Competition and Consumer Protection Commission (CCPC) Submission to the Joint Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach on the General Scheme of Consumer Credit (Amendment) Bill 2021

1 September 2021

Overview

The Competition and Consumer Protection Commission (CCPC) welcomes the publication of the General Scheme of the Consumer Credit (Amendment) Bill 2021 (the General Scheme) and the opportunity to make a number of observations on its contents to the Joint Oireachtas Committee.

The CCPC is supportive of the proposals in the General Scheme that seek to regularise the interest rate regime across the licensed moneylending (renamed as high-cost credit) sector and place it on a statutory footing. This would allow for more certainty to be given to businesses, reduce the cost of credit for consumers and provide a mechanism to periodically review the regulation.

The CCPC has previously opposed the introduction of caps in other markets, as such caps generally do not achieve the intended outcomes, but instead serve to reduce competition, with the cap effectively becoming a target. However, in the context of licensed high-cost credit, the CCPC believes that the potential for mitigating consumer detriment, particularly for more vulnerable consumers, posed by the possibility of increased rates in future has merit, subject to regular review by the Central Bank of Ireland (CBI). The CCPC also supports the proposals to further modernise and streamline this sector and notes the importance of supporting digitalisation while ensuring consumer interests are promoted and protected.

Financial well-being of consumers

In 2018, the CCPC published a research study regarding the financial capability and financial well-being of consumers in Ireland[1]. The study found that a wide range of factors influence general financial well-being. The study noted that the two factors that have the biggest effect on the financial well-being of consumers are active saving and not borrowing for daily expenses.

However, some consumers may find it difficult to achieve financial well-being in this manner. The study identified that 7% of the population in Ireland can be categorised as “Struggling”.

[1] ‘Assessing the Levels of Financial Capability and Financial Well-being in Ireland’ is available here: https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/12/Financial-Well-being-in-Ireland-Final-December-2018.pdf. A summary report is available here: https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/12/Financial-capability-2018.pdf

Within this "Struggling" category, 32% were unemployed, and a further 8% were unable to work due to illness or disability.

The circumstances of those categorised as "Struggling" may have been further exacerbated by the economic challenges resulting from the COVID-19 pandemic. A 2020 survey in 21 EU Member States showed that since the start of the restrictions due to the COVID-19 pandemic, 6 in 10 consumers have faced financial difficulties[2] which may lead to over-indebtedness. For consumers with difficulty servicing debt, over time, their options to access credit can narrow, increasing the likelihood of using licensed moneylenders or other forms of high-cost credit. Therefore, the CCPC supports enhanced protections for consumers in this sector, including proposals to place controls on the cost of high-cost credit.

Introducing a statutory cap on interest rates

The CCPC supports the proposal in Head 4 to amend Section 93(10)(B) of the Consumer Credit Act (the Act of 1995) to introduce a statutory cap on interest rates charged by high-cost providers, depending on the type of loan being offered.

Providers appear to be involved in at least four forms of lending:

- credit provided in the form of cash loans, typically from home collection firms;
- credit provided for the purchase of goods by catalogue firms;
- finance to cover large up-front expenses, such as a new boiler or an insurance premium; and
- credit provided on the basis of 'guarantor loans'.

Any proposal to cap the interest rate needs to consider how it may affect consumers. Evidence cited in the 2013 CBI Report on the Moneylending Industry suggests that the majority of consumers who avail of high cost credit do not shop around to identify suitable options based on their requirements before taking out a high-cost loan. Those consumers who do not understand the cost of credit are less likely to shop around than those who do. Consumers in this sector also demonstrate very high levels of loyalty[3].

These characteristics may be detrimental to consumers if the proposed interest rate cap becomes a 'floor' in the market, indicating that close monitoring is important. The CCPC notes that the proposed interest rate cap will be periodically reviewed by the CBI. This could result in a change to the caps on interest rates effected by Ministerial Order.

[2] https://www.europarl.europa.eu/news/en/press-room/20200525IPR79717/eu-citizens-want-more-competences-for-the-eu-to-deal-with-crises-like-covid-19

[3] https://www.centralbank.ie/docs/default-source/publications/consumer-protection-research/gns4-2-1-1-rep-on-licensed-moneyldg-ind-112013.pdf?sfvrsn=6

The CCPC does not have a view on the level of the interest rate caps in the General Scheme. However, the CCPC supports the introduction of an interest cap, with a built-in review mechanism and ability to change the interest cap level, as it allows time for the market to adjust and identify areas in which operational efficiencies can be achieved. It also allows for time for the regulator to assess the impact of statutory changes and to ensure that loan terms and amounts are not manipulated in order for caps to be met.

The CCPC supports the review mechanism built into the General Scheme to assess the impact of the cap on high cost providers and to consumers in this sector. But it will also be important for the regulator to consult with all relevant stakeholders and assess the impact more broadly as there may be a risk that the cap could cause an increase in the use of unlicensed providers. Vigilance against this type of migration by consumer and enforcement by the appropriate authorities against such unlawful credit provision is essential for consumer protection in this sector.

Abolition of collection charges

The CCPC welcomes the proposal in Head 6 to amend section 102 of the 1995 Act to add collection charges to the list of prohibited charges. The CCPC expects that this also means that no charges will apply where a consumer pays their loan remotely or via Standing Order/Direct Debit, which would further support consumers in repayment and promote the digitalisation of the sector.

Digitalisation

The CCPC supports the proposal in Head 5 to amend Section 100 of the Act of 1995. This introduces the concept of providing a repayment book “on paper or on another durable medium”. This means that consumers can now choose to record loan repayments electronically. Although the CCPC understands that a significant portion of the market operates ‘door to door’ and is paper based, it is aware potential new entrants to the market may operate wholly or partly online. Giving consumers the option of an electronic repayment book assists in the wider adoption of digitalisation in the financial sector.

It is not clear if the legislation provides for or actively promotes electronic repayments where consumers wish to choose that repayment method. The potential to support the digitalisation of the delivery of high-cost credit by permitting provision of electronic repayments could be expected to involve a greater reliance by providers on automated credit assessments, faster application and repayment processes, and more remote delivery of services. Increased digital provision of services while balancing the needs of those consumers who wish to deal in face to face transactions may in turn improve competitive conditions in the market through reduced costs and expanded consumer choice[4]. Furthermore, competitive providers could avail of the opportunity to lower their costs by shifting toward a greater use of payments technology.

Digital Literacy

The CCPC notes the General Scheme also aims to modernise and streamline the high-cost credit sector. In this context and as providers increase their digital services, digital literacy is an important part of digitalisation, including in financial markets. The agency responsible for funding, coordination and monitoring and further education and training provision in Ireland, SOLAS[5], is developing a digital literacy programme. The CCPC have made a submission to its consultation on the Adult Literacy, Numeracy and Digital Literacy 10-Year Strategy for Ireland. In that submission, the CCPC connected digital skills with consumers' ability to both access financial products and make financial decisions. As the digitalisation of the financial markets increases, the CCPC notes the parallel importance of provision of clear, transparent and understandable guidance for consumers online and offline. It is important to target the more vulnerable groups to improve digital literacy, including in the area of high-cost credit, as digitalisation increases across the financial sector.

Transparent information

In addition to the importance of developing consumers' digital skills, the CCPC notes that consumers should receive all necessary and appropriate pre-contractual information and advice so as to make informed choices when entering into credit agreements. These measures are key for matching consumers' financing needs with their ability to repay and thus reduce the risk of payment default and over-indebtedness.

The CCPC has concerns however that the digitalisation of the high-cost credit sector could however serve to facilitate impulsive and ill-informed borrowing, as highlighted in behavioural research in this area[6]. In order to better protect consumers, providers should present clear and salient information in a manner that does not exploit consumer biases or vulnerabilities.

Alternative forms of credit

Alternative forms of credit are available in the market, such as the Personal Micro Credit Schemes operated by credit unions. The CCPC welcomes the availability of such initiatives to ensure that there is access to alternative finance for low income customers. Since this General Scheme was published, one of the main high-cost credit providers has pulled out of the Irish

[4] http://www.finconet.org/Digtalisation-Short-term-High-cost-Consumer-Credit.pdf
[5] https://www.solas.ie/alnd-strategy/
[6] http://www.finconet.org/Digtalisation-Short-term-High-cost-Consumer-Credit.pdf

market. How the market will adjust is unknown at this point but the availability and awareness of these alternative finance schemes will become even more important.

Legislative measures, such as the General Scheme of the Consumer Protection (Regulation of Retail Credit Firms) Bill 2019, which includes Buy Now, Pay Later credit facilities within the scope of CBI's Consumer Protection Code, and this Consumer Credit (Amendment) Bill 2021, are important to ensure support for a more comprehensive set of protections for consumers engaging with credit providers.

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