Consumer Protection Code for Licensed Moneylenders

January 2009
Legislative Basis

This Code is issued by and in the name of the Irish Financial Services Regulatory Authority ("the Financial Regulator") under section 117 of the Central Bank Act 1989 and Section 8H(1)(f) of the Consumer Credit Act, 1995 ("the Act").

Scope

This Code applies to moneylenders licensed under the Act, while engaging in the business of moneylending.

The supervisory framework for moneylenders comprises the statutory obligations under the Act, together with the requirements of this Code.

Throughout this text, reference to a ‘moneylender’ refers to a moneylender licensed under the Act, its officers, employees and persons who engage in the business of moneylending on behalf of the moneylender.

Other Matters

The provisions of this Code will come into effect on a date to be specified by the Financial Regulator.

Moneylenders are reminded that they are required to comply with this Code as a matter of law.

All references to the business of moneylending throughout this Code also include the provision of an offer to engage in the business of moneylending.

The Financial Regulator has the power to administer sanctions for a contravention of this Code, under Part IIIC of the Central Bank Act 1942.

Please refer to the Definitions section for any term shown in bold and italics throughout the text of the Code.
DEFINITIONS

In this Code:

“advertisement” means any commercial communication usually paid for by a moneylender, which is addressed to the consumer public or a section of it, the purpose being to advertise a product, service or moneylender the subject of this Code, excluding name plaques, sponsorship material and a prospectus drawn up in accordance with the Prospectus Directive (2003/71/EC);

“advertised product or service” means the product or service that is the subject of an advertisement;

“APR” has the meaning assigned to it by section 2(1) of the Act;

“associate” in relation to a person means:
   a) an undertaking in the same group as that person;
   b) any other person whose business, private or familial relationship with the first person or its associate might reasonably be expected to give rise to a community of interest between them which may involve a conflict of interest in dealings with third parties; or
   c) any other person whose business, private or familial relationship (other than as arises solely because that person is a client of the firm) with the first person is such that he or she has influence over that person’s judgment as to how to invest his property or exercise any rights attaching to his investments;

“associated undertaking” means an associated undertaking within the meaning of Regulation 34 of the European Communities (Companies Group Accounts) Regulations 1992;

“business day” means any day except Saturday, Sunday, bank holidays and public holidays;

“certified person” has the meaning assigned to it by section 55 of the Investment Intermediaries Act, 1995;
“charge” means any cost or fee which a consumer must pay in connection with a product or service provided by a moneylender;

“complaint” refers to an expression of grievance or dissatisfaction by a consumer, either verbally or in writing, in connection with:

a) the provision of a product or service to a consumer by a moneylender; or

b) the failure of a moneylender to provide a product or service to a consumer;

“connected party” shall, except where otherwise stated, include a partner, officer, controller, associated undertaking, related undertaking or subsidiary undertaking, employee or person authorised to engage in the business of moneylending on behalf of a moneylender, including any associate of the person concerned;

“consumer” has the meaning assigned to it by section 2(1) of the Act;

“employee” means a person employed under a contract of service or a person otherwise employed by a moneylender;

“group” includes a company, its parent and its subsidiaries and any associated undertaking or related undertakings;

“officer” in relation to a moneylender, means a director, chief executive, manager or secretary, by whatever name called;

“outsourced activity” is where a moneylender employs another person (other than a natural person who is an employee of the moneylender under a contract of service) to carry out an activity on its behalf;

“person” means a natural person or a legal person;

“record” means any document, file or information (whether stored electronically or otherwise) and which is capable of being reproduced in a legible form;
“running account” has the meaning assigned to it by section 2(1) of the Act;

“related undertaking” means:

a) companies related within the meaning of section 140(5) of the Companies Act 1990;

b) undertakings where the business of those undertakings has been so carried on that the separate business of each undertaking, or substantial part thereof, is not readily identifiable; or

c) undertakings where the decision as to how and by whom each shall be managed can be made either by the same person or by the same group of persons acting in concert;

“unsolicited contact” means: contact with a consumer by way of personal visit or telephone call. It does not include written contact with the consumer.
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CHAPTER 1

GENERAL PRINCIPLES

A moneylender must ensure that in all its dealings with consumers and within the context of its licence, it:

1. acts honestly, fairly and professionally in the best interests of its consumers and the integrity of the market;

2. acts with due skill, care and diligence in the best interests of its consumers;

3. does not recklessly, negligently or deliberately mislead a consumer as to the real or perceived advantages or disadvantages of any product or service;

4. has and employs effectively the resources and procedures, systems and control checks that are necessary for compliance with this Code;

5. seeks from its consumers information relevant to the product or service requested;

6. makes full disclosure of all relevant material information, including all charges, in a way that seeks to inform the consumer;

7. seeks to avoid conflicts of interest;

8. corrects errors and handles complaints speedily, efficiently and fairly;

9. does not exert undue pressure or undue influence on a consumer;

10. ensures that any outsourced activity complies with the requirements of this Code;
without prejudice to the pursuit of its legitimate commercial aims, does not, through its policies, procedures, or working practices, prevent access to basic financial services; and

complies with the letter and spirit of this Code.
CHAPTER 2

COMMON RULES FOR MONEYLENDERS

GENERAL

1 A moneylender must ensure that any warning required by this Code is prominent, i.e. it must be in a box, in bold type and of a font size that is larger than the normal font size used throughout the document or advertisement.

PROVISION OF INFORMATION TO THE CONSUMER

2 A moneylender must assist a consumer in understanding the product provided, including the method of repayment, all related interest payments, charges and the cost per €100 borrowed.

3 A moneylender must, prior to entering into an agreement with a consumer:
   a) disclose all the fees, costs and interest in a clear manner; and
   b) prominently indicate the high-cost nature of the loan on all loan documentation where the APR is 23% or higher. This disclosure must take the following form:

   Warning: This is a high-cost loan.

4 A moneylender must, where it collects repayments by way of direct debit, issue statements, at least monthly, to consumers who pay weekly and statements, at least quarterly, to consumers who pay monthly.
5 A moneylender must, where applicable, inform consumers of the amount and order in which payments will be allocated to different outstanding balances at different borrowing rates.

6 A moneylender must ensure that, where it intends to record a telephone conversation with a consumer, it informs the consumer, at the outset of the conversation, that it is being recorded.

7 A moneylender must ensure that, where it communicates with a consumer using electronic media, it has in place appropriate arrangements to ensure the secure transmission of information to, and receipt of information from, the consumer.

8 A moneylender must ensure that all printed information it provides to consumers is of a print size that is clearly legible.

PRESERVATION OF A CONSUMER’S RIGHTS

9 A moneylender must not, in any communication or agreement with a consumer (except where permitted by applicable legislation), exclude or restrict, or seek to exclude or restrict:

a) any legal liability or duty of care to a consumer which it has under applicable law or under this Code;

b) any other duty to act with skill, care and diligence which is owed to a consumer in connection with the provision to that consumer of financial services; or

c) any liability owed to a consumer for failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of a financial service.
10 Before providing a product or service to a consumer, a moneylender must gather and record sufficient information from the consumer to enable it to provide a recommendation or a product or service appropriate to that consumer. The level of information gathered should be appropriate to the nature and complexity of the product or service being sought by the consumer, but must be to a level that allows the moneylender to provide a professional service.

This requirement does not apply where the consumer has specified both the product and the moneylender and has not received any advice.

11 A moneylender must gather and record details of any material changes to a consumer’s circumstances before providing that consumer with a subsequent product or service.

12 A moneylender must ensure that, where a consumer refuses to provide information sought in compliance with this Code, the refusal is noted on that consumer’s records.

13 A moneylender must endeavour to have the consumer certify the accuracy of the information he/she has provided to the moneylender. Where the consumer declines to do so, the moneylender must note this on the consumer’s records.

14 A moneylender must maintain a list of its consumers who are the subject of this Code.

SUITABILITY

15 A moneylender must ensure that, having regard to the facts disclosed by the consumer and other relevant facts about that consumer of which the moneylender is aware, any product or service offered to a consumer is suitable to that consumer.
This requirement does not apply where the consumer has specified both the product and the moneylender and has not received any advice.

16 Before providing a product or service to a consumer, a moneylender must prepare a written statement setting out the reasons why a product or service offered to a consumer is considered to be suitable to that consumer.

The moneylender must give a copy of this written statement to the consumer and retain a copy.

This requirement does not apply where the consumer has specified both the product and the moneylender and has not received any advice.

**UNSOLICITED CONTACT (COLDCALLING)**

17 When contacting a consumer other than an existing consumer, a moneylender may make an unsolicited contact, only if:

a) the consumer has signed a statement, within the previous 6 months, giving the moneylender permission to make unsolicited contact; or

b) the consumer is the subject of a referral, received from an entity authorised to provide financial services in Ireland, another entity within the same group, a solicitor, a certified person or an existing consumer.

In relation to b) above, such a referral must be followed up by an indication to the consumer by the moneylender that the referral has been made and asking for consent to proceed.

This requirement does not apply where the moneylender is providing non-cash credit to the consumer.

18 A moneylender must ensure that, where it makes an unsolicited contact on foot of a referral, it retains a record of the referral.
An unsolicited contact made to a consumer other than an existing consumer, may only be made between 9.00 a.m. and 9.00 p.m. Monday to Saturday (excluding bank holidays), unless otherwise requested by the consumer.

When making an unsolicited contact in accordance with this Code, the representative of a moneylender must immediately and in the following order:

a) identify himself or herself by name, the name of the moneylender on whose behalf he/she is calling and the commercial purpose of the contact;

b) inform the consumer that the call is being recorded, if this is the case;

c) disclose to the consumer, the source of the lead or referral supporting the contact; and

d) establish if the consumer wishes the call to proceed; if not, the caller must end the contact immediately.

A moneylender must abide by a request from a consumer not to make an unsolicited contact to him/her again.

A moneylender must not reach a binding agreement with a consumer on the basis of an unsolicited contact alone, except in the circumstances permitted under the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004.

**DISCLOSURE REQUIREMENTS**

A moneylender must include a regulatory disclosure statement:

a) on its business stationery (including moneylending agreements, repayment books and authorisation cards);
b) in all advertisements;

c) in all catalogues, brochures etc; and

d) on all electronic communications with consumers including on the home page of its website, if any.

The regulatory disclosure statement must take the following form:

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

24 A moneylender must not use the regulatory disclosure statement on any business stationery, advertisement, catalogue, brochure or electronic communication in connection with a product or service for which the moneylender is not regulated by the Financial Regulator.

25 The regulatory disclosure statement must not be presented in such a way as to appear to be an endorsement by the Financial Regulator of the moneylender or its products or services.

ERRORS

26 A moneylender must:

a) speedily, efficiently and fairly, correct an error in any charge or price levied on, or quoted to, a consumer in respect of any product or service the subject of this Code;

b) where it considers that there may have been a material charging or pricing error, without delay, inform the Financial Regulator of its proposals for correcting any such error as may have occurred in accordance with paragraph a) above (if any such information is provided verbally in the first instance, it must be provided to the Financial Regulator in writing on the next business day); and
c) notify all affected consumers, both current and former, in a timely manner and in such form as may be agreed with the Financial Regulator, of any material charging or pricing error that impacted negatively on the cost of the service or the value of the product provided.

HANDLING COMPLAINTS

27 A moneylender must have in place a written procedure for the proper handling of complaints. This procedure need not apply where the complaint has been resolved to the complainant’s satisfaction within 5 business days, provided however, that a record of this fact is maintained.

At a minimum this procedure must provide that:

a) the moneylender will acknowledge each complaint in writing within 5 business days of the complaint being received;

b) the moneylender will provide the complainant with the name of one or more individuals appointed by it to be the complainant’s point of contact in relation to the complaint until the complaint is resolved or cannot be processed any further;

c) the moneylender will provide the complainant with a regular written update on the progress of the investigation of the complaint at intervals of not greater than 20 business days;

d) the moneylender will attempt to investigate and resolve the complaint within 40 business days of having received the complaint. Where the 40 business days have elapsed and the complaint is not resolved, the moneylender will inform the complainant of the anticipated timeframe within which the moneylender hopes to resolve the complaint and of the consumer’s right to refer the matter to the Financial Services Ombudsman and will provide the consumer with the contact details of the Financial Services Ombudsman; and
e) the moneylender will advise the complainant in writing, within 5 business days of the completion of the investigation of a complaint, of the outcome of the investigation and, where applicable, explain the terms of any offer or settlement being made. The moneylender will also inform the complainant of the right to refer the matter to the Financial Services Ombudsman and will provide the consumer with the contact details of the Financial Services Ombudsman.

28 When a moneylender receives a verbal complaint, it must offer the consumer the opportunity to have the complaint treated as a written complaint.

29 A moneylender must maintain an up-to-date record of all complaints subject to the complaints' procedure. This record must contain the details of each complaint, a record of the moneylender's response(s), any other relevant correspondence or records and the action taken to resolve each complaint.

CONSUMER RECORDS

30 A moneylender must maintain up-to-date consumer records containing at least the following:

a) a copy of all documents required for consumer identification and profile;

b) the consumer’s contact details;

c) all information and documents prepared in compliance with this Code;

d) details of products and services provided to the consumer;

e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;

f) all documents or applications completed or signed by the consumer;
g) copies of all original documents submitted by the consumer in support of an application for the provision of a service or product; and

h) all other relevant information concerning the consumer.

Details of individual transactions must be retained for 6 years after the date of the transaction. All other records required under a) to h) above, must be retained for 6 years from the date the relationship ends. Consumer records are not required to be kept in a single location but must be complete and readily accessible.

**UNSOLICITED CREDIT FACILITIES**

31 A moneylender must not offer unsolicited pre-approved credit facilities.

32 A moneylender may only increase the limit on a consumer’s running account following a request from the consumer.

**ARREARS AND GUARANTEES**

33 A moneylender must have in place, procedures for the handling of arrears cases.

34 A moneylender must advise consumers prior to entering into a moneylending agreement and again upon the sixth default/missed payment, whether consecutive or otherwise, during the currency of a moneylending agreement, of relevant credit counselling services, and the contact details for such services e.g. name and address of a local Money Advice & Budgeting Services’ office.

35 A moneylender must ensure that, where a loan is being advanced subject to a guarantee, the guarantee outlines the obligations of the guarantor and must contain the following warning:
Warning: As a guarantor of this loan, you will have to pay off the loan, the interest and all associated charges if the borrower does not. Before you sign this guarantee, you should get independent legal advice.

36 A moneylender must notify the guarantor in writing if the terms of the loan agreement change.

DEBT COLLECTION

37 Where a moneylender engages the services of a third party to collect debts on its behalf, the moneylender must have in place a written contractual arrangement which seeks to ensure that its consumers are treated in accordance with the provisions of this Code and the relevant provisions of the Act.

38 A moneylender must inform an affected consumer that his/her moneylending agreement has been assigned to a third party as soon as practicable after assigning the moneylending agreement.

This requirement does not apply where the moneylender, by agreement with the third party, continues to service the moneylending agreement vis-à-vis the consumer.

COMPLIANCE WITH THIS CODE

39 A moneylender must have adequate systems and controls in place to ensure compliance with this Code.

40 Where the Financial Regulator requires a moneylender to provide information in respect of the moneylender's compliance with this Code, such moneylender is thereby required to provide information which is full, fair and accurate in all respects and not misleading and to do so in any reasonable period of time or format that may be specified by the Financial Regulator.

41 Where the Financial Regulator requires information in respect of a moneylender's compliance with this Code, and the Financial Regulator is of
the opinion that a meeting with personnel of the moneylender is necessary in order to procure such information in a satisfactory manner, the moneylender must use its best endeavours to arrange for appropriate personnel to participate in such a meeting in order to provide the required information to the Financial Regulator.

42 A moneylender must, upon being required by the Financial Regulator to do so, provide to the Financial Regulator records evidencing compliance with this Code for a period prior to such requirement as the Financial Regulator may specify (up to a maximum period of 6 years).
CHAPTER 3

ADVERTISING

GENERAL REQUIREMENTS

1 A moneylender must ensure that all its advertisements are fair and not misleading.

2 An advertisement must not influence a consumer’s attitude to the advertised product or service of the moneylender either by inaccuracy, ambiguity, exaggeration or omission.

3 The name of the moneylender publishing an advertisement must be clearly shown in all advertisements.

4 The nature or type of the advertised product or service must be clear and not disguised in any way.

5 An advertisement must be designed and presented so that any reasonable consumer knows immediately that it is an advertisement.

6 The design and presentation of an advertisement must allow it to be clearly understood. Where small print or footnotes are used, they should be of sufficient size and prominence to be clearly legible. Where appropriate they should be linked to the relevant part of the main copy.

7 Warnings and product specific information must be clear and must not be obscured or disguised in any way by the content, design or format of the advertisement.

8 Any statement or promise contained in an advertisement must be true and not misleading at the time it is made and any assumptions on which it is based must be reasonable and stated clearly.
9 Any recommendations or commendations quoted must be complete, fair, accurate and not misleading at the time of issue, and relevant to the advertised product or service.

10 A recommendation or commendation may not be used without the consent of the author and, if the author is an employee of the moneylender or a connected party of the moneylender, or has received any payment from the moneylender or a connected party of the moneylender for the recommendation or commendation, the advertisement must state that fact.

11 Comparisons or contrasts must be based either on facts verified by the moneylender, or on reasonable assumptions stated within the advertisement and must be presented in a fair and balanced way; and not omit anything material to the comparison or contrast. Material differences between the products must be set out clearly.

12 Where an advertisement includes an APR, the advertisement must clearly state if the underlying interest rate is fixed or variable.

13 An advertisement for a loan must, if displaying the APR and the term, display the total cost of credit.