

**Joint submission by:**

**Irish Brokers Association (IBA),**

**Independent Mortgage Advisers Federation (IMAF)**

**Proposals for**

**Additional Consumer Protection Requirements for Debt Management Firms**

## Introduction

Thank you for the opportunity to provide a response to Consultation Paper 75 “ Additional Consumer Protection Requirements for Debt Management Firms”

We propose to firstly address the twelve questions that have been raised in Consultation Paper 75 and conclude with some general comments on aspects of the Debt Management Process that are of concern to our members. Where there are specific comments in relation to the context of a particular question this has been included with the answer.

**Question 1:** Do you agree that the current advertising requirements under the Code adequately protect consumers from the potential for consumer detriment associated with debt management services?

**Answer 1** Yes both the CPC 2012 and Guidelines issues in Oct 2013 protect the Consumer from potential detriment associated with debt management services.

**Question 2:** If you believe that additional advertising rules should be introduced for the activity of debt management services, please outline what measures you think should be considered.

**Answer 2:** We do not believe any additional requirements are required

**Question 3:** Do you agree with the proposed approach relating to client leads as outlined above? If not, please explain why?

**Answer 3 :** In principle we agree that ‘Lead generator’ companies as defined should ensure that the marketing and advertising materials that they use are clear, fair, accurate and not misleading with regard to the nature of the service being offered. However we believe it is unreasonable to expect Debt Management Firms to be in a position to verify this before they make payments. It should be incumbent of the ‘Lead Generators to verify their own processes that they use to generate the leads. We are also concerned that the proposed Additional Regulation 2.2 will be in conflict with 3.25 of the CPC 2012.

**Question 4:** Do you think that these information requirements for improved transparency of charges are sufficient? If not, please outline any further measures you think are necessary in this area.

**Answer 4:** The existing CPC requires that Fees and Charges are disclosed in advance. This is usually disclosed in the way stated below. In view of the nature of the work being carried out it is highly unlikely that the debt manager would know the total cost of the service before work begins.

**Comment:**

Terms of Business should allow for differentiation of service where different fee scales apply. It is normal practice for Regulated Entities (and other professionals e.g. Accountants Solicitors) to agree an up-front fee with additional amounts to be agreed in advance before other work commences

- Initial Fees to assess what is required and how long it is likely to take

- Particular charges for money transfers and other specific task

Details of the fees charged should be transparent and indication of approximate costs can be given, however it is inconsistent with professional advisors that total costs be agreed up front at a consultation meeting where the firm has no concept of what difficulties or issues may be there with the potential client. The modus operandi applied by other professionals i.e. the legal profession would be to give a ball park figure. The firm could agree to provide a statement of fees accrued to date on a monthly basis and the client can have the option of settling that amount then or waiting to the end. From the Debt management firms' perspective, settling on a monthly basis would be an acceptable proposition.

Alternatively fees per hour could be agreed in advance.

**Question 5:** Do you think that there should be a prohibition on the payment by means of credit of fees or charges for debt management services?

**Answer 5:** We do not believe there should be a prohibition on the payment of fees by means of some form of credit. By definition it may be difficult for the customer to source the professional help required if there is an inability to have some form of credit available.

Comment: Staged payments over an agreed period could also be considered as suggested above. Alternatively an arrangement similar to the arrangements that which applies to Personal Insolvency Practitioners could be considered e.g. include fee as part of the Debt to be paid as instalments over initial period along with restructured debt repayment. When fee discharged then amount of monthly debt repayment could be increased.

**Question 6:** Do you agree that a standardised method of financial assessment is required for this sector? If not, please explain why?

**Answer 6:** Yes it makes perfect sense that there should be a standardised method of financial assessment leaving scope for notes to clarify the individual's personal circumstances.

**Comments:** The standard SFS form is perfectly acceptable however we also suggest

- If there are other arrears they need to include optional sections for them.
- That all institutions should be required to have the same layout
- That the Primary Residence details should be kept separately from other 'Buy to Let' or other commercial concerns. It is confusing that parts of the form state Primary residence and then other parts refer the customer back to these sections subsequently.
- If the form is being altered the up to date version should also take account of water charges & C13 should make reference to car fuel i.e. petrol/diesel/gas.

**Question 7:** In respect of the potential options for a standardised method of financial assessment as outlined above, which is your preferred approach and please, explain why?

**Answer 7:** The existing form, subject to above suggestions seems to capture all relevant information

**Question 8:** What alternative measures do you think we should consider to achieve a robust and holistic approach to financial assessment?

**Answer 8:** We share the concerns of the Central Bank as outlined on Page 8 iii) Financial Assessments & Quality of Service a), b), c) & d). We believe that allowing practitioners who have proven skills, knowledge and experience in this field are best placed to carry out Debt Management services as defined. We believe that entities that are already regulated and are qualified by academic achievement i.e. QFA, Certified Financial Planners and those 'grandfathered' in that area should be accredited for this work. We believe those who have qualified as Personal Insolvency Practitioners should also be included without further scrutiny.

**Question 9:** Do you agree with the proposed requirements outlined at a), b, c) and d) and with the option outlined at e) above? If not, please outline why.

**Answer 9:** a) b) c) & d) Provisions appear reasonable

**b) Comment:** This provision is reasonable as a statement of suitability is already required by the Code. Along with outlining the reasons why the course of action is the most suitable option for the consumer based on his or her individual circumstances. We agree the risks and consequences of acting on such advices should be included.

e) A finite timeframe of 5 days appear to be a very tight period for a customer to reflect and consider all the implications of such an undertaking. As customers are more accustomed to 'Cooling Off' periods perhaps the offer should be made in an agreed framework with the financial institution concerned. If there is a run off time, where the financial institution will withdraw the terms available, that deadline should be brought to the attention of the client. It seems unreasonable that an institution could put more pressure on the consumer to make a decision in five days rather than allowing them the sufficient amount of time they need

**Question 10:** Do you think these protections are sufficient to address the potential conflicts of interest risks identified above? If not, please outline any further measures you think are necessary for this particular sector.

**Answer 10** Provisions 3.28, 29, & 32 of CPC seem sufficient to address Conflicts of interest Proposal 4.5c will add a layer of transparency.

**Question 11:** Do you agree with the proposed approach relating to reviews of debt management arrangements as outlined above? If not, please explain why?

**Answer 11:** NO we believe there are already provisions in CPC to deal with unwanted contact.

**Comments:**

1) Concerns about contributing to stress and opportunity for additional fees would appear to be unfounded in the light of the UK experience. Periodic review of a restructured debt seems prudent. Those who negotiated would seem best placed to review.

2) This should be benchmarked against an existing client whereby some clients ask them to provide ongoing contact and to manage them through the process so that they do achieve the debt resolution that they want. This is done on the basis of an annual contract with a monthly retainer. If the Debt Management programme is going to be stressful for the client in the first instance, that should be addressed and if the Debt Management advisor genuinely has his clients' interests at heart it shouldn't increase stress levels but only the consumer can decide this and let the consumer decide if they want this type of arrangement and pay the fees agreed for it in that instance.

The Debt Management advisors as professionals don't want a damaged reputation with the financial institution whereby they negotiate terms for a client or consumer who then reneges on the agreement or never had any attention of repaying the debt. This will tarnish their reputation with the financial institutions and may inhibit their ability to negotiation on other genuine cases into the future. Therefore there is reputational risk for the Debt Management firm which does not seem to have been taken into account.

**Question 12:** Do you think that:

- i) Such review should be allowed only at a consumer's request; or
- ii) Such review should be allowed only when there is a change in a consumer's circumstances; or
- iii) No limitations should be imposed on debt management firms in relation to undertaking reviews of debt management arrangements; or
- iv) Should there be an obligation for periodic reviews without specifying the frequency of these?

**Answer 12:** See response to Q 11 above

## Other Comments

We have concerns about the following issues. Item numbers & page numbers are included for clarity.

### Page 15

Provision 1.1 d)

It is will be exceedingly difficult to decide the 'likely duration' of the arrangement before any assessment has taken place.

Page 15

2.2. A **debt management firm** must not pay a fee, commission, etc.

Please see comment on referrals for a fee in relation to Question 3 above

### Appendix 1 A&B

### Page 19

1. *There are sources of free debt advice and services:* in our opinion should not have to be included. The free services out there do not offer the same service as Debt Management Firms and therefore are not comparable.. We have concerns that many of the sources of free advice are not in a position to deal with the volume of business and the individual concerned are not adequately experienced in many of the complex situations that arise. In our experience consumers can suffer long delays and have unrealistic expectations of the service available.

We also have concerns that some organisations, that offer free advice, are not funded publically by the state, but are in receipt of funds from Financial Institutions. We are strongly of the view that these firms should be subjected to the same rigorous scrutiny of the Central Bank as all the Debt Management Firms who receive fees in the normal way from their own clients.

Page 20

Section '(2) You **will** know the **total** cost to you of any fees and charges associated with the service'

- (a) In compliance with Provision 4.56 [of the Code], this section must explain the fees and **charges** that **could** apply.
- (b) Comment : We suggest more consistency in phraseology – There is a big difference in '**you will know the total** v **fees & charges that could apply**

The total cost is impossible to quantify and it puts the Debt Management Firm in a very difficult position on the basis that there may not be full disclosure from the client at the initial meeting. There must be a caveat on the basis that if the scope of work changes that the company reserves the right to revisit the total costs etc. There will be no quantifying of the total cost at this early in the engagement.

**Page 21**

Comment: We suggest an amended wording as shown below.

*Section '(5) You should be aware that there may be potential risks and/or disadvantages associated with the service' as a consequence of acting on such advice*

This section must include the following statements: .....

Sixth Bullet slight amendment for meaning

“Undertaking the proposed course of action may affect your credit rating, which may limit ~~their~~ **your** ability to access credit in the future.”

**Page 22**

Comment on *Section '(6 )* additional item should be included

Item c) a level of notice must be given and any outstanding fees must be paid.

This information should be contained in the Terms of Business &/or in the Terms of Engagement letter which would be given to the client.

Any comments in relation to **Appendix 2** are contained in the responses to the questions.

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