



FINANCIAL REGULATOR
Rialtóir Airgeadais

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15 December 2008

**Re: The Consumer Credit Act, 1995
The Consumer Protection Code (the Code)**

Dear «Greeting»

The Financial Regulator has been carrying out a series of consumer focussed themed inspections/reviews to monitor compliance with specific requirements of the Code and other relevant statutory provisions applying to mortgage intermediaries. This theme looked at how intermediaries were dealing with potential conflicts of interest that may arise when they are also providing property services. It also enquired into the measures firms were applying in seeking to avoid and deal with potential conflicts of interest as required by the Code.

The purpose of this letter is to provide you with important feedback in relation to the findings from this themed review. We appreciate that not all of the issues discussed in this letter will be applicable to your firm. This information will be of assistance to you in developing and ensuring your own firm's compliance with the Code and the relevant legislation.

Set out below, are details of the particular issues identified from our themed review:

1. Overall view

Application of the Code

While overall the Financial Regulator was satisfied with the response to this theme, (81% of firms questioned advised having a pro-active policy in relation to conflicts of interest) there is some concern that a number of intermediaries indicated that some conflict of interest provisions in the Code didn't apply to them, because they only referred business on, or "introduced", to another intermediary. The definition of a mortgage intermediary was amended with effect from 1 January 2005 to include anyone who previously "introduced" mortgage business. In November 2004, the Financial Regulator wrote to all mortgage intermediaries advising them of this fact and informing them that from 1 January 2005 they required a Mortgage Intermediary's authorisation in his/her own right. In this regard, all mortgage intermediaries are reminded that the Code applies to all regulated entities including those who refer on business to another intermediary.

The Financial Regulator was also concerned at the delay in response by a significant number of firms to the questionnaire issued in July of this year. This appeared to show a lack of awareness of the requirements of the Code¹.

I would remind you that the Code was implemented with full effect from 1 July 2007 and we would expect firms to have taken appropriate measures to implement the relevant provisions at this stage. Compliance with the Code will be the subject of ongoing monitoring and appropriate action will be considered where it is discovered that firms have failed to meet its requirements.

¹ Provisions 58 and 59 of the Common Rules in the Code require that all requests for information in respect of a regulated entity's compliance with the Code should be supplied within a reasonable period.

2. Conflicts of interest

- (a) Policy on Conflicts of Interest: We noted that the majority of firms have put in place procedures to avoid conflicts of interest. In particular, we recognise that some firms have introduced segregation of business by having separate staff and separate filing/computer systems for different areas of business. However, we did note that some firms did not have a stated policy in relation to avoiding potential conflicts of interest and some firms felt that as they referred on customers to another intermediary, the question of conflicts of interest did not arise. Firms are reminded that under General Principle 7 of the Code “*a regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it seeks to avoid conflicts of interest*”.

Also under the Common Rules for all Regulated Entities, Chapter 2, Provision 8 of the Code, it is a requirement for all regulated entities to draw up its terms of business and to provide each consumer with a copy. The Code requires that a terms of business document must include a summary of the regulated entity’s policy in relation to conflicts of interest. Where a firm cannot reasonably avoid a situation where a potential conflict of interest arises, it must deal with the situation in accordance with Provisions 51 – 55 of the Code.

- (b) Provision of additional services. The Financial Regulator would like to remind mortgage intermediaries of the increased possibility of conflict of interest issues arising in relation to providing mortgage services to their customers when also acting as an auctioneer/estate agent. Firms who act in dual capacity are obliged to ensure that at all times they act in the best interests of their customers and in doing so they seek to avoid conflicts of interest (Chapter 1, General Principles 1, 2 and 7 of the Code). This potential risk increases where the person providing services in relation to a mortgage also has a financial interest in the property.

Firms should also distinguish between services that are regulated by the Financial Regulator and those that are not, in their dealings with customers. When providing services such as auctioneering/estate agency services or advising on other additional services, such as exempt unit trusts, Provision 40 of the Code says that *“a regulated entity must not use the regulatory disclosure statement on any business stationery, advertisement or electronic communication in connection with a product or service for which the firm is not regulated by the Financial Regulator”*.

3. Other Issues

Disclosure requirements. This review also examined intermediaries’ advertising literature and stationery. A significant number of firms did not have the required regulatory disclosure on their stationery. In addition, a small number of firms failed to have the required disclosure in their advertising literature. Intermediaries should be aware of the requirements contained in Chapter 2 Provision 41 of the Code governing disclosure:

“The regulatory disclosure statement must take the following form:

[Full legal name of regulated entity (and trading name, if applicable) is regulated by the Financial Regulator]”

Again, we would remind firms that this disclosure should not be used to give the impression that a firm’s regulated status applies to non-regulated services. The issue of firms providing regulated and un-regulated services and how this should be disclosed will be considered as part of the review of the Code in 2009.

Terms of Business. During the course of this inspection, evidence provided suggested that some mortgage intermediaries may not have a terms of business document. Please note that it is a requirement of the Code, which was implemented in July 2007, that all firms covered by the Code are required to have a terms of

business document to be provided to each consumer prior to providing the first service to that consumer.

Should you have any queries in relation to the contents of this letter please contact Paul Gallagher (01) 410 4626.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Adrian O'Brien', with a large, stylized flourish at the end.

Adrian O'Brien
Deputy Head of Consumer Protection Codes Department