



national consumer agency
gníomhaireacht náisiúnta tomhaltóirí

putting consumers first

National Consumer Agency submission to the Central Bank of Ireland's consultation paper: *'Additional Consumer Protection Requirements for Debt Management Firms'*

1. Introduction

- 1.1. The National Consumer Agency ('Agency') welcomes the opportunity to comment on the Central Bank of Ireland's ('Central Bank') consultation paper concerning *'Additional Requirements for Debt Management Firms'*¹ ('Additional Requirements'). As stated in its response to the recent consultation, *'Authorisation Requirements and Standards for Debt Management Firms and the Amendment of the Minimum Competency Code 2011'*², the Agency has advocated for the regulation of debt management firms in recent years and is of the view that there is currently insufficient supervision or regulation of such firms with the result that consumers are not sufficiently protected³.
- 1.2. The Agency is unaware of the size of the debt management market in Ireland and would welcome clarity as to the number of debt management firms and the number of consumers that are receiving assistance from these firms, as a starting point for any analysis of the sector. While the Agency has previously suggested that these statistics are required, it would re-iterate that this information should be collected and monitored once the new regulatory regime is in place, in order to accurately record and assess the market.
- 1.3. The Agency was contacted, via its consumer helpline, 28 times by consumers in relation to debt management firms from February 2013 to February 2014 and 349

¹ <http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP75/Consultation%20Paper%20CP75%20FINAL.pdf>

² <http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP70/Consultation%20on%20the%20Authorisation%20Requirements%20and%20Standards%20for%20Debt%20Management%20Firms.pdf>

³ <http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP70/NCA%20Submission.pdf>

times since July 2010. The majority of the contacts received related to debt management firms which went into liquidation. Consumers of these firms contacted the Agency's helpline to seek clarification of their rights and whether they would lose their funds. Furthermore, consumers have also sought to clarify with the Agency as to whether these firms are regulated as well as a number of queries in relation to data protection practices.

- 1.4. The Agency notes that there are requirements for firms to have professional indemnity insurance but separate to this, whether client funds will be covered under the Deposit Guarantee Scheme is queried. If not, consumers should be made fully aware that their deposits with debt management firms are not covered under the scheme. The Agency would also query if the specific regulations on client funds in S.I. No. 383 of 2009, European Communities (Payment Services) Regulations 2009⁴ are applicable and if not could similar protections be considered. The Agency is strongly of the view that the funds of consumers who use the services of these firms should be fully protected.

2. General observations

2.1. Section 5.2 (i) – Advertising of debt management services

- 2.1.1. The Agency notes the concerns identified in relation to the marketing practices in the sector and considers that the main issues have been identified. At a very basic level, there is the concern that an advertisement can mislead consumers in terms of what a firm of this nature actually is, the type of business they carry out and the services they provide. A misunderstanding of this information could have a very detrimental impact on consumers. In relation to this, the Agency would have concerns where firms are falsely claiming to be or implying that they are charities or government bodies, which became a problem in the UK and was identified by the Office of Fair Trading following a review of the market⁵.

2.2. 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?

- 2.2.1. The Agency considers that the Code does not adequately protect consumers from the potential for consumer detriment associated with debt management services and supports the introduction of Additional Requirements.
- 2.2.2. The Agency agrees that 9.2, 9.3(g), 9.11, 9.13 and 9.18 of the Code are all important in terms of the concerns raised relating to advertisements, however, the Agency

⁴ <http://www.irishstatutebook.ie/pdf/2009/en.si.2009.0383.pdf>

⁵ <http://www.of.gov.uk/news-and-updates/press/2010/101-10>

would query why prominence is given to some provisions over others when all the provisions in Chapter 9 of the Code apply. For example, one provision in particular that may have been overlooked is provision 9.6, which states: *“A regulated entity must ensure that:*

- (a) Key information, in relation to the advertised product or service, is prominent and not obscured or disguised in any way by the content, design or format of the advertisement; and*
- (b) Small print or footnotes are only used to supplement or elaborate on the key information in the main body of the advertisement and must be of sufficient size and prominence to be clearly legible.”*

2.2.3. The Agency is also of the view that the provisions in relation to warning statements and in particular risk warnings should be considered equally important in terms of the potential risk attached to debt management firms. In line with this and regarding 5.2(i)(a)-(e) the Agency notes that there is no reference to misleading advertisements which emphasise the potential ‘savings’ which may be made through rescheduling procedures. The Agency would be of the opinion that potential savings should not be highlighted in advertisements. Furthermore the Agency is of the view that provision 9.9, which states: *“It is not necessary for a regulated entity to display the warning statements required by this Chapter if the advertisement does not refer to the benefits of a product or service but only names the product or service and/or invites a consumer to discuss the product or service in more detail with the regulated entity”*, should be strengthened. Regardless of whether the benefits of a product or service are named and/or the consumer is invited to discuss the product or service in more detail, an advertisement for a debt management company and/or its services should include all relevant warnings.

2.3. 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.

2.3.1. Although the current advertising requirements under the Code provide a level of protection for consumers, as above, the Agency would argue that the inclusion of warning statements on advertisements for debt management firms and/or services needs to be considered. The Agency believes that warning statements are vital for consumers and should be included in documentation and advertisements by debt management firms. In addition, the Agency would propose that a warning such as the following should be included in the Additional Requirements: *“WARNING: You may still have debt outstanding after completing the debt management process”*. Consumers may seek the services of a debt management company for unsecured short-term debt and they need to be aware that they may still have a mortgage and/or other loans outstanding that they will need to continue repaying.

2.3.2. The Agency notes that the Additional Requirements do not appear to provide a clear definition of the terms ‘free’ and ‘non-profit’ and the implications of these terms for consumers of debt management companies. Provision 4.17 of the Code⁶ sets out when the term ‘independent’ can be included in the name of the firm or used as a description. The Agency proposes that a similar provision would be beneficial to clarify the terms ‘free’ and ‘non-profit’. It is of concern that some debt management companies advertising themselves as non-profit organisations are charging high fees for their services. It is believed that using ‘non-profit’ as a description of a Company is a means of making such fees appear more legitimate⁷. Consumers should be made aware of exactly what each of these terms mean, and what the implications of each of these terms are for them. Unless a debt management company is in fact ‘free’ perhaps there should be a provision prohibiting them from alluding to any other vague description.

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

2.4.1. The Agency understands that if a firm satisfies itself that the marketing and advertising materials used by a third party are clear, fair, accurate and not misleading with regard to the service, then a debt management firm can pay a lead generator or other third party a fee. The Agency has a number of queries relating to this proposed approach to client leads:

- It is unclear how a debt management firm will determine whether the third party’s marketing/advertising arrangements are suitable in this respect.
- How would debt management firms become aware of the necessary criteria for a third party’s advertising to be deemed appropriate?
- Is there a process in place for a debt management company to effectively evaluate a third party entity?
- How is it intended that this judgement/evaluation be checked and enforced?

2.4.2. Overall this provision appears vague and may lead to a situation where a debt management company, supervised and regulated by the Central Bank, would be responsible for the assessment of a (potentially) unregulated entity. The Agency is strongly of the view, to ensure that consumers are adequately protected, that a provision is included to require debt management companies follow a formal,

⁶ “The term ‘independent’ may only be used in any trading name or other description of a regulated activity where the intermediary: (a) Provides the regulated activity on the basis of a fair analysis of the market; and (b) Allows the consumer the option to pay in full for the regulated activity by means of a fee.

Where a regulated entity does not provide all of its regulated activities in an independent capacity, it must explain the different nature of its services in a way that seeks to inform the consumer. It must ensure there is no ambiguity about the range of services that it provides in an independent capacity.”

⁷ <http://www.ofc.gov.uk/news-and-updates/press/2010/101-10>

documented process, to ensure the lead generator/third party has the necessary capability to carry out its activities and that such processes are monitored. Furthermore there should be protection in place to ensure that consumers are aware that their details are being passed to debt management firms through third party lead generator firms and the implications of this, where necessary⁸.

2.4.3. The Office of Fair Trading, in their most recent guidance paper, March 2012⁹, set out much stricter requirements in respect of client leads, in particular how they are licensed, than those proposed in the consultation paper.

2.5. Section 5.2 (ii) – Charging for debt management services and transparency of charges

2.5.1. The Agency notes the following statement from the consultation paper *“The position is also complicated by the fact that the debt management firm may also provide services of money transfer (which falls under a different legislative heading for the Central Bank), so it can be difficult potentially to discern what portion of their overall charges relates to ‘debt management services’”*. The Agency would seek clarity on the potential difficulty to breakdown the charges. The Agency considers that these are two distinct services offered to consumers by the same firm, however, the Agency would query why the fees can not be broken down similarly. A clear and transparent fee process needs to be in place by any firm offering one or more service, in particular when the firm is handling consumers' funds.

2.6. 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.

2.6.1. While the Agency welcomes consumers being made aware of the services provided, the total cost of the service and when the charges will be payable by the consumer, the Agency considers that there needs to be more clarity around the potential of fees and charges arising at different stages during the process. The Agency would query what happens in the event that a consumer cancels the process or wishes to switch firms and believes that the charges, where applicable, for such eventualities must be included in the template *‘Using Debt Management Services – what you should know’*.

2.6.2. Finally the Agency would argue that where a debt management firm will impose a fee on consumers for services, consumers should be able to avail of the option of

⁸ The Agency recently received a query via its helpline from a consumer who received a call from a debt management company asking data protection questions. The consumer did not have a relationship with the firm and was confused as to why it was being contacted seeking this information.

⁹ See paragraphs 3.7-3.9 inclusive for specific guidance on firms' responsibilities when dealing with client leads - http://www.offt.gov.uk/shared_offt/business_leaflets/credit_licences/oft366rev.pdf

paying this fee separately. It should not be compulsory to include it with debt repayments.

2.7. 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?

2.7.1. In line with the recommendation from the Office of Fair Trading, the Agency would agree that the issue of accepting credit as a means of paying for debt advice is a practice which could be detrimental to consumers and should be prohibited. This provision would appear to allow consumers to sink further into debt without any clear guarantee to suggest the debt management process will ultimately benefit them. In circumstances where consumers can clearly not afford to pay for the service, the firm should be in a position to assess this situation accurately but the risk in this regard is that the interests of the firm and the consumer are not aligned.

2.8. Section 5.2 (iii) Financial assessment and quality of advice

2.8.1. In line with implementation of a standardised tool for financial assessment, the Agency includes some further issues below in relation to assessment and quality of advice that may have been overlooked and/or need to be considered for a robust and holistic plan to work in practice. These would include:

- A provider's failure to look at priority debts and the importance of paying such debts first and foremost and
- The use of language in a financial assessment that may be too technical for the consumers' comprehension.

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

2.9.1. The Agency believes that a standardised method of financial assessment is required for this sector. The failure to carry out a realistic and reliable assessment, taking appropriate account of the consumers' financial position, could effectively lead to detrimental effects for consumers. The process also needs to be transparent and easily understood. The use of a standardised structure would also mean that more effective supervision and regulation can be in place.

2.10. 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?

2.10.1. The Agency understands that the Standard Financial Statement ('SFS') is used by consumers who are in arrears and it is also used by the Money Advice and Budgeting Service ('MABS'). However, it should be strongly considered that not all consumers in mortgage arrears will use debt management services and not all consumers using debt management services will be in mortgage arrears. For this reason, this financial

statement needs to be tailored to debt management services, specifically. The statement needs to take into account the consumers' unique circumstances in a simplistic form, i.e., the amount of debts, debts which are a priority, debts which may be considered less of a priority, the cumulative cost of all debts and the ability of a consumer to pay any or all debts taking into consideration their income and expenditure. It is suggested that the assessment also needs to identify the needs of individual consumers, ensuring consumers are equipped with the necessary tools and advice to firstly understand the plan and secondly make it work for them.

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

2.11.1. While a standardised approach is necessary, it should be flexible enough to consider individual circumstances. The issue of the way debts are paid needs to be addressed during the assessment stages, i.e., is it a priority debt management plan or will the debt be consolidated? Consumers need to be aware of each of the debts that are included in the process and the nature of the way they are potentially to be paid off, and indeed the outstanding amount after a set period. Emphasis should be placed on a clear and transparent approach that allows consumers understand:

- the total amount being paid;
- how much is the fee for the company;
- how much is covering interest rates;
- how much is being used to pay off the capital;
- whether the arrangement is a consolidation of all debts or debt prioritisation and if the latter, how are debts prioritised?

2.11.2. The plan needs, more specifically, to address if a debt consolidation arrangement will suit the needs of the individual consumer. In some cases consumers would feel that this is the best option, the loan interest rate on a consolidated debt may be significantly lower than the interest being paid on individual debts. They may also feel that one monthly payment is easier and simpler than the alternative of paying multiple, smaller debts and consumers need to be aware of the possibility that they may still receive contact from creditors who have not signed up the arrangement.

2.11.3. The debt management company, given the individual's income and expenditure, will need to consider if the consolidation may lead to a circumstance, whereby consumers feeling that they only have one debt, however large this may be, will be more likely to avail of further credit and sink further into debt. Research has shown that in certain circumstances this can be the case, and consolidation plans can potentially tempt further borrowing¹⁰.

¹⁰ <http://www.debtadvisorycentre.co.uk/debt-consolidation-loans/proscons/>

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

2.12.1. The Agency agrees with the principle of the proposed requirements. In terms of a), it is not clear whether documentary evidence of this assessment being conducted must be maintained. As such, the Agency would suggest clarifying this in the Additional Requirements. The Agency requests further clarity in respect of debt write down/off and considers it may be best to include that it is necessary to clarify the conditions which must be adhered to in the case of debt write down/off.

2.12.2. In relation to b), the following statement may need to be explained fully, i.e., *“that creditor’s collection activities may continue even though a debt management firm has been engaged”*. It appears that this is currently an issue, as a recent contact to the Agency’s helpline queried why extra payments were being taken for a loan they had thought was included in the plan. There needs to be clear information provided to consumers, in these instances. Section b) also needs to be updated to include potential or actual risks in terms of where rescheduling debts may lead to a negative credit rating for consumers or where reducing/rescheduling payments may lead to an extended repayment period. Furthermore it does not seem to include the potential risk that in certain circumstances the debt management service may not help the client’s situation in full or in part.

2.12.3. The Agency would have concerns about Section d) and would request examples of third parties that may be required and clarity on the role of third parties in assisting consumers with a particular course of action.

2.12.4. Section e) appears to offer consumers a type of ‘cooling-off period’. The Agency welcomes this and feels it is an important inclusion. The Agency would argue consumers should not be charged any fee up to this point and the firm should not try to unnecessarily influence consumers to proceed with this course of action. The Agency feels this time period should be considered standard and does not agree with the facility to waive the right to the timeframe.

2.13. 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.

2.13.1. In respect of a conflict of interest arising, where a debt management firm receives a payment from a third party, the Agency agrees with the obligation on the debt management firm to set out any fees, charges or monetary benefits received by the firm from the third party.

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

2.14.1. The Agency agrees that on-going contact between the debt management firm and consumers is necessary in order to proactively monitor the consumers' repayments and to assess the debt management plan on a periodic basis. If the consumers' situation changes the debt management firm will need the opportunity to reassess the consumers' position and the Agency believes it is important for the consumer to be involved in any decision making process with the debt management firm.

2.15. 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 review of debt management arrangements; or**
- iv) Should there be an obligation for periodic reviews without specifying the frequency of these?**

2.15.1. The Agency is of the view that there should be an obligation for periodic reviews of the plan in order to determine consumers' financial position on an ongoing basis and proactively manage their situation. The frequency of these reviews should be set out at the initial stages and additional reviews should only be allowed at the request of consumers, e.g., if consumers' financial circumstances change. It is important for debt management firms to be aware that unnecessary contact with consumers can cause additional pressure, and as such it is necessary to impose strict limitations on firms in respect of the undertaking of additional reviews of the arrangements in place. Ideally, the requirements imposed should lead to a balance between consumers and firms being able to manage the consumers' financial situation whilst not putting consumers in a stressful situation or not unduly harassing them.

3. General observations on Appendix A - Additional Consumer Protection Requirements for Debt Management Firms

3.1. At a high level the Agency has concerns that there may be an information overload for consumers. The Additional Requirements impose provisions requiring the consumer's signature, which may be frustrating and appear confusing for consumers. Some other general observations on the Additional Requirements are set out below:

3.1.1. General (provision 1.1)

The Agency would query the difference between this document and the terms of business document required under provision 4.13 of the Code. The Agency would

suggest that provision 1.1 is edited to state that these requirements should be included in the firm's terms of business document.

3.1.2. Restrictions (provision 2.2)

As stated earlier under question 3, the Agency would query how provision 2.2 will be enforced.

3.1.3. Statement of suitability (provision 4.4(a))

The Agency notes that there is no reference here to consumers who are acting as guarantors and whether there are any implications for same. The Agency would be of the view that a description of the actual or potential consequences of a guarantee being invoked should be included.

3.1.4. Appendix 1 – Information to be provided to consumer (pursuant to requirement 3.1)

The Agency considers that it is important to ensure the contents of this document are written in plain English. This is especially important under Section 5 – You should be aware that there may be potential risks and/or disadvantages associated with this service. The Agency suggests the Central Bank seek some plain English editing for this section, as firms will be required to re-create it.

- The Agency wishes to point out an inconsistency in the use of first and third person in the last bullet *“Undertaking the proposed course of action may affect your credit rating, which may limit your ability to access credit in the future”*.

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