

Banking

Further Safeguards for Financial Consumers – The Consumer Protection Code 2012

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The Consumer Protection Code 2012

The Code addresses weaknesses experienced with the previous code and it is intended, when combined with a higher level of enforcement, to result in greater consumer protection.

To access the Code, please click [here](#).

To access the Central Bank's press release on the publication of the Code, please click [here](#).

Application of the Code

As a rule of thumb, the Code applies to, and is binding upon, most forms of financial services entities (other than licensed moneylenders, (generally) credit unions, MiFiD services and reinsurers) offering financial services in the State.

Generally, the Code applies in addition to, rather than in place of, other regulatory and legislative requirements. However in certain circumstances, all or some of the Code's provisions do not apply; examples include a credit agreement to which the EC (Consumer Credit Agreements) Regulations, 2010 applies or a mortgage loan secured by the borrower's primary residence as the Code of Conduct for Mortgage Arrears applies.

Scope of the Code

The general principles at the beginning of the Code benefit all financial services customers in the State, but the remaining chapters of the Code only apply to the more restrictive category of "consumers" as defined by the Code. Further protections are prescribed to new limited categorisations, "personal consumers" and "vulnerable consumers", both of which are defined in the Code.

Contents of the Code

Some of the main revisions to the Code are specified below, following the order of chapters as specified in the Code.

General Requirements

The obligations imposed on an entity in the previous code have either been made more explicit through expressed requirements being inserted or additional protections being introduced, particularly in this chapter which sets out many of the Code's key fundamental concepts. Below are some of the main new concepts in this chapter.

An entity must provide those identified as vulnerable consumers with necessary arrangements or assistance to facilitate their dealings with that entity.

Where an entity intends to merge, cease or transfer its business, it must consult with the Central Bank and its consumers.

Unsolicited personal or doorstep visits for the purpose of selling financial products to consumers are now prohibited. Any other contact with consumers must be logged and follow strict guidelines.

The Code also requires an entity to give detailed information to its intermediaries in relation to the investment products they sell on its behalf. This should aid intermediaries in assessing whether a product is suitable for a consumer. An entity's remuneration arrangements should not impair the assessment of whether a particular product or service is suitable for a consumer and meets the consumer's needs and objectives.

Provision of Information

Increased transparency for consumers is a key aim of the Code.

The Code sets out key information that an entity must provide to a consumer before, during and after the sales process, including information on charges, commission and remuneration arrangements as well as information about the product or service.

There are new or revised informational requirements depending on the type of the product or service being sold. For example, an entity can only use the word "independent" in its name or description if it is indeed independent. Features and restrictions of products must be clearly specified as should an intermediary's status or basis of remuneration.

Information about the entity, the product and remuneration must be simple, accurate, easy to find (eg on a website) and up to date.

Knowing the Customer and Suitability

Again the requirements are more prescriptive than the previous code. An entity must collate information under the 'Knowing the Consumer' process to assess whether a product or service is suitable for a particular consumer prior to offering it. This may include the consumer's needs, objectives and financial and personal circumstances.

A lender must assess whether a personal consumer can afford the loan and, in certain circumstances, "stress test" the applicant to determine if the loan can still be repaid should the rates increase. In determining affordability testing, self-certified income declarations of personal consumer's income can no longer be accepted by an entity.

A written statement of suitability must be provided to the consumer.

Post-Sale Information Requirements

In addition to the Code still requiring notification to consumers of material changes to its terms of business, other changes (such as interest rates on credit) and annual statements must also be provided.

Rebates and Claims Processing

Similar to its predecessor, the Code is prescriptive on the requirement to have and implement written procedures for premium rebates and claims processing.

Arrears Handling

New rules (similar to those for mortgage arrears which are already covered by the Code of Conduct on Mortgage Arrears) have been introduced setting out how an entity must deal with and treat personal consumers who are in arrears on a range of loans (including credit cards, personal loans and buy to let mortgages). The provisions do not apply to mortgage lending as these loans are covered by Code of Conduct on Mortgage Arrears.

A written procedure for arrears handling must be in place and information on arrears handling must be on the entity's website.

In particular, where an account is in arrears, an entity must immediately communicate with the personal consumer and seek to agree an approach with the consumer. It must provide more detailed information to the consumer than previously required, for example, in relation to any impact which continued non-payment might have on other accounts held by the consumer with that entity.

Where the consumer makes an offer of a revised repayment arrangement that is rejected by the entity, the entity must immediately explain its reasons for rejecting the offer and communicate these to the consumer.

The level of contact and communications from the entity must be proportionate and not excessive, with unsolicited communications with a consumer in arrears limited to three only in any calendar month. As the Code stops short of the Code of Conduct on Mortgage Arrears in terms of the protections it sets out for such loans, it may have an unintentional consequence. For example, there is no provision preventing an institution from taking legal action for repossession within a certain time period following default, as exists for primary residences under the Code of Conduct on Mortgage Arrears. As a consequence, an entity will be more likely to institute legal proceedings earlier against a non-communicative defaulting personal consumer as it is limited from communicating with him/her under the Code.

Advertising

An advertisement must contain more balanced information, and its mandatory contents are prescribed in the Code. Where an advertisement outlines the benefits of a product or service, it must also outline the risks.

In addition to the required warnings, assumptions, commendations and comparisons must be reasonable, fair, up to date and not misleading.

Errors and Complaints Resolution

Errors and complaints resolution has been substantially increased. In addition to an entity having written procedures in place for the effective handling of errors and complaints, there are now limited timeframes for an entity to resolve errors. Detailed error and complaint logs must also be retained.

Regular analysis of errors and complaints is required to ensure that the entity identifies any potential patterns of consumer detriment. It should also be highlighted to senior management, who should consider it as part of their individual fitness and probity requirements.

Records and Compliance

Records of consumer instructions, decisions, conditions and other details that must be logged are much more prescriptive. Where the Central Bank requires information, the appropriate personnel shall participate in the meeting.

Definitions

This chapter is more extensive than the previous code with new and more elaborate definitions now included.

Conclusion

In conclusion, consumer protections have been strengthened by this Code that is binding on financial services entities. Further the Central Bank has increased its resources to supervise and audit financial services entities to ensure compliance with the Code. Guidance as to the Central Bank's proposed strategy if an entity fails to implement the Code is provided by the "CP 54 - Review of the CPC" publication, enforcement action taken to date and the administrative sanction guidelines.

For further information on this topic please contact: Garrett Miller, Partner, Corporate M&A
E: gmliller@efc.ie