



Advice NI Response to the Independent Review of the Lending Code.

Deadline: 10th September 2010

Advice NI welcome the opportunity to respond to the independent review of the lending code. **Section 1** includes background information on Advice NI and a general overview. **Section 2** then highlights our views on what needs to change within the code.

1. Background:

Advice NI is a membership organisation which exists to provide leadership, representation and support for independent advice organisations to facilitate the delivery of high quality, sustainable advice services. Advice NI provides its members with the capacity and tools to ensure the delivery of effective advice services. This includes: advice and information management systems, funding and planning, quality assurance support, NVQs in advice and guidance, social policy co-ordination and ICT development.

Membership of Advice NI is normally for organisations that provide significant advice and information services to the public. Advice NI has over 70 member organisations operating throughout Northern Ireland, providing information and advocacy services to over 100,000 people each year and dealing with over 227,000 enquiries on an extensive range of matters including: debt, social security, housing, customers and employment issues. For further information, please visit www.adviceni.net.

Statistics from Credit Action highlights that consumer credit lending to individuals was £217billion in July 2010, a decrease of £14billion from the previous year. Although there has been a slight decrease in subscribers offering people loans, Advice NI are still seeing a large increase in the number of enquiries to independent advice centres and the number of people falling into financial difficulties. One example of this is Advice NI's Debt Action Project, aimed at helping the most financially vulnerable in Northern Ireland which has provided debt advice

to 901 customers and dealt with nearly £13million pounds in debt for the period November 09-July 2010. Based on figures for the period April-June 2010 approximately 50% of the £13 million debt had been accrued on credit cards, personal loans and bank loans.

Advice NI regards the lending Code as a pivotal tool within Advice NI membership as it outlines recommended creditor good practice, and is routinely used by advisers either as part of their negotiations on behalf of customers or as a self-help tool to empower people in resolving their own debt problems. It is also a helpful tool for advisers when communicating with the Financial Ombudsman Service. However from the experience of advisers some subscribers do not put the Code's requirements into practice, particularly in relation to section 9 of the lending code which looks at dealing with customers in financial difficulty. Given the current economic climate the need to improve the practice lending code has never been greater

2. Comments within Lending Code:

Section 1 Key Commitments

Irresponsible lending

Within this section one of the key commitments within the code is that subscribers will lend money responsibly. Although lending practices have tightened in the last few years Advice NI is not confident that responsible lending is always adhered to. From our experiences loans issued to people who cannot afford the repayments often have a detrimental effect on their mental health and also cause relationship difficulties. Below are a couple examples of irresponsible lending highlighted within Advice NI membership;-

1. An individual requested a loan of £500 from a local lender. This was agreed and he was informed he could access further loans instantly. However no background checks were carried out to determine his ability to make the loan repayment or to check if he had additional loans elsewhere. In addition to this the lender was offering further credit without knowing the customers ability to make the loan repayments on the £500 borrowed. The customer has now lost his job, owes over £6500 to the lender amongst other debt and is unable to make the loan repayments.

2. This involved a customer with 9 children, 5 of which were dependent. The customer was living on income support and was issued a £10,000 loan from a local lender on the basis that she owned her own home. Eighteen months later when weekly payments were not forthcoming, a ¹charging order was placed on her property. From Advice NI's experiences it would appear creditors sometimes look at an individual's value of equity on their property on which the loan is being secured when issuing loans, rather than considering the borrower's ability to repay the loan. If the individual defaults on loan repayments the creditor can place a charging order on the property.

Irresponsible non-lending

Whilst we have highlighted our views above on irresponsible lending we would also like to address the potential issue of irresponsible non-lending. Advice NI considers that credit providers have a duty to lend responsibly and fairly. We advocate an approach where subscribers should; (1) assess whether the customer will be able to repay the loan and (2) conduct the necessary checks. Many people in Northern Ireland often have difficulty accessing consumer credit even though they have a good credit rating and are able to meet the repayments. We would therefore have concerns that the lending culture in Northern Ireland may become too stringent and result in a further tightening up of lending practices and potentially financially excluding people. We recommend there is a section included within the lending code that requires subscribers to lend fairly on the provision that people are able to meet the necessary repayments.

Another key commitment within this section is that customers will be given clear information about accounts and services, how they work, their terms and conditions and the interest rates that apply to them. However we do not always believe this happens. From our experiences information on loans can be complex and difficult to understand, even for people who have a substantial level of knowledge and confidence about financial products. We propose that this information needs to be made clearer and transparent for customers who are considering entering into loan agreements or who want to change their status within the credit agreements including termination.

There is also a lack of clarity regarding interest rates and levels of charges and how/when they are applied. From our experience customers only seem to become aware of these fees after they get into financial difficulties.

¹ A charging order is an order from the court placed on a debtor's property (house or land) for monies owed to a lender, which means that when the property is sold you will have to pay that debt off first before any of the proceeds are given to the debtor.

We feel that banks should provide customers with information on levels of charges, interest rates and the circumstances in which they will incur these fees before this happens.

Section 2 Communications and financial promotions

Advice NI would like to highlight that the EU Consumers Credit Directive, due to be introduced in February 2011 and incorporated into UK law will have major implications for the financial promotions of the lending code, particularly around pre-contractual information. We recommend the Lending code is updated accordingly in line with these changes.

Section 3 Credit Reference Agencies

Under Section 3 credit reference agencies at point 42 it states that

“If a customer asks, subscribers should tell them how to get a copy of the information that CRAs hold about them, or should give the customers one of their leaflets that explain how credit referencing works.”

We would suggest making it a requirement that subscribers provide customers with this information. We recommend the Information Commissioner Booklet “Credit explained.”

http://www.ico.gov.uk/upload/documents/library/data_protection/practical_application/credit_explained_leaflet_2005.pdf

Section 4 Credit Assessment

It is the expectations of Advice NI that from February 2011 the **EU Consumers Credit Directive** will be integrated into UK law. We assume the Lending Code will have regard to the legal requirement on creditors, under section 55B of the Act, to carry out an assessment of a borrower's creditworthiness prior to making a regulated consumer credit agreement, or before the amount of credit is increased significantly.

We anticipate the Consumers Credit Directive will have huge consequences for the Lending Code in relation to the provision of; adequate explanations of credit products to the customer, requests for further information by the customer, communication of various features of the agreement, the consequences of failure to pay, and the right of withdrawal within 14 days. We would like to see clear guidance in the Code as to how compliance with the Consumers Credit Directive will be accomplished.

In addition under the Credit Assessment section it states that before lending any money, granting or increasing an overdraft, or other borrowing, subscribers should assess whether the customer will be able to repay it. For personal customers this assessment should include consideration of information from CRA's plus at least one of the following:-

- Customers income and financial commitments
- How they have handled their finances in the past
- Internal credit scoring techniques

Advice NI suggests that if the code's requirements on lending are to be strengthened, that it is insufficient that in addition to a customer assessment that only one of the above checks is completed. We recommend that in addition to a CRA assessment there should be a specific requirement that a basic financial statement or a budget check be completed.

Section 5 Current Account overdrafts

It is our experience that accounts often fall into an overdrawn situation due to direct debits and cheques clearing after close of business. This seems very unfair as the customers cannot address this situation. The account enters into an overdrawn situation and can attract unfair charges. Advice NI advocate an approach whereby transactions should not be conducted out of business hours (evenings or weekends) and ideally take place in the mornings so as to afford customers the opportunity of lodging funds to keep the account in credit. From our experience it is often the bank charges and interest that leads to customers' debts becoming unmanageable rather than the initial debt itself. Also, we believe that there would be value in including additional guidance on the circumstances in which flexibility should be applied, for example, where financial difficulties are identified charges should be reduced or removed from an account.

Section 6 Credit Cards

Point 84 under Credit Card limits states "Before giving a customer a credit limit, or increasing an existing limit, subscribers should assess whether they feel the customer will be able to repay it." Advice NI is not satisfied that this is being done adequately in all cases. Case studies indicate that what appear to be unsuitable credit card limits are still being offered by bank staff to vulnerable customers who are subsequently unable to repay. In our view, the Code should be strengthened so that banks cannot increase available credit limits without obtaining the expressed consent of the customers.

It is not responsible lending to inform customers after the event that their credit limit has been increased, which is a practice that may increase the risk of rising customer debt.

Techniques such as credit scoring and credit reference agency checks are designed to predict borrower behaviour. However, they are totally different from an examination of a customer's income and outgoings and outstanding debts/financial commitments, which take into account the current financial situation of the customer. If the Code's requirements on lending are to be strengthened, we recommend that, there should also be a specific requirement that a basic financial statement or a budget check be completed.

Section 7 Loans

Responsible lenders should take proportionate steps to assess both creditworthiness and affordability before issuing a loan. The means employed for checking creditworthiness and affordability should depend on a number of factors including, the nature of the credit product, the amount of credit to be provided, and the borrower's financial circumstances. In our view, the Lending Code should be aligned with the OFT Irresponsible Lending Guidance.

Advice NI is particularly concerned with the rising usage of ²payday loans. A recent Customers Focus report highlights that the number of people taking out payday loans has quadrupled to 1.2 million over four years. It estimates that employees borrowed £1.2bn in 2009 alone. Interest charges on these often ranges from 13% but can be as high as 2000%. One of our members reports a scenario whereby a customer received 2 payday loans from different providers, one for £600 and one for £500. The customer was long term unemployed and in receipt of jobseekers allowance at the time of taking the loans. He also had other loans. The payday loans providers did no background checks on the customers and did not look at the customer's ability to repay the loans. As payday loans providers normally charge extortionate interest it is imperative that subscribers conduct background checks to assess whether they feel the customers will be able to meet the repayments.

Section 8 Terms & Conditions

Under this section point 130 states "All terms and conditions should be written in clear and intelligible language. Advice NI believes that the current information available to customers is complex and difficult to understand even for those who have a generous level of knowledge and confidence about financial products.

² A payday loan is a small, short-term loan that is intended to cover a borrower's expenses until his or her next payday.

There is currently a poor level of both financial literacy and financial capability in Northern Ireland particularly for the most vulnerable groups such as people on low incomes, older people and those with learning disabilities. We therefore feel that the language used to describe financial products should reflect people's understanding of the products, and be clear, concise and easy to understand. We would welcome a simplified description of financial products under the terms and conditions section.

Section 9 Financial Difficulties

In cases in which borrowers experience financial difficulties, the lender must be committed to seek genuine solutions which include proportionate and reasonable measures, to postpone payments and to co-operate with advisers in order to find the best solution.

We feel that the guidance could spell out more clearly how a lender should apply the concept of "sympathetically and positively" [section 137 of the Code]. We are concerned that the interpretation of these terms may vary significantly from one lender to another and that in some cases lenders would not feel compelled from acting in a manner that would be regarded as being neither sympathetic nor positive. In our view, bank staff should be encouraged and trained accordingly to adopt a customer-focussed approach to deal with people in financial difficulty.

Advice NI reports the case of a young woman suffering from severe depression who was a hospital in-patient. Her bank refused to cancel her direct debits even though there was no income coming into her account other than Statutory Sick Pay, which meant that the account was accruing charges daily. As highlighted previously in this response, in this case there would be value in including more guidance on the circumstances in which flexibility should be applied. This case should have been handled differently by the lender. We would therefore welcome the reduction or removal of charges from a clients account when financial difficulties are identified.

Common Financial Statement

Advice NI wish to highlight that the Common Financial Statements (CFS) best practice checklists were recently published by the Money Advice Trust (Mat) and are a result of partnership working. The CFS best practice checklists aim to clarify communications and encourage best practice around CFS offers. There is an adviser and a creditor checklist giving specific guidance on dealing with CFS offers. The anticipated benefits of improving communications are universal, including benefits for all involved:

We would also like to highlight that the CFS trigger figures were recently updated in line with rising living costs and suggest that there is a section inserted into the lending code requiring subscribers to adhere to using both the good practice checklists and the most up to date trigger figures.

In the lending code under section 167 it states that "If a customer works with a debt-counselling organisation to complete a Common Financial Statement (CFS), the subscriber should accept the CFS as the basis for negotiations with the customer to draw up a debt-management plan." Advice NI would like to highlight that the definition of the term debt management plan as stated on the Consumer Credit Counselling Service website is;-

"A Debt Management Plan (DMP) is a plan that helps people or households manage their debts, when they are unable to maintain their contractual payments to their creditors due to financial difficulties". Debt management plans are normally paid for by the individual by making one monthly payment, which is then distributed to all creditors. In order to avoid misinterpretation of this term we would therefore recommend that this wording is changed to 'repayment arrangement/plan' rather than a 'debt management plan'.

Right of Set off

Advice NI welcomes the FSA "Proposed changes to Banking Conduct of Business Sourcebook on right of set off consultation paper. The practice of "setting off" typically involves banks moving money from a current account to pay off a credit card account which is overdrawn. It is our view that customers often experience extreme poverty when banks exercise their right of set-off between accounts either without providing notice or checking the individual's circumstances beforehand.

This practice does not comply with the Lending Codes requirement under section 9 to treat people in financial difficulties sympathetically and positively. By using the right of set-off, it further exacerbates the difficulties, particularly of those on benefits by letting them accumulate priority debts such as rent or mortgage arrears. When banks use the right of set-off, they are prioritising payment of a credit-card debt above more important commitments, where non-payment can have huge consequences for those in financial difficulties and can often result in repossession or having their essential utilities disconnected.

We would welcome guidance outlining within moderation how this power should be used where the lender has been alerted to financial difficulties by the customer or an adviser. We feel that this practice contradicts section 9 requirement within the Lending Code to treat people in financial difficulties sympathetically and positively.

Debt & Mental Health

Advice NI welcomes the section on debt and mental health included on page 24 of the lending code. We do however have some concerns with point 180 which states “Subscribers are encouraged to consider the DMHEF³ if it is presented by the customers or their adviser (with the customer’s consent).” We feel this areas needs to be strengthened and suggest that subscribers are expected to consider the DMHEF, as opposed to encouraged.

Token offers and write offs

A lot of people in financial difficulties in Northern Ireland who have loans are often not in a position to pay their debt at that present time. In this instance they can offer their creditors a token offer⁴ as a gesture of goodwill. This shows the creditor that they are not refusing to repay their debts just that they are not in a position to do so until their situation improves present. Quite often token offers are rejected by loan subscribers due to the cost of administering smaller payments. From Advice NI’s experiences this can often have a major effect on customers in financial difficulties who are trying to repay back the money they borrowed and consequently do not feel they have gained any control over their financial situation.

A person who has a loan will often feel obliged to make loan repayments. This could result in;-

- The debtor seeks further credit from door step lenders who charge extortionate interest rates or
- The debtor prioritises that particular loan and therefore has no surplus income left for day to day living or to pay other debts including rent and rates.

³ The DMHEF is a Debt & Mental Health Evidence Form which provides a standardised methodology for advisers and creditors to share relevant information about the customer’s condition from health and social care professionals.

⁴ A token offer is an offer of £1 or £2 from the customer to the creditor as a gesture of good will.

Advice NI consider both of these could have major implications for the debtor and could result in increased debt, court action and possibly having their home repossessed. We would therefore suggest that section 165 which states “Token offers may be accepted where the customer has demonstrated they have no surplus income available for their non-priority creditors and there is a realistic prospect of the customer’s circumstance improving”. We feel this areas needs to be strengthened and suggest that it is reworded to read Token offers should be accepted, and not that token offers may be accepted.

Useful contacts

We suggest Advice NI’s contact details are added to this section on page 36 of the lending code.

Contact information on this response:

Bob Stronge (Chief Executive)

Joanne Mc Coy (Money Advice Coordinator)

Advice NI

1 Rushfield Avenue

Belfast

BT7 3FP

Tel: 028 9064 5919

Fax: 028 9049 2313

Email: bob@adviceni.net

Email: joanne@adviceni.net

Website: www.adviceni.net