Irish
Mortgage Holders
Organisation

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RE: Consultation on the Authorisation Requirements and Standards for Debt Management Firms and the Amendment of the Minimum Competency Code 2011 Consultation Paper CP70.

Submission by: The Irish Mortgage Holders Organisation

The consultation paper issued by the Central Bank, we believe, could present a major issue for debtors and could limit access to advice for many and rise the cost of advice for all, with the most significant adverse impact on those debtors who are experiencing the most accute financial pressures. It goes without saying that strict regulation is needed for the personal insolvency area from both a debtor/creditor and societal point of view. In this regard suitable and proportionate regulation is very important to protect all parties, both now and in the coming years Many agreements or advices may seem sustainable or correct when entered into, but may prove to only be a short term solution. When the agreements are tested and come under strain, those who may not have been given proper advice at the outset yet again become vulnerable. We agree, for this to be avoided, that regulation needs to be both succinct and reasonable.

However, the proposed regulation, while well intentioned, may dramatically limit the access of distressed borrowers to advice and negotiation services at first instance.

Specifically, we raise the following issues and offer some possible avenues for their mitigation:

1. Minimum Requirements

We propose that the following be among the "minimum requirements" for a debt advice provider,

- QFA
- Solicitor
- Barrister
- Accountant

- Personal Insolvency Practitioners Course
- Mortgage arrears course
- Certain "PIP" course qualifications
- Relevant experience
- Mental health training

The minimum competency omits any relevant experience needed. Many might have QFA qualifications but not deal with mortgages or clients in mortgage arrears and may only deal with pensions or insurance products. We propose that the regulations be modified to reflect inclusion of such requirements as outlined above and in the cases where advice is being provided by those who do not meet relevant experience, such advice should be subject to second opinion testing by a senior colleague or partner who meets the experience requirement.

2. Client Funds/Accounts

Many have legitimate concerns, arising from experience gained over the past number of years in personal finance services (e.g asset management), with regard to debt management firms who have withheld client funds. We argue that there needs to be a clear distinction between debt advice / negotiation and services involving client funds. This consultation regulation deals with both distinctly separate services but treats them as one, this is not appropriate given the huge differences that clearly exist and the substantial cost that such failure to differentiate between two distinct types of services will impose on service providers. This draft regulation intends to have all those advising debtors on their debts be regulated to the same extent as those handling client funds. This will put an excessive burden on those who, by only providing advice and negotiations services, arguably, are carrying out a less risky service. In addition, this requirement will impose unnecessary double cost burden on borrowers, who will be covering the cost of provision of such insurance by both debt advice / negotiation service providers and services providers handling client funds. Furthermore, this double cost burden will be imposed indiscriminantly on those who can pay and those who have no funds to pay for the services, potentially resulting in many truly distressed borrowers being left outside the professional advice services.

In our opinion, client funds and accounts restrctions should instead apply only to those providers directly involved in handling clients funds.

3. Professional Indemnity Insurance

We believe the proposed requirements in relation to professional indemnity insurance are disproportionate. We believe it is an excessive requirement that insurance must cover the full amount of all the client debt, this could prove to be an uninsurable figure. This, we argue, is prohibitive. This will close existing consumer-focused organisations, resulting in reduced

competition, lower quality of alternatives available to borrowers and higher cost of services provided.

We suggest that it would be more appropriate to cover only the money being processed by the firm. This would ensure that small operators in more remote areas of Ireland could function, otherwise the insurance requirements may leave many counties or towns without debt advisors/negotiators.

4. Compliance

Significant expense is envisaged in order to provide a compliance person and an internal audit function. For those not handling client funds it is questionable whether this is excessive, and thus a significant expense which will be passed onto debtors. These compliance requirements may not be an issue for the larger firms but this regulation must also provide for reasonable relief for those operating in more rural and small scale areas.

We propose that the requirement for a compliance officer and auditor should be similar to the requirement for other retail intermediary firms.

We also propose propose an 'audit light' regime whereby basic compliance questions must be answered / provided as part of the initial process and a full audit only becomes a requirement when the regulator can demonstrate that it is required in a particularl case.

5. Transitional Period

The transitional period of four years to obtain the relevant qualifications is, we believe, highly unsatisfactory. It exposes the area to perhaps negligent and unqualified advice just at the time when the peak numbers of cases are expected to go through the system. If improper advice is given at the start, leading debtors down a wrong path, it may prove impossible to rectify. Those in financial trouble are vulnerable from the moment they engage a debt advisor, it is highly unsatisfactory for the debtor to be exposed to the risk of negligent or unqualified advice. The first clients may essentially prove to be guinea pigs for an unqualified advisor who learns from his/her mistakes or obtains the suitable qualifications some years later.

We propose that there be no transitional period. If this were another profession, such as a solicitor or doctor, one would not be allowed to practice without having the requisite qualifications. People's lives and futures are equally at risk in this instance. We however propose, due to possible demand for services, that each firm may have three "unqualified" advisors working under a/each senior qualified colleague. These three advisors are however to be subject to a 12 month transitional period, within which they must get the requisite qualifications.

6. Director Liability

We argue that the provision that every director falls culpable for the actions of each staff member or volunteer, where breaches occur, is excessive. This is particularly true where the direction in question may have no actual knowledge of such breach This puts a huge risk, a possible criminal offence, on a director that may be acting and operating his service to the highest standards

We propose that the company/body corporate should be liable and not the directors personally.

7. IT Systems

The IT system needed in our experience is significantly more functional than what is outlined in the draft. This must include the highest security levels, covering all debtor and creditors correspondences and up to date files and information.

Directors

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