

## **National Consumer Agency Observations on the Authorisation Requirements and Standards for Debt Management Firms and the Amendment of the Minimum Competency Code 2011**

### **Introduction**

The National Consumer Agency ('Agency') welcomes the opportunity to provide comments to the Central Bank of Ireland ('Central Bank') on the Authorisation Requirements and Standards for Debt Management Firms ('Requirements and Standards') and the Amendment of the Minimum Competency Code 2011 ('MCC 2011'). The Agency notes that there will be further consultation in 2013 focussing on specific conduct of business rules for debt management firms.

The Agency has advocated<sup>1</sup> for the regulation of debt management firms in recent years as there is not adequate supervision or regulation of such firms with the result that consumers are not sufficiently protected. The Agency therefore welcomes the legislation set out in the Central Bank (Supervision and Enforcement) Act 2013 ('2013 Act').

A number of general observations are set out below.

### Consumer Contacts

At a high level the Agency would be interested to know what the size of the debt management market is. In particular it is not clear how many debt management firms are active in Ireland and how many consumers are receiving assistance from these firms. It is suggested that these statistics should be collected and monitored once the new regulatory regime is in place.

The Agency was contacted 38 times by consumers in relation to debt management firms from September 2012 to September 2013 and 340 times since July 2010. A majority of the complaints received related to debt management firms which went into liquidation. Customers of these firms contacted the Agency's helpline to seek clarification of their rights

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<sup>1</sup> For example: <http://www.irishexaminer.com/archives/2012/0125/world/debt-management-firms-must-be-regulated-says-consumer-agency-181362.html>

and whether they will lose their funds. Consumers have also sought to clarify with the Agency as to whether these firms are regulated.

The Agency has reviewed the contacts received and noteworthy issues in relation to conduct of business are:

- *Unsolicited contact*

It appears that firms appear to be contacting consumers who are not existing customers. Consumers advised the Agency that it was not clear where the firms have got their details from. The Agency notes that the rules regarding unsolicited contact set out in Chapter 3 'General Requirements' of the Consumer Protection Code 2012 will apply to debt management firms once they 'stand-authorised'. The Agency would ask the Central Bank to be cognisant of the 'lead generation' firms using websites to generate business and to ensure that consumers who are not existing customers are not being approached in an unsolicited manner.

- *Unfair terms*

Some of the queries received relate to the fees being charged and consumers consider them to be unfair and unclear. There would appear to be significant confusion and opacity in this regard. The Agency would suggest that all consumers need to be made aware of exactly how much they will be charged, and on what basis, in advance of agreeing to sign-up for any service.

- *Unclear whether bills are being paid*

This issue is one of transparency again. Debt management firms typically take discretion over consumer funds. However, it appears that while the firm may be paying bills, the consumer is not clear whether these are being paid and if they are paid on time. Consumers should receive, as a matter of course, frequent notification of same from the debt management firm so that they can be assured that bills are being paid and what their outstanding liabilities are.

### Requirements and Standards

The Agency notes that the Requirements and Standards at Appendix 1 of the consultation paper concern the requirements necessary for authorisation and the expected standards for on-going supervision.

The Agency would request clarification that debt management firms will fall under the Fitness and Probity Regime.

The Agency notes the requirements set out under '2 – Solvency' and '3 – Professional Indemnity Insurance'. The Agency agrees with these requirements and considers it essential

that while firms have the power to handle and manage client funds they also have the necessary resources to repay these funds. The Agency would query whether client funds will be covered under the Deposit Guarantee Scheme. If they are not, consumers should be made fully aware that their deposits with debt management firms are not covered under the scheme. The Agency is strongly of the view that consumers who use the services of these firms should be fully protected.

Paragraph 3.3 states *“the level of PII cover should be kept under review during the first year of trading”*. The Agency would suggest that the level of PII cover should be reviewed periodically to ensure that both consumers and the firm are protected against liability arising from negligence and taking the requirements of paragraph 3.2 into account.

The Agency notes the definition of *“important operational function”* from paragraph 10.7 and the inclusion of (a) *“the continuing compliance of the debt management firm concerned with the requirements of its authorisation or its other obligations”*. Paragraph 7.2 under *‘Outsourcing’*, states *“a debt management firm shall notify the Central Bank as soon as possible where a change occurs or is due to occur in an outsourcing arrangement governing an important operational function relating to the provision of debt management services”*. Paragraph 4.5(b) under *‘Organisation and Management’*, states *“the relevant persons involved in the compliance function are not involved in the performance of services or activities they monitor”*. This implies that the compliance function must be independent of the services or activities of the firm, yet paragraph 7.2 refers to outsourcing of the important operational functions that relate *“to the provision of debt management services”*.

The Agency requests clarification on whether the compliance function can be outsourced and if so the Agency suggests that the wording of paragraph 7.2 should be amended to take account of this.

### MCC 2011

The Agency notes the reference in the consultation paper to the *‘Qualified Financial Adviser’* (‘QFA’) as the recognised qualification for debt management firms. The Agency, while not having views on what the appropriate qualification is, considers it crucial that all persons performing the functions and activities of debt management firms are adequately qualified in order to provide sufficient assistance to consumers seeking advice. Related to the above, the Agency does not believe that *‘grandfathering’* should be allowed in this sector and would consider that experience of providing services does not equate to appropriate and defined qualifications. The Agency is of the view that the four year transitional period will allow persons adequate opportunity to achieve the agreed recognised qualification.

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