

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 the Consumer Protection (Regulation of Retail Credit Firms) Bill 2019

12th April 2021

Overview

The Competition and Consumer Protection Commission (CCPC) welcomes the publication of the General Scheme of the Consumer Protection (Regulation of Retail Credit Firms) Bill 2019 ('the General Scheme') and the opportunity to make a number of observations on its contents to the Joint Oireachtas Committee.

The CCPC is very supportive of the proposals in the General Scheme that seek to address current and potential future lacunae in the regulation of consumer credit. The application of the Consumer Protection Code to a broader definition of consumer credit, particularly in relation to non-cash loans and in circumstances where credit is not provided directly to a consumer should afford important additional protections. Such protections are timely given the evolution of some consumer credit products which have become more complex and differentiated from the traditional consumer credit models. In particular, the provisions of the Consumer Protection Code in relation to "*Knowing the consumer and suitability*" are of particular relevance in credit markets.

The CCPC notes that the European Commission has proposed a review of Directive 2008/48/EC ('the Consumer Credit Directive') in the context of the *New Consumer Agenda*. Based on the outcome of an evaluation of the Consumer Credit Directive, the review will seek to ensure better consumer information and understanding of consumer credits, taking into account the digitalisation in the provision of such products. The General Scheme would appear to be aligned with the intention of the review of the Consumer Credit Directive to ensure a more comprehensive set of protections for consumers engaging with credit providers.

Personal Contact Plans

In 2018, the CCPC published *Personal Contract Plans: The Irish Market*¹ (the 2018 report). It examined the Personal Contract Plan (PCP) market, and in particular the retail sale of new cars to private consumers i.e. business to consumer transactions (referred to alternatively as private

¹ <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/03/Personal-Contract-Plans-the-Irish-Market.pdf>

new car sales). The 2018 report found that PCP products generally display the characteristics which would ordinarily be associated with hire purchase. PCP finance is underwritten by financial institutions (“high-street” banks), automotive manufacturer banks and special purpose institutions which exclusively offer car finance. Dealerships may act as credit intermediaries on behalf of these institutions.

When a consumer arranges a loan through a financial institution, such as a retail bank or a credit union, the financial institution must carry out credit and suitability checks in order to comply with the Central Bank’s Consumer Protection Code. The Consumer Protection Code requires any regulated entity selling a product to a consumer to ensure that:

- the product meets that consumer’s needs and objectives,
- the consumer is likely to be able to meet the financial commitment associated with the product on an ongoing basis, and
- the consumer is financially able to bear any risks attaching to the product.

In the case of credit products, the institution must ensure that a consumer has the ability to repay the debt as required under the agreement, on the basis of the outcome of the assessment of affordability and must ensure that the product or service is consistent with the consumer’s attitude to risk. The 2018 report found that, should a consumer enter into a PCP agreement, which may even be underwritten by the same institution, this is not covered by the provisions of the Code. As a result, a major financial commitment can be entered into by a consumer without affordability and suitability checks.

The 2018 report noted that the concept of a PCP is not expressly defined in the Consumer Credit Act 1995, as it was not an established form of car finance when the Consumer Credit Act 1995 was enacted, or last reviewed in 2003. The 2018 report recommended that, given the significance of the PCP market, it would be timely for the Consumer Credit Act 1995 to be reviewed to ensure its suitability in relation to this specific, new form of car finance. Furthermore, the 2018 report recommended that PCPs be brought within the scope of the Central Bank’s Consumer Protection Code. This would have the effect of mirroring the protections that are currently afforded to consumers who purchase other types of financial products, including suitability and affordability checks and general requirements around the provision of information.

The CCPC further notes the recommendations of the *Review of Regulation of Personal Contract Plans* commissioned by the Minister for Finance from Michael Tutty (‘the Tutty report’)². One of the recommendations of the Tutty Report was for the removal of legal doubt about the status of PCPs. Head 2 of the General Scheme will amend section 28 of the Central Bank Act 1997 (as amended) to extend its provisions to include “credit”, “hire-purchase agreements” and “consumer-hire agreements” as defined in Article 2 of the Consumer Credit Act 1995. The General Scheme states that the definition of “hire-purchase agreements” will include PCP

² <https://assets.gov.ie/3909/061218122212-f875ff7879c743c486f08f10edc0df68.pdf>

agreements. The CCPC welcomes the extension of the definition to include PCPs. It is suggested that a specific definition of what constitutes a PCP, or similar financial accommodation exhibiting the characteristics of a PCP, as a form of “hire-purchase agreement” be inserted in the Consumer Protection (Regulation of Retail Credit Firms) Bill 2019 to provide for greater certainty.

Head 2 of the General Scheme also provides that the providers of “credit”, “hire-purchase agreements” and “consumer-hire agreements” will be required to be authorised as a “retail credit firm” by the Central Bank. This will have the effect of bringing such firms within the scope of the Consumer Protection Code. The CCPC welcomes this provision as one which will provide for the closing of a lacuna in consumer protection in the state.

Reporting requirements and provision of market data

The 2018 report found that PCPs are a significant part of the car finance market. The CCPC collected data on a voluntary basis for the purposes of the study and recommended that consideration be given to how this data should be collected on a statutory basis in order to track and monitor the development of the market. The 2018 report found some volatility evident in the development of the PCP market which would emphasise the need for ongoing monitoring of both the size of the sector in terms of the numbers and values of PCPs underwritten, but also the penetration in the second-hand car market. The Tutty Report further observed that there would be value in broadening the base of firms that would fall within the statistical reporting of the Central Bank in regard to PCPs.

The CCPC therefore welcomes the provision in Head 5 of the General Scheme that the Central Bank will, on a regular basis, collect and publish aggregate data on the types of relevant agreements entered into with consumers by retail credit firms. The CCPC notes that Head 5 provides that this requirement will include the publication of information on agreements secured by a charge, mortgage or ‘provided for the purpose of obtaining a motor vehicle’. This latter provision would appear to provide for ongoing reporting on developments in markets such as PCPs and will provide welcome insights into the development over time of those markets.

Credit Intermediaries

The CCPC shares responsibility for the advertising of credit facilities with the Central Bank of Ireland and has specific responsibility for the authorisation of credit intermediaries and for maintaining the Register of Credit Intermediaries (‘the Register’). Credit Intermediaries are defined in the Consumer Credit Act 1995 (as amended) as follows³:

“Credit intermediary means a person, other than a credit institution or a mortgage lender, who in the course of his business arranges or offers to arrange for a consumer the provision of credit or the letting of goods in return for a commission, payment or

³ Section 2 Consumer Credit Act 1995

consideration of any kind from the provider of the credit or the owner, as the case may be”.

Examples of credit intermediaries include motor vehicle traders and high street retailers (such as furniture and electrical retailers) leasing or hiring out goods, selling on credit, or arranging credit finance provided in turn by credit institutions. Credit intermediaries can arrange, or offer to arrange, a PCP for consumers.

Head 2 of the General Scheme will amend section 28 of the Central Bank Act 1997 to expand ‘the type of financial activity that falls within the business scope of a “retail credit firm”’. The CCPC notes that the definition of “retail credit firm” was inserted in section 28 by section 19 of the Markets in Financial Instruments and Miscellaneous Provisions Act 2007 (‘the 2007 Act’). Section 19 of the 2007 Act states that the definition of “retail credit firm” does not include a “person who is an authorised credit intermediary under Part XI of the Consumer Credit Act 1995”⁴.

The CCPC notes that the proposals, therefore, do not seek to amend the CCPC’s current limited role in relation to credit intermediaries. The CCPC would retain its existing functions, thereby exposing credit intermediaries to compliance monitoring by both the CCPC and the Central Bank. In addition, it should also be noted that there is considerable overlap between the existing regimes with approximately 33% of credit intermediaries authorised by the CCPC also being authorised by the Central Bank (primarily as insurance intermediaries). This exposes credit intermediaries, who are primarily small businesses, to an uncertain regulatory environment, with potential engagement by both the CCPC and the CBI and with compliance costs and administrative burdens attached to both regimes.

The CCPC has previously raised the issues highlighted here with the Department of Enterprise, Trade and Employment, the Department of Finance and the Central Bank, and suggested that inclusion of credit intermediaries under the Consumer Protection Code and removal of the limited role of the CCPC in regard to credit intermediaries from the Consumer Credit Act 1995 would achieve greater regulatory coherence. We note that this approach is not reflected in the proposed legislation. The CCPC retains the view that the credit intermediary function needs to be reviewed and, should it not be included within this Bill, we will carry out further work to reconsider this matter.

ENDS

⁴ While the definition of “retail credit firm” has subsequently been amended by section 1 of the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015 this did not affect the provision relating to credit intermediaries.