FURTHER SUBMISSION TO THE DEPARTMENT OF FINANCE ON RELEVANT ARTICLES OF THE 'CREDIT FOR CONSUMERS' DIRECTIVE

FREE LEGAL ADVICE CENTRES, JULY 2006

Free Legal Advice Centres is an independent human rights organisation dedicated to the realisation of equal access to justice for all, and it campaigns through advocacy, strategic litigation and authoritative analysis for the eradication of social and economic exclusion.

Article 18 - APR

A common Europe wide method of calculating the cost of credit in the form of APR is highly desirable but it requires a sizeable investment in consumer education for the concept to be understood by many borrowers whose knowledge of financial matters and products may be limited. Agonising over what should or should not be included in the calculation of the APR is all very well and good, but if APR is not understood or is used by consumers to compare dissimilar types and durations of credit agreement, then it has failed as a formula. A commitment in the preamble (for example in clause 15) by the Council and the Parliament to designate resources to consumer education in the area of financial literacy should be included in the directive.

In relation to credit agreements that provide for a variable rate of interest, Article 18 (4) provides that an assumption be made that the initial borrowing rate will remain the same throughout the agreement. Whilst this would appear to be unavoidable, it is suggested that the directive should provide for some kind of obligatory health warning to accompany the agreement, especially in light of a climate of rising interest rates. For example, the agreement might state – *'This is a variable rate loan and the cost of your instalments may rise during the course of this agreement'*.

The issue of payment protection insurance still creates a problem here. Of course, as long as such insurance is not obligatory, it cannot be included in the total cost of credit. However, there are still credit providers who ostensibly portray PPI as optional in theory but insist upon it heavily in practice. Is there not room in the directive for information to be provided on how the cost of payment protection insurance can affect the cost of credit, so that borrowers can decide whether they wish to avail of it or not?

From the domestic viewpoint in Ireland, a significant amount of personal borrowing is now being provided by credit unions in addition to credit institutions, credit card companies, finance houses and moneylenders. To our knowledge, credit unions are not currently obliged to use the APR method of calculating interest. This means that in Ireland we already have a potential distortion in terms of comparing different offers of credit. Will credit unions be obliged as a result of the revised directive to use APR as the sole method of calculating charges on borrowings?

In relation to Hire Purchase agreements in Ireland, we also have a comparable problem. At present, because a HP agreement is not a credit agreement within the meaning of the CCA 1995, there is no obligation to quote an APR. Given that the revised directive will not apply to HP at all as far as we can see, this lack of comparative information on the cost of credit in relation to HP will continue and this is hardly consumer friendly. Surely this is an issue which must be addressed in any amendment of the CCA that will result from transposition of a revised directive.

Article 20 – Credit Intermediaries

Article 19 proposes to ensure that credit intermediaries (CI's) are either supervised by an independent authority or regulated. Presumably, this will enable CI's to continue to require a specific authorisation in Ireland and to have letters of recognition from each undertaking they propose to act for, although it would be far preferable given their specific connection with financial services that such regulation would be under the umbrella of the Financial Regulator rather than the Office of the Director of Consumer Affairs (ODCA). Indeed, it is ironic and illogical that recent Ministerial regulations (SI 191/2005) have added CI's to the list of regulated financial service providers for the purposes of the Ombudsman's for Financial Services Bureau but not for the purposes of the Financial Regulator.

Viewing Article 20 in its entirety, it is arguably weaker than the current provisions in the Irish Consumer Credit Act. In the context of the directive being a maximum harmonisation measure, this may have implications for the protection afforded to the average consumer on the garage forecourt where most of the transactions carried out by CI's in Ireland occur. The existing directive by way of Article 12 is not particularly strong in relation to CI's but in the transposition of the directive, the Irish legislature imposed more stringent requirements on C.I's. In particular, s.148 dealing with the obligation to disclose details in writing of the nature of the finance being arranged to the consumer in advance of the contract being concluded is worth noting.

Breaking Article 20 in the revised directive down, it does not seem as onerous. The second part of the article prohibits fees being charged by the CI to the consumer unless specific requirements are met. The first part provides that a CI must indicate '*in advertising and documentation intended for clients the extent of his powers, in particular whether he works exclusively with one or more creditors or as an independent broker'*. This appears to be the sum total of the CI's obligations to the client/consumer under the directive. The wording is very general in that it does not even seem to impose an obligation to have documentation in the first place, only an obligation if there is documentation provided to include certain information in it. Contrast this with s.148 of the CCA 1995 which provides:

Where a consumer negotiates with a seller in respect of the acquisition of goods and the seller, being a credit intermediary, offers, or is requested by the consumer, to arrange a financial accommodation for the consumer in respect of the acquisition of the goods, the seller shall, as soon as may be reasonable, before any agreement, in relation to the goods

under negotiation resulting from the offer or request, is entered into, disclose in writing to the consumer—

> *(a) the nature of the financial accommodation,*
> *(b) the amount, number and frequency of payments and the total amount that the consumer would have to pay under an agreement, and, where applicable, the APR,*
> *(c) who has the property in the goods during the agreement,*
> *(d) the name of any undertaking for which the seller acts as a credit intermediary, and*
> *(e) that the seller receives a commission, payment or consideration of any kind from an undertaking for arranging any such financial accommodation between the consumer and the undertaking.*

It is suggested that this section is far more prescriptive. It imposes a specific obligation, before any agreement is entered into, to disclose quite detailed information in writing to the consumer. This includes the important question, in the context of hire purchase agreements, as to who has the property of the goods during the agreement.

It may be that CI's do not have such a prominent role in other European jurisdictions. However, in summary, given the widespread role of credit intermediaries in car finance in Ireland, we would be concerned that the proposed directive is weaker than existing legislation. The maximum harmonisation approach in the directive complicates this. Whether an exception could be made for hire purchase agreements offered by CI's because HP agreements Irish style are not covered by the directive is open to question. However, we believe that the directive should in any case be strengthened in relation to the disclosure obligations of credit intermediaries.

Article 22 – Penalties

This article provides that penalties for infringement of applicable rules must be effective, proportionate and dissuasive. The current CCA provides for a number of criminal offences, either summary offences or offences which it would appear can be prosecuted summarily or on indictment. Without examining the relevant penalties in detail, it can be surmised that they are proportionate, although the fines could do with updating a decade later. However, unless actual prosecutions are brought on foot of complaints, then action can hardly be said to be effective and dissuasive. In this context, the record of the Financial Regulator in terms of prosecutions under the Act is non-existent, although complaints by consumers have been made.

Article 23 – Out-of-court dispute resolution

In order to ensure that out-of-court dispute resolution procedures in place for the settlement of consumer disputes concerning credit agreements are effective, it is important that consumers are informed of their existence. Thus, we are pleased to see that the suggestion we made in our previous submission that details of out of court dispute

resolution mechanisms should be included in the details of the information the borrower is entitled to receive in the credit agreement has now been included in Article 9. In our view this will strengthen the intent of Article 23.