



FINANCIAL REGULATOR
Rialtóir Airgeadais

PO BOX NO 9138
College Green
Dublin 2
T +353 1 224 4000
F +353 1 671 6561

10 June 2009

Re: Common Rule 45 of the Consumer Protection Code

Dear «Greeting»

In 2008 we engaged in a themed review which focussed on Common Rule 45 of the Consumer Protection Code (“the Code”). This Code provision imposes a number of requirements on regulated entities, notably the correction of all errors, the reporting of material errors to the Financial Regulator and the notification to customers of such errors. The purpose of the theme was to ascertain how Credit Institutions and Insurance Companies - life and non-life (referred to as “institutions” in this letter) have implemented the materiality requirement of the Code, as set out in Common Rule 45 b), to gain an understanding of the criteria used by institutions to determine materiality and to inform us in the preparation of the criteria for determining materiality, for the purpose of reporting errors, as required under the Code. The theme also sought to ascertain institutions’ internal processes for dealing with both material and non-material errors that come into the public domain and to seek the views of the institutions with regard to what information should be in the public domain regarding charging errors.

The purpose of this letter is to set out the findings from this theme in relation to the requirements of Common Rule 45 and to provide feedback in this regard. No additional requirements are being proposed at this time.

In general, institutions have implemented the requirements of Common Rule 45 of the Code with regard to any error in charges or prices levied on, or quoted to customers, from 1 July 2007 and procedures are in place for complying with the requirements of the Code. We would encourage institutions to ensure that staff are aware of these procedures and that procedures are regularly reviewed.

Our feedback set out below is provided under the headings of materiality, logging of charging or pricing errors and charging issues in the public domain.

1. Materiality

Common Rule 45 b) of the Code refers to where a regulated entity considers that there may have been a “material” charging or pricing error, the Financial Regulator should be informed without delay of its proposals for correcting any such error. As part of the theme, we sought (i) to ascertain the materiality level set by institutions to comply with this aspect of the Code requirement and the criteria used in determining the materiality level and (ii) details of how institutions log such errors, both material (for the purpose of the Code reporting requirement) and non-material errors. The findings from the survey are set out below:

Assessing Materiality

There was no one definitive approach being used by all of the institutions surveyed with regard to how materiality was assessed. Some institutions surveyed defined materiality in quantitative terms, while other institutions determine materiality in qualitative terms.

The diverse nature of the responses received and the approaches taken by the institutions highlighted the difficulties that the Financial Regulator would have in setting a single materiality level in monetary terms that would cover all institutions.

The following is a list of the criteria taken from the submissions received, in terms of how materiality is currently assessed in the industry:

- The nature of the incident;
- The number of impacted customers;
- The amount of the charging error;

- The period over which any error has occurred;
- Likely duration and frequency of the error;
- Absolute average amount of error per customer;
- Proportion of population of customers overcharged;
- Whether a potential breach of a regulatory obligation has occurred;
- The extent to which any error was deliberate;
- Whether the error reveals serious or systemic weaknesses of the management system or internal controls;
- Whether there are a number of smaller linked issues, which individually may not justify reporting to the Financial Regulator, but which when taken collectively are likely to be material; and
- Whether the institution has previously been requested to take remedial action regarding the error or type of error.

We are requesting institutions to consider the appropriateness of the above criteria in their assessment of materiality under the requirements of Common Rule 45 of the Code.

2. Logging of Charging or Pricing Errors

The theme sought details of how institutions log charging or pricing errors within their organisations, considering both material errors (for the purpose of the Code reporting requirement to the Financial Regulator) and non-material errors, which are not reported to the Financial Regulator. It was found that logs or registers were being maintained in some format for recording errors, although the processes within institutions differed, as did the level of detail provided. With regard to the logging of errors, there appeared to be little distinction between the treatment of material and non-material errors within the institutions surveyed.

With regard to the logging of charging or pricing errors:

- *institutions should be in a position to identify all errors from a control perspective;*
- *a central log should be maintained of all errors, both material and non-material, to ensure that pricing or charging errors of a systemic nature are recognised and that all errors can be monitored from a control perspective by the institutions;*
- *the quality of data input into the logs used for recording errors needs to support appropriate analysis of patterns of errors and proper control of the correction process;*

- *escalation of errors internally to compliance/risk units as well as to senior management, etc. where appropriate, is considered best practice; and*
- *logs will be subject to inspection by the Financial Regulator.*

3. Charging Issues in the Public Domain

The theme considered a number of issues with regard to charging issues in the public domain, including the procedures that institutions have in place for dealing with both material and non-material errors that come to the attention of the media. Views were sought from institutions surveyed with regard to proactively bringing issues to the attention of the media, the information to be given to the media with regard to material and non-material pricing errors and how institutions deal with inaccurate information in the public domain on such issues.

Dealing with Charging Issues in the Public Domain

The theme noted that institutions generally have procedures in place for dealing reactively with charging issues in the public domain.

We would request institutions to consider the information that should be provided to the media on both material and non-material errors which may vary depending on the error. While we are not specifically setting out the information that should be provided, we do consider that it should include at a minimum the total monetary amount of the error and the number of customers impacted.

Proactively bringing Issues into the Public Domain

Based on responses received, institutions currently do not proactively bring issues to the attention of the media.

From our experience of how firms deal with such issues, it can prove beneficial in the long term for institutions to proactively bring issues to the attention of the media, rather than wait for them to come into the public domain and we request institutions to consider this approach for the future. In addition, where institutions are writing to a large number of customers on charging issues, we consider that they should be proactive with the media and be prepared for media queries that may arise.

Incorrect Information in the Public Domain

Where incorrect information on charging errors enters the public domain, it would appear from the responses received, that these are currently dealt with on a case-by-case basis by institutions.

The Financial Regulator considers that institutions should seek to correct inaccurate information regarding charging or pricing errors in the public domain in a timely manner.

References to the Financial Regulator

On a separate but related matter, if institutions are making public press statements, any references to the Financial Regulator contained in these statements should be advised to the Financial Regulator, prior to being released.

We would ask all institutions to consider the issues as set out above, in their ongoing compliance with Common Rule 45 and in their ongoing development of systems and controls in this area. We appreciate that not all of the issues outlined in this letter may be applicable to your institution. Should you have any queries in relation to the contents of this letter, please contact Mary McEvoy on 2244512 or Eileen Bray on 2244514

Yours sincerely



Fiona McMahan
Deputy Head
Consumer Protection Codes