McCANN FITZGERALD

Central Bank of Ireland issues “Dear CEO” Letter on Discretionary Commission Arrangements

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The Central Bank of Ireland (the **“CBI”**) recently published a “Dear CEO” letter (here) addressing concerns regarding discretionary commission arrangements (**“DCAs”**) in the provision of motor finance through hire-purchase agreements.

The CBI is requiring regulated firms to cease the practice of DCAs immediately, and no later than 31 July 2024. Firms will also be required to review their other commission arrangements and, where appropriate, amend relevant consumer documentation. The CBI is proposing to apply the full Consumer Protection Code 2012 (the **“CPC”**) to the activities of hire purchase (including personal contract plans (**“PCP”**)) and consumer-hire.

Background

Issuance of the “Dear CEO” letter follows an extensive review by the CBI of commission practices in the motor finance market, where motor finance is arranged through hire-purchase agreements. The CBI’s focus was particularly on the relationship between interest rates charged to consumers and commissions paid by the regulated finance provider to credit intermediaries that arrange the finance for the consumer.

The UK’s Financial Conduct Authority (the **“FCA”**) recently conducted a similar investigation, resulting in a prohibition on the use of DCAs in the United Kingdom. Research by the FCA indicated that discretionary commission models had led to higher costs for consumers. The ban in the UK took effect from 28 January 2021.[1] The FCA is currently reviewing the historical use of motor finance discretionary commission arrangements (see here).

What is a DCA?

The CBI considers a DCA to be an arrangement whereby a firm allows a credit intermediary to select the interest rate charged to the consumer, and where the commission paid to that credit intermediary by the finance provider is linked, either wholly or partially, to the interest rate charged to the consumer.

The CBI’s Dear CEO letter provides examples of commission models that the CBI considers to be DCAs:

1. **“Increasing difference in charges”** or **“interest rate upward adjustment”** arrangements, whereby a product producer or regulated firm sets a minimum interest rate, and the commission paid by the product producer or regulated firm to the credit intermediary is based on the difference between the interest rate negotiated by the credit intermediary and the minimum rate.
2. **Scaled models**, whereby the commission paid by the product producer or regulated firm to the credit intermediary varies within specific parameters based on the interest rate negotiated by the credit intermediary and paid by the consumer.

CBI Findings

The CBI's investigation revealed that certain commission structures create potential conflicts of interest that may not align with consumers' best interests and would not comply with Provision 3.25A of the CPC. Specifically, the practice of linking the commission paid to intermediaries to the interest rate charged to consumers raised concerns. Under such arrangements, intermediaries could potentially increase interest rates to maximise their commission, leading to higher costs for consumers.

Application of the Consumer Protection Code 2012

Until relatively recently, hire-purchase was expressly excluded from the scope of the CPC. However, this changed following the introduction of the Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2022 (see our previous briefing here). As a result of that Act, as of 16 August 2022, certain chapters of the CPC were applied to the activities of hire-purchase (including PCP) and consumer-hire.

Chapter 3 of the CPC was however not one of the CPC chapters which applied to these activities. Chapter 3 includes Provision 3.25A which sets out obligations on regulated entities in relation to payments of fees, commissions or any other award or remuneration to certain persons including credit intermediaries.

The CBI has specifically referred to Provision 3.25A in its Dear CEO letter and that it does not consider the DCAs to be consistent with these requirements or those regarding conflicts of interest. While Chapter 3, including Provision 3.25A, does not currently apply to hire purchase (including PCP) and consumer-hire, to address this gap, the CBI proposes to apply the full CPC to these activities, as set out in CP158 – Consultation Paper on the Consumer Protection Code (March 2024).

CBI Expectations

The "Dear CEO" letter outlines the CBI's findings and sets forth expectations for firms involved in the provision of motor finance through hire-purchase.

The CBI requires regulated firms to immediately discontinue the practice of linking commission payments to interest rates, but by no later than the 31 July 2024. Board-approved confirmation of cessation of this practice must be provided to the CBI by 5 July 2024. Firms must also review all other commission structures they operate and how these are disclosed to customers and make any necessary updates to documentation. Board-approved confirmation that the firm will carry out this review and update its documentation is also due to the CBI by 5 July 2024. The review of arrangements and updates to documentation, to ensure they comply with both current and proposed CPC requirements, is required to be completed by 30 August 2024. Firms must also provide the CBI with the outcome of such review by 30 September 2024.

Conclusion

Publication of the "Dear CEO" letter highlights the CBI's ongoing commitment to pursuing its consumer protection mandate. As they seek to ensure continued fairness for consumers, in-scope firms should review their arrangements to ensure compliance with CBI requirements and take steps now to meet the various deadlines set out in the CBI's Dear CEO letter.

For further details, please do not hesitate to get in touch with one of our key contacts below, or your usual McCann FitzGerald contact.

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1. Financial Conduct Authority, “Motor finance discretionary commission models and consumer credit commission disclosure –feedback on CP19/28 and final rules” (see here).