce, Free Legal Advice Centres, Tel – (01) 8745690, Email – paul.joyce @flac.ie