FINANCIAL REGULATOR
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Re: Consumer Protection Code (the Code)
Review of mortgages referred to non-bank lenders by mortgage intermediaries

Dear «Greeting»,

As you may be aware, the Financial Regulator conducted a themed inspection of a number of mortgage intermediaries in relation to how they were complying with the Code provisions regarding mortgage suitability. The scope of the review focused on sales through intermediary channels referred to non-bank/ specialist lenders. The purpose of this letter is to provide general feedback to the industry. In selecting mortgage suitability, we are recognising that a mortgage represents a significant and complex lending transaction for most consumers; however, the observations below may be useful with regard to the sale of other consumer products also. The following are the main findings in relation to this theme.

- **Suitability and affordability** – Whilst affordability is a prime component of suitability, a fuller consideration of a consumer's individual circumstances and needs is required in order to comply with the suitability provisions of the Code.

  We note the following factors are considered when assessing suitability of mortgage sales:
    - purpose of borrowings;

- type and length of loan;
- plans for early redemption;
- attitude to fixed/variable interest;
- age;
- savings track record;
- LTV;
- employment;
- income and;
- repayment capacity.

The Financial Regulator is of the view that factors such as, but not limited to those listed above should be considered when assessing suitability in relation to mortgage products.

- **Suitability statement/reasons why letter** – (Chapter 2, Provision 31)
  During the review, a number of firms were found to be producing statements of suitability lacking detail and containing vague generic statements. Because suitability is specific to the circumstances and needs of every individual consumer, all firms should be satisfied that written statements reflect an assessment of each individual client's specific circumstances and needs, thereby meeting the 'Knowing the Consumer' requirements of the Code, and must set out why the product is considered suitable, or most suitable, as appropriate.

- **Affordability considerations** – In a number of cases firms did not appear to be conducting sufficient research into the consumer's ability to repay and firms seemed to rely solely on the lender's criteria for assessing ability to repay and suitability for a mortgage. Firms must satisfy themselves that a product they recommend is suitable for the consumer's circumstances. The Financial Regulator is aware that this may mean not recommending some clients for a mortgage but would remind firms they must act in the best interests of the client at all times.

  From a consumer protection viewpoint, the ability to meet future repayments is clearly customer and product specific. Firms should therefore consider the future ability of each individual customer to service the product being purchased up to the full term of the mortgage which in some cases may be into a consumer's retirement.

Furthermore, we believe that where a mortgage product is initially priced on a temporary/introductory basis (at an initial discount, fixed for a period or interest only for a period), the affordability post this initial arrangement should also be considered at point of sale, in light of each individual's circumstances and needs.

- **Appropriate documentation**. Firms are reminded of the importance of documenting research done and client information gathered, relevant to ascertaining whether a product is the most suitable. While the firms inspected could demonstrate that systems were in place in relation to researching the market, there was a lack of evidence on the files reviewed to back this up. Up to date file notes are an important tool and aid the audit trail. Firms should document all work carried out and retain it on the client file.

- **Areas of responsibility**. There was a perception in a number of firms, that it was the lenders and not the intermediaries' responsibility to comply with certain sections of the Code. For example, Chapter 4, Provision 14 of the Code relating to declarations of sight of original documentation and in some cases if the lender had not requested a declaration from the intermediary, it had not been forwarded to the lender. Intermediary firms must remain cognisant that they are a regulated entity and therefore must satisfy themselves that they are in compliance with the Code.

- **Specialist Lending versus Prime Lending**. In some firms, sales staff believed that areas of the Code did not have to be adhered to, when selling a specialist mortgage, for example, Chapter 4, Provision 10 providing the consumer with a written indicative comparison calculation where the client is consolidating loans. This misapprehension may have come about as these lenders had not been subject to our supervision until recently. However, the intermediary is a regulated entity and must comply with the Code.

By highlighting the issues above, the Financial Regulator is seeking to actively promote compliance with the relevant Code provisions. We appreciate that not all of the issues referred to in this letter may be applicable to your firm. We expect that these findings be incorporated into the review of your firm's compliance with the Consumer Protection Code.

Should you have any queries on the contents of this letter, please contact Mr Joe Donnelly at joe.donnelly@financialregulator.ie or Ms Renée Behan at renee.behan@financialregulator.ie.

Yours sincerely

Sharon Donnery
Head of Consumer Protection Codes Department