



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

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Feedback to CP82 – Second Consultation on Additional Consumer Protection Requirements for Debt Management Firms



Contents

1. Introduction	4
2 Our position on issues/questions raised in CP82	5
2.1 Client Leads	5
2.2 Payment of debt management fees by credit	6
2.3 Cooling-off Period	7
2.4 Additional information and contact with consumers	8
3. Next Steps	9

1. Introduction

Consultation Paper 82 (CP82), the **Second Consultation on Additional Consumer Protection Requirements for Debt Management Firms** was published on 20 June 2014. This consultation closed on 18 July 2014 and a total of 8 responses were received.

CP82 was a continuation of the work being undertaken by the Central Bank of Ireland (“Central Bank”) in respect of the additional consumer protection requirements to be applied to debt management firms. It followed the publication of Consultation Paper 75 (CP75) on **Additional Consumer Protection Requirements for Debt Management Firms**, and both consultations reflected the following principles:

- to promote a culture of consumer protection behaviour amongst 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; and
- to deliver improved transparency for consumers so they have the information necessary to make informed decisions when availing of debt management services.

The purpose of the second consultation was three-fold:

- i) to outline the position we had reached on some of the issues and questions posed in CP75;
- ii) to highlight a number of new or amended provisions which came to our attention as part of our analysis of the submissions received in response to CP75 and also as a result of our ongoing regulatory work; and
- iii) to give a final opportunity to our stakeholders to review a full version of the proposed new Additional Requirements for Debt Management Firms (the “Additional Requirements”).

The Central Bank is grateful to all parties who responded to the consultations and we thank them for their time and effort. The responses to CP82 are available on the Central Bank website at:

<http://www.centralbank.ie/regulation/poldocs/consultation-papers/Pages/closed.aspx>

The purpose of this document is to summarise the significant points raised in submissions received as part of the second consultation process and to outline the Central Bank's comments and decisions in finalising the Additional Requirements.

2 Our position on issues/questions raised in CP82

2.1 Client Leads

It is the Central Bank's view that the activity of lead generation¹ offers no benefit to consumers who are seeking debt management services. Furthermore, this activity could create unnecessary confusion for consumers and add additional costs to the process. Therefore, in CP82 we proposed that debt management firms would not be permitted to pay a fee, commission, other reward or remuneration to any person in respect of client leads or referrals. We also proposed that if a debt management firm were to contact a consumer on foot of a referral (for which no fee, commission, other reward or remuneration had been paid) this could only occur if the consumer had given his or her specific consent to their details being referred to the specific debt management firm.

2.1.1 Submissions

A variety of different views were given in response to this issue: five respondents agreed with the proposed approach, one respondent preferred the previous approach adopted in CP75; and one further respondent suggested that this was a function that could be outsourced with the debt management firm remaining responsible for monitoring the outsourced activity. Two respondents suggested that a consumer could benefit from a referral to a debt management firm from a regulated entity.

2.1.2 Our response

Given our concerns regarding the activity of lead generation, we have decided that it is necessary to retain the protections proposed in provisions 13.6 and 13.7.

¹This activity involves the collection of information from consumers to sell on to debt management firms.

We remain of the view that lead generation offers no benefit to consumers and leads to confusion and potentially higher costs. It should be noted that our proposed approach does not prevent referrals from other *regulated entities* to debt management firms, which we accept could be of benefit to the consumer. However, remuneration cannot be given or received, either directly or indirectly for such referrals.

2.2 Payment of debt management fees by credit

We proposed in CP82 that a debt management firm should be prohibited from recommending or arranging, or assisting a consumer to arrange credit, for the purposes of paying their debt management fees. In addition, CP82 imposed a requirement that, where a consumer proposed to avail of credit to pay such fees, the debt management firm must warn the consumer that this will increase the amount of debt owed by them.

2.2.1 Submissions

Two respondents were not in favour of a prohibition on arranging or assisting the consumer to arrange credit. They contend it is more appropriate to keep the same firm involved in all aspects of the arrangements being made or that it is overcomplicated to expect a consumer to go elsewhere to seek credit with no guarantee of a successful credit application where the debt management firm is willing to arrange or recommend the credit. It was also suggested that allowing debt management firms to provide these services is likely to mean more consumers are able to avail of debt management services. Two respondents reiterated their view that there should be a prohibition on credit as a means of payment for debt management services and stated that where a consumer proposes to borrow to pay for debt management services, they should be informed of the availability of free advice services. A further two respondents supported the ban on allowing consumers to use credit to pay debt management fees; however, in the event that payment by credit was allowed, both supported the prohibition proposed in relation to the debt management firm arranging or assisting in arranging credit.

2.2.2 Our response

Having considered the submissions received, we have decided not to amend provisions 13.3 and 13.4 of CP82. This approach allows consumers to use credit to pay for debt management services which should assist the consumer in addressing their debt problems but protects the consumer from the conflict of interest that would arise if a debt management firm were permitted to recommend or arrange the credit that a consumer would use to pay that firm's fees.

It should also be noted that the information leaflet provided to consumers at the outset of the relationship with the debt management firm (in accordance with provision 13.1 and Appendix D) informs consumers of the availability of free services.

2.3 Cooling-off Period

CP82 proposed that, after the statement of advice is provided to the consumer, the consumer must be permitted at least five business days to consider this statement before the debt management firm can undertake any of the actions proposed in that statement. We also consulted on whether the consumer should have the ability to waive this timeframe where there was "*a relevant and compelling reason*" to do so.

2.3.1 Submissions

Seven of the eight respondents to CP82 agreed that there should be a cooling off period. However, three of those respondents did not support a possible waiver of this option, arguing that this would undermine the purpose of the cooling off period. Concerns were expressed that consumers could be encouraged to waive their right to a cooling off period when it may not be in their best interests to do so. It was argued that a consumer needs time to consider proposals and discuss them with others and that a consumer's judgement could be severely impaired when they are financially stressed.

2.3.2 Our Response

Following our consideration of responses, we have decided to retain provision 13.18 without the possibility for a consumer to waive their right to this cooling off period. We agree with the majority view that the consumer must be given the opportunity to absorb and consider their options after the statement of advice has been provided. This period allows time for a consumer to discuss the proposals with a friend or family member etc. There is also the possibility that the consumer may decide that no further services are required from the debt management firm and they should not be rushed into their decision. We have concluded that it is in the consumer's best interest to preserve this breathing space for a consumer to reflect and make better informed decisions on whether this is the approach they wish to take, including whether they can undertake the proposed actions themselves or require assistance to do so.

2.4 Additional information and contact with consumers

The Additional Requirements in CP82 require debt management firms to provide additional information to consumers on an ongoing basis. These include:

- provision 13.17 requires the debt management firm, having issued a statement of advice to the consumer, to provide details of the charges payable to that point;
- provision 13.22 prevents the debt management firm from agreeing to a negotiated outcome with a creditor without first seeking the consent of the consumer; and
- provision 13.23 requires the debt management firm, while negotiations with creditors are ongoing, to provide an update on the status of these negotiations to the consumer, on at least a monthly basis, until the process of negotiation is completed.

2.4.1 Submissions

Five of the respondents agreed with the proposed provisions. One respondent did not agree that timeframes should be specified in provision 13.23² as debt management firms will be in regular contact with their consumers and the relevant lenders/creditors and therefore consumers will be kept up to date with negotiations, with the frequency of

² Erroneously referred to CP82 text as 13.22

contact depending on circumstances surrounding each individual case. Another respondent suggested that this provision should be amended to allow the consumer to specify the frequency of the updates.

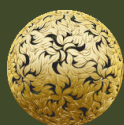
2.4.2 Our Response

We have decided that amendments to provisions 13.17, 13.22, 13.23 or 13.24 are not required. To encourage timely resolution of outstanding debts and to keep the consumer informed of progress, we believe that the timeframe specified in provision 13.23 needs to be retained.

3. Next Steps

Having concluded our review, the Central Bank has included the additional requirements for debt management firms in the Consumer Protection Code 2012 and the revised Code can be found on the Central Bank's website at <http://www.centralbank.ie/regulation/processes/consumer-protection-code/Pages/codes-of-conduct.aspx>.

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