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Re: Consumer Protection Code: Thematic Inspection of Compliance by Debt Management Firms

Dear CEO/Managing Director

The Central Bank's Consumer Protection Outlook Reports in 2015 and 2016 highlight the importance that culture plays in driving the behaviour of firms and individuals within them. As part of our commitment to ensuring that regulated firms develop a positive consumer-focused culture, we undertook to target firms shortly after authorisation and/or firms which are not meeting minimum regulatory requirements.

Against that backdrop, the Central Bank recently concluded a thematic inspection, which assessed how debt management firms are complying with the Consumer Protection Code (the Code). This work followed on from the thematic inspection that was carried out in late 2014, which identified failings in compliance with the Code by the firms inspected at that time.

Chapter 13 of the Code was introduced on 1 January 2015 following two public consultations and provides a cohesive package of consumer protection measures for those consumers who wish to avail of debt management services. The purpose of these statutory provisions is threefold:

- To promote a culture of consumer protection behaviour among debt management firms.
- To promote high standards in terms of the quality of debt management services provided to consumers so that consumers receive advice that is in their best interest and in accordance with their individual circumstances.



- To deliver improved transparency for consumers so they have the information necessary to make informed decisions when availing of debt management services.

The thematic inspection, which included desk-based analysis and on-site inspections, found deficiencies in how firms are complying with the Code. Each of the 55 firms that held an authorisation as a debt management firm in June 2015 was requested to complete a survey and, following analysis of the responses to the survey, five debt management firms were inspected on-site¹.

The purpose of this letter is to provide you with general feedback in relation to our findings and it is intended to assist you in ensuring that your firm is delivering fair outcomes for consumers. It is important that you critically assess the issues set out in Appendix 1 in the context of their relevance/ potential relevance to your firm as the Central Bank will continue to focus on firms that are not meeting minimum regulatory requirements.

Firm-specific feedback has been issued in separate letters to the in-scope firms and, where necessary, appropriate supervisory action has been taken.

Should you have any queries in relation to the contents of this letter, please contact Yvonne Tracey at yvonne.tracey@centralbank.ie.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'M Stewart'.

Mick Stewart
Deputy Head of Consumer Protection
Supervision Division

¹ 10 Debt Management Firms were inspected in 2014, which means that a total of 15 of the 55 authorised firms have now been the subject of an on-site inspection.



APPENDIX 1

The Central Bank's findings are set out below, in the order of the relevant provisions of the Code:

Standard information document not issued or incomplete

Firms are required to ensure that consumers have clarity up-front on what service(s) will be provided and how firms will charge for those services. Moreover, if there is an on-going charge it must be clear to consumers what they are getting in return. Therefore under Provision 13.1 of the Code, before any debt management services are provided, the consumer must be provided with information on 'What you should know about *Debt Management Services*'. The format of this document is prescribed in the Code as a template and only minor adjustments in relation to the firm's fees and its status with regard to making payments to creditors are required.

It was found in some cases that this document was not provided to consumers, while in other cases, all the information in the required format was not provided to consumers.

Lack of signed agreements before giving advice or insufficient information

Under Provision 13.2 of the Code, a debt management firm must not provide debt management services to a consumer unless the consumer has signed an agreement which clearly specifies details of the services to be provided, the fees payable and when they will be payable, whether the firm can make payments on behalf of the consumer, the duration of the agreement and any charges if the consumer withdraws from the agreement.

Our inspection of client files found cases where:

- no such agreement had been signed by the consumer prior to fees being paid;
- no agreement was in place;



- the agreement had been drafted and was on file, however the firm could not demonstrate that it had been signed by the consumer;
- the agreement was not signed until after the Statement of Advice was issued; and
- the agreement was on file, but it did not contain all the information required by the Code.

Failure to use the prescribed Standard Financial Statement (SFS) to gather all relevant information prior to offering advice

The Central Bank believes that a robust and holistic approach to financial assessment is crucial in ensuring that any debt management solution recommended to a consumer is suitable to that consumer's needs and circumstances. Therefore, the analysis carried out on a consumer's financial circumstances must be comprehensive and the financial assessment should consider which options are suitable for all the consumer's personal financial circumstances including his or her income and expenditure, debts and the availability of any surplus income or assets in the context of all his or her debts.

Under Provision 13.10 of the Code, firms are required to utilise the prescribed SFS to ensure that all the relevant information is gathered to be in a position to provide appropriate and suitable advice to that consumer.

- It was found in some cases that the SFS had not been used by firms and that other documents that were used were not detailed enough to ensure that a comprehensive assessment of the consumer's circumstances could be undertaken by the firm.
- In other cases, existing documentation from the consumer's creditors was used to carry out the assessment of the consumer's circumstances. While, in some instances, this documentation may have been comprehensive, it is the Central Bank's view that the prescribed SFS must be used to ensure that the appropriate services are provided to consumers by debt management firms.
- In some cases it was found that the SFS was not up-to-date or that the information appeared to be inconsistent and this had not been challenged by the firm.



Failure to document the consideration of the impact of proposed options

Debt management firms must ensure that all the relevant options are considered to ensure that the most suitable options are advised to the consumer. Firms were unable to demonstrate that they had adequately considered all options as per Provision 13.12 of the Code.

Deficiencies in the Statement of Advice (SOA) issued to consumers

Consumers must be informed of the reasons why the course of action being proposed by a debt management firm is the most suitable option, based on the firm's assessment of his or her individual circumstances. The Code requires firms to provide each consumer with a SOA, which must also explain the risks and consequences of acting on such advice.

Provision 13.14 of the Code requires that once a *debt management firm* has identified a proposed course of action for a *consumer*, the *debt management firm* must prepare a written statement of advice setting out the reasons why the course of action proposed to the *consumer* is considered to be suitable and affordable for that *consumer*. A warning box, required by Provision 5.20 of the Code must also be inserted.

Under Provision 13.15 of the Code, the consumer must also be provided with details of any potential cost savings to the consumer and/or any additional fees and charges which may arise at this time.

The inspection found instances where:

- the SOA was provided to consumers before the completion and analysis of the SFS and therefore could not have contained advice based on the required assessment of the consumers' circumstances;
- some consumers had not been provided with a SOA;
- the SOA had not been signed by the firm;



- where the SOA was provided to consumers, it did not always contain all the information required by the Code, particularly details of the other options available, and/or did not contain the relevant warning box.

Failure to provide the consumer with sufficient time to consider the SOA

It may be in the consumer's interests to take a step back and consider proposals without being pressurised; he or she may also wish to discuss the suggested course of action with a friend or family member before deciding to take a particular course of action. Therefore, Provision 13.18 of the Code requires that, where a firm has provided a SOA to a consumer, the consumer must be provided with a period of at least five business days to consider this document before the firm can begin negotiations with creditors.

Some firms could not demonstrate to the Central Bank that the five days had been provided to each consumer; in other cases the firm had permitted the consumer to sign consent to waive this period. For the avoidance of doubt, there is no provision in the Code for waiving this requirement.

Failure to obtain consent from consumers to act on their behalf

In order to ensure that a consumer is kept fully informed at all stages of the debt management process, he or she must give his or her consent to each of the creditors to which the debt management firm proposes to submit details of his or her financial circumstances.

Provision 13.9 of the Code requires that a debt management firm must not provide a completed SFS to a consumer's creditors without the consumer's prior written consent to do so. In addition, Provision 13.19 requires that a debt management firm can only begin negotiations with a consumer's creditors after it has received the consumer's consent to do so.

It was found in some cases that one or other of these requirements had not been met by firms. In addition, in some instances it was found that firms requested that consumers provide "blanket" consent at the outset of the relationship with the firm rather than seeking



the consent at the point in time where it is relevant to do so. The Central Bank does not regard this as being consistent with the spirit of the Code. Consumers must be given the opportunity to decline further services if it is appropriate for them to do so.

Failure to provide the required updates to consumers

To ensure that a debt management firm is proactively attempting to resolve a consumer's debt situation, and to ensure transparency for the consumer in the event that a creditor does not respond to the debt management firm, Provision 13.22 of the Code requires, while negotiations are still on-going, that debt management firms provide updates to consumers at least on a monthly basis on the status of negotiations with creditors.

It was found that this requirement was not being implemented in all cases and firms tended only to provide updates when new information became available.