



Association Of Expert
Mortgage Advisors

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By Email and Post
Consumer Protection – Retail Intermediaries and Payments Institutions,
Central Bank of Ireland,
PO Box 559,
Dame Street
Dublin 2.

19th September 2013.

Re: Response to Consultation Paper on the Authorisation Requirements and Standards for Debt Management Firms and the Amendment of the Minimum Competency Code 2011 (CP70).

Dear Sir/Madam,

This document has been compiled by the Association of Expert Mortgage Advisors setting out some practical issues which are of concern to us as detailed in the Consultation Paper on the Authorisation Requirements and Standards for Debt Management Firms and the Amendment of the Minimum Competency Code 2011 (CP70).

The Association of Expert Mortgage Advisors represents a group of Financial Advisers who specialise in the area of mortgages and debt negotiation/re-structuring. Our experienced and qualified members have practical and direct hands on experience in assisting financially distressed consumers on a daily basis, in order to achieve workable solutions with their Lenders. Our members promote professional standards and are well regarded by both their clients and the Lenders they negotiate with. We develop long-term relationships with our customers who, in turn, can rely on our experience, expertise and knowledge in all aspects of their debt re-structuring needs.

This is largely a new area of expertise and while many other professions have some experience in this as part of their own respective field, a number of our members took the decision to specifically specialise in the area of mortgage debt re-structuring when arrears first became an issue over five years ago. Typically, these advisers provide debt re-structuring services to on average 150 clients on an annual basis. Therefore, we are particularly well informed in the nuances of this area and in the developing policies of the main Lenders and the solutions that are likely to be acceptable to both parties.

Whilst welcoming and endorsing the introduction of regulation in this area, having reviewed and considered the Consultation Paper (CP70), we believe that the proposed regulations as they currently stand do not meet the needs of those consumers in financial difficulty. As proposed they do not appear to be in line with the existing authorisation requirements for Retail Intermediaries.

Directors: Peter Gilbourne, Trevor Grant (Chairman), Peter Magee, Ken Murray, Daniel Joseph O'Donovan.

Secretary: BettyAnn Keogh (Carroll).

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In particular, we wish to address the following matters:

General Comment

We are aware that there is separate legislation required for those firms who handle client funds for onward transmission to their creditors. We believe that a number of the requirements proposed in CP70 would be more suited specifically to such entities, rather than applied to Financial Advisers who have no involvement in cash dispersal but are simply providing expert debt management advice to their clients. The regulations on the face of it would appear to favour non-specialist larger firms, which is likely to significantly increase the cost of advice for cash strapped consumers. Many of these firms, whilst highly qualified and experienced in their core areas, are unlikely to have direct experience in supporting consumers in negotiating with their mortgage Lenders and others creditors.

In our opinion this will lead to consumers being placed at a significant disadvantage. Primarily, this will be as a result of a number of costly requirements, which appear to be written with larger less specialised firms in mind. Many providers of this service currently operate small firms and their size does not compromise the quality and value of advice they provide. These advisers have specific experience in face-to-face customer relations and also with lender negotiations – both of which are required to ensure that borrowers receive appropriate and effective advice.

These skills are generally not practiced on a daily basis in other professions. For example, if consumers are going to be offered “incidental” advice by Barristers, Solicitors & Accountants, then questions need to be asked about how informed will these professionals be regarding CCMA, MARP & MARS and the specific policies of each lender? Could the consumer ultimately end up with an inferior arrangement simply because their negotiator, whilst highly qualified, didn’t have the relevant and in depth day to day practical experience required?

The consultation paper states that “excepted people” can give this advice without authorisation and they include Barristers, Solicitors & Accountants “who provide debt management services only in an incidental manner and are subject to regulation by a professional body” – however, a Financial Adviser (who is already regulated under the Consumer Protection Code), cannot provide this service even in an incidental manner. This appears inequitable and unreasonable and will be to the detriment of the consumer. We do not believe that the consumer’s best interest can be served by non-specialist firms offering incidental advice on an ad-hoc basis, and this element of the regulation would seem to encourage it. The best interests of the consumer needs to be foremost in these regulations.

Of more specific concern to us are the following;

Minimum Competency Code 2011

It is proposed the qualification, Qualified Financial Adviser (QFA), will be included in the MCC as a recognised qualification for persons exercising certain functions in debt management. It is further proposed that there will be a transitional period of 4 years for persons seeking authorisation to obtain a relevant qualification. Considering the life changing issues at stake for consumers, we believe that the QFA qualification alone is not sufficient for an adviser operating in this area. Given the specialised knowledge required, we suggest that these advisers should be at a minimum APA (Loans) qualified and in the process of obtaining the QFA qualification within the next 2 years. In addition, we recommend that the adviser should also have completed the Personal Insolvency Practitioners Certificate and/or the Residential Mortgage Arrears Course with the LIA or Institute of Bankers within a period of 12 months, as the area of debt management/mortgage arrears advice requires specific knowledge relating to the CCMA/MARP and Personal Insolvency.

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3.2 Professional Indemnity Insurance (PII)

We do not agree nor understand the requirement for a firm to hold a level of Professional Indemnity Insurance cover greater than that currently required by other regulated retail intermediaries or Personal Insolvency Practitioners.

The level of cover required by a Personal Insolvency Practitioner is €1m for each claim and €1.5m in the aggregate. Therefore, why should a greater level of PII be required for a debt management firm?

On the premise that the proposed level of cover is available (and based on numerous enquiries this is extremely questionable), the cost based on sample quotes obtained is considered prohibitive and therefore it is likely that only a few, if any, Financial Advisers will be in a position to continue in this area. This will obviously be to the detriment of the consumer.

We recommend a level of cover consistent with that required of other regulated retail intermediaries. We cannot see the level of risk anticipated that would require cover to be at the level of the total amount of debt of all customers being negotiated at any given time.

Operation and Management

4.5 Compliance Officer

The requirement for a standalone Compliance Officer states "that the relevant persons involved in the compliance function are not involved in the performance of services or activities they monitor". For many smaller firms this will require the function to be either outsourced or they will be required to hire additional staff on a part-time basis. This is likely to be extremely costly and impractical, and could exclude those experienced specialist debt advisers that consumers in financial difficulty have come to rely on. We recommend that the requirement for a Compliance Officer for debt management firms should be the equivalent to those requirements for currently regulated Financial Services Firms.

4.6 Internal Audit Function

The paper stipulates a requirement for an internal audit function. Notwithstanding the points previously made in relation to the typical size of an adviser firm and the additional costs associated with retaining additional employees/external advisers, we are unclear as to the necessity for such a requirement, particularly in light of the fact that no other regulated entity, including firms authorised under MIFID, appear to have such a requirement placed upon them. If there is to be a role for an Internal Auditor we suggest that it is combined with the role of Compliance Officer.

Conclusion

In conclusion, we believe that it is imperative that those consumers in financial difficulty receive the most appropriate and up-to-date advice possible. We are extremely concerned that some of the draft/potential regulations as highlighted could unduly restrict this service and deprive consumers of a highly valuable service.

It would seem only logical that those suitably qualified advisers engaged in this area on a daily basis are best placed to offer the expertise and knowledge required to act in the consumers best interests. This is particularly pertinent considering the regularly changing and diverging policies and strategies of each of the Lenders. This service requires absolute focus from qualified and experienced professionals who have a day to day practical experience of assisting those consumers in need. Anything less will short-change the 100,000 plus families in mortgage arrears.

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Finally, for the purposes of clarity we detail below the functions performed by our members in the provision of debt management services to their customers:

1. Provide information and advice that is always accurate and appropriate for the consumer;
2. Explore and take account of the consumer's reasonable expectations, desired outcomes, preferences and attitude to risk;
3. Provide clear and balanced explanations of all of the options available to the consumer, including the relevant advantages/disadvantages, eligibility criteria, the costs and risks associated with each proposed solution;
4. Carry out a realistic and reliable assessment, taking appropriate account of the consumer's financial position, personal circumstances and other relevant factors before advising the consumer of the preferred/most suitable course of action;
5. Explain to the consumer why we recommend a particular debt solution over another;
6. Ensure that the consumer is aware of the requirements of the latest CCMA & MARP processes and ensure that any proposed solutions have taken into consideration such regulations, policies and protocols for homeloans;
7. Ensure that the consumer is aware of the options available under the Personal Insolvency Act;
8. Always involve the consumer in the decision making process and ensure the consumer understands all of the options and consequences of same;
9. Ensure that the consumer understands the importance of paying priority debts over other debts;
10. Ensure that the consumer doesn't ignore correspondence or other contact from its creditors.

Timelines

Having sought clarification from the CBOI, we are advised of the following timelines:

- September 23rd:** Closing date for responses to CP70
September 30th: Finalisation of the Debt Management Regulations
October 31st: Preliminary interview and application for authorisation must be submitted.

It would appear that the CBOI has a very short period in order to consider all submissions in response to CP70, particularly in light of the number of expressions of interest to date from firms who are currently operating in this area. Given the requirement for a firm to have applied for and conducted a detailed interview and subsequently submit a comprehensive application, we respectfully request that the October 31st deadline for applicant firms is extended to November 30th. This would provide any applicant firm with a suitable amount of time to digest and understand the final requirements in relation to this matter, prepare appropriately for the preliminary meeting and submit a comprehensive application to the standard required.

ENDS