REVIEW OF THE MONEYLENDING CODE

Submission to the Central Bank

SVP SOCIAL JUSTICE AND POLICY TEAM

JUNE 2018

Introduction and Background

SVP is the largest charity of social concern and action in Ireland, with a variety of services being provided by our 11,000 voluntary members an all-Ireland basis. Home visitation is the main work of the organisation where we provide support and friendship to families in need. SVP services to households in need include debt advice and the provision of direct financial assistance to individuals and families in need. Since 2008, calls for assistance to the SVP have increased dramatically in recent years, as has our direct assistance expenditure. The experience of the SVP is not only increased demand but greater complexity in the cases we are dealing with. In this context, SVP has continually expressed concern about the prevalence of high cost borrowing from licenced moneylenders among the people they assist, many of whom vulnerable and trying to cope on a limited weekly income. We therefore welcome the opportunity to responded to the proposed enhanced protection measures outlined in the Review of the Consumer Protection Code for Licensed Moneylenders.

SVP perspective

In 2017, SVP received over 130,000 calls for assistance. Debt and money-lending represented only 1% of the requests made during 2017. However, the experience of our members on the ground suggests that people are very ashamed of using money lenders and are slow to admit doing so, even in the context of a visitation, and thus would be very reluctant to refer to the issue in an initial telephone call to the Society. In 2017, one in three calls related to food poverty and our experience is that households will prioritise repaying their loan and cut back on food, as it is the one item of household expenditure families have control over.

Families tend to use moneylenders to subsidise an inadequate income from either social welfare or low paid employment. Back to School, Confirmation/ Communions and Christmas times can be key pressure points where families turn to moneylenders to fill gaps. Increasingly, households have such low incomes that bills, utilities, and rising rents, have forced people to access money from lenders when they just can't make up the difference themselves.

Table 1 illustrates that income from social welfare is inadequate to meet the needs the minimum needs of households with children. The data, based on the Vincentian Partnership for Social Justice Minimum Essential Standard of Living Research, shows that one parent households and families living in rural areas are at greater risk of income inadequacy. People engaged in minimum wage employment are also vulnerable to income inadequacy.

Table 1: The Gap Between Household Income and the Costs of Minimum Essential Needs

Income from social welfare				**Income from minimum wage employment (one wage)**			
Two parents with 2 2 children age 10 & 15		**One parent with 2 children age 10 & 15**		**Two parents with 2 2 children age 10 & 15**		**One parent with 2 children age 10 & 15**	
Urban	**Rural**	**Urban**	**Rural**	**Urban**	**Rural**	**Urban**	**Rural**
€556 Need pw	€594 Need pw	€456 Need pw	€521 Need pw	€560 Need pw	€709 Need pw	€516 Need pw	€581 Need pw
€464 Income pw	€451 Income pw	€345 Income pw	€345 Income pw	€586 Income pw	€586 Income pw	€586 Income pw	€586 Income pw
-€92 Gap	**-€143** Gap	**-€111** Gap	**-€176** Gap	**€6** Gap	**-€123** Gap	**€69** Gap	**€4** Gap

Data based on the Vincentian Partnership for Social Justice's Consensus Budget Standards Research. See www.bugeting.ie . In each of these scenarios we have assumed the families are living in social housing and paying a differential rent of €60 per week. If families were in private rented accommodation the differential would be significantly higher.

This case study is typical of the types of circumstances that lead people to take out high cost credit from a moneylender.

We recently began supporting a one parent family. Her 2nd youngest daughter was treated for cancer 6 years ago and is required to attend a weekly appointments in Dublin . She had no childcare so all three children travel with her costing over €90 with petrol, tolls, parking and specialist snacks for the daughter. CWO provided an annual lump sum grant which covers less than half the cost. Before we met the family, the car broke down so she took out a loan with moneylender and is still paying it back. -Member in the West Region

SVP members report that not all the people we assist fully understand the implications of taking out such a loan. They are often vulnerable people, living on a low income and have difficulty balancing day-to-day expenses. Customers of moneylenders tend to find their services easy to access and use and like the fact that money is available up-front, on their doorstep courtesy of the agents, and with very little paper work required.

Given the vulnerable and stressful situations people are faced with, the proportionately large amounts of credit available, and interest rates up to and over 200% , are therefore predatory and exploitative.

Monitoring, enforcement and penalties

SVP supports regulatorily frameworks such as the Consumer Protection Code for Licensed Moneylenders as a way of protecting the people we assist. First and foremost, SVP would like to see a greater focus on monitoring compliance. Our members report potential breaches of current statutory moneylending requirements including potential customers not receiving full information, refinancing or top up loans, and a little or no assessment of creditworthiness. SVP members regularly report inappropriate lending to very vulnerable households who do not have the capacity to repay the loan**.** It is our experience that people tend to use moneylenders when they have limited access to other sources of credit and they may be worried about cutting themselves off from this source of credit by reporting abuses within the sector.

It is crucial to include in the Revised Code how this shall be monitored and enforced in the industry and consequences for breaching this requirement communicated.

Financial Exclusion and Education

Research shows that people most at risk of financial inclusion are older people, the unemployed, lone parents, social housing tenants and those on low incomes.[1] Financial exclusion makes it more difficult for these at-risk groups to manage their money and means greater exposure to high-cost financial services and the risk of over-indebtedness.

Levels of financial exclusion are significantly higher in Ireland than in the majority of the EU15 countries. According to the Report on Financial Exclusion in Ireland[2], the 2008 European Union Survey on Income & Living Conditions (EU SILC) estimated that approximately 17% of Irish people currently live in households that do not have access to a transaction banking account (the standard metric for financial exclusion) – compared to 2.1% or less in 11 of the EU15 countries. This is a big issue for those affected because people without bank or transaction accounts are disadvantaged when it comes to trying to pay for bills, or buying goods and services.

It is SVP view that the issue of moneylenders is part of a much wider financial inclusion piece. Over time SVP ask that the Central Bank , in conjunction with the Department of Finance and the

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[1] Russell et al. 2011 Financial Exclusion and Over-indebtedness in Irish Households http://www.socialinclusion.ie/publications/documents/2011_03_07_FinancialExclusionPublication.pdf

[2] Strategy for Financial Exclusion by Steering Group on Financial Exclusion published online on http://www.finance.gov.ie/documents/publications/reports/2011/Fininclusreport2011.pdf

Department of Education take a more active approach to financial inclusion, and that those who are marginalised and excluded have:

- a sufficient 'buffer' of savings to cushion them against external shocks or unexpected events
- the skills and knowledge to deal with their personal finances, and make informed choices
- access to the use of appropriate financial services and protection from irresponsible lending
- recourse to a humane, fair and holistic system if things go wrong and offering a fresh start regarding personal finances.

Interest Rate Restrictions

SVP believe that regulatory frameworks are just one mechanism to protect vulnerable customers of moneylenders. We acknowledge that when considering introducing an interest rate restriction, a key issue for the Central Bank is how to balance the high cost of credit versus access to and availability of appropriate amounts of micro credit to low income or disadvantaged groups. However, a 2013 recent report on IRR in EU countries showed Ireland was a laggard in this regard and that the current system was ineffective.[3] However, it noted restrictions on interest rates are often ineffective in absence of other measures aimed at reducing information asymmetries, the availability of low cost social lending alternatives and other banking regulation in particular the inclusiveness of mainstream banking services.

SVP are asking that the Central Bank bring Ireland in line with other European countries by introducing an interest rate restriction that reduces the total cost of credit for low income and vulnerable customers. By adopting a holistic approach it is possible to mitigate against displacing lending from legitimate money lenders to illegal money lenders.

SVP Response to the Revised Code

Section 4: Responsible lending and acting in the best interests of consumers

4.1 Prohibiting targeted advertising

Q1. Do you agree with our proposal to prohibit moneylenders from engaging in targeted advertising?

Yes we agree with the proposal to prohibit moneylenders from engaging in any form of targeted advertising.

SVP members have continually expressed concern about the promotion and advertising of regulated money lending loans to vulnerable customers who have limited capacity to repay. In particular, we want to see better regulation of leaflet drops and radio advertising, specifically those that occur during key pressure points for families such as Christmas and Back to School time. This proposal should also be extended to verbal advertising from home credit agents. Given the relationship that can exist with an agent calling to a home on a weekly basis there is a need to ensure that agents do not promote new loans where customers are nearing final repayments. This needs to form part of agent training.

Regulation of online targeted contact via email marketing and third part marketing must also be made more explicit under the regulations. There should be a cooling off period in online communications in regard to direct marketing when a customer is nearing the end of the their loan repayment.

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[3] Reifer et. al. 2010 Study on interest rate restrictions in the EU
http://ec.europa.eu/internal_market/finservices-retail/docs/credit/irr_report_en.pdf

There should be a minimum time delay between one loan and the next.

Q2. Do you have any views on our proposed definition for 'targeted advertising' as set out in the draft Regulations?

Under part a & b of the draft regulations, SVP would also include targeted leaflet drops to be included under "tailored or delivered in such a manner as to target consumers who have recently made full repayment of a moneylending agreement or who have a moneylending agreement nearing full repayment". The definition needs to specify and reference verbal, print, email and online communications.

In relation to part c, a definition of "low income" is necessary. This is particularly pertinent, as in SVP's experience, money lending companies target local authority housing estates and people and families dependent on social welfare. We would suggest rephrasing to "low income including those reliant on social welfare".

In relation to part (d) it refers to 'availing of credit from a moneylender may not be in their best interests' is somewhat ambiguous. SVP would recommend including the Law Reform Commission definition of over-indebtedness as a more all-encompassing definition:

"A household whose existing and foreseeable resources are insufficient to meet its financial commitments without lowering its living standards, which has both social and policy implications if this means reducing them below what is regarded as the minimum acceptable in the country concerned"

4.2 Prohibiting unsolicited contact on foot of referrals from consumers

Q3. Do you see any reason why unsolicited contact with a new customer, on foot of a referral from an existing consumer, should not be prohibited?

No, we do not see any reason why unsolicited contact with a new customer should be permitted.

The section of the regulations should set out how this will be monitored and enforced within the industry. It should also set out the types of communication channels that the regulation relates to

4.3 Prohibiting unsolicited contact for the purposes of sales and marketing

Q4. Do you foresee any practical difficulties with our proposal to prohibit unsolicited contact with existing consumers for the purposes of sales and marketing?

We see a practical difficulty with trying to enforce this regulation, particularly through online communication channels. Issues pertaining to GDPR and the role of the Data Protection Commission will be relevant in such instances.

4.4 Removing the exception to the unsolicited contact rules for non-cash credit

Q5. Do you have any views on the proposal to remove the existing exception from the unsolicited contact rule for moneylenders providing non-cash credit

This exception should be removed.

4.5 Preventing catalogue firms providing discounts predicated on availing of credit

Q6. Do you agree with the proposal outlined above in relation to the additional rules specifically targeted at discounts which are predicated on availing of credit?

Yes we agree with the proposals outlined in relation to targeted discounts which are predicted on availing of credit. It is our experience that many customers do not understand the overall cost implications of availing of such “discounts”. They should therefore be prohibited. This should be also part of a financial education package.

Q7. Do you have any views on what, if any, unintended consequences may arise in implementing this proposal?

Consumers could potentially pay more for their purchases. Such measures must be pursued alongside financial education to assist them understand their choices. Information outlining the costs of borrowing, should be funded centrally.

Section 5: Consumers availing of credit from a moneylender on a more informed and considered basis

5.1 Enhancing the existing high-cost credit warning statement

Q8. Do you see any reason why the existing warning statement should not be enhanced in the manner set out above?

The warning statement should be enhanced.

SVP experience suggests that borrowers are focussed on receiving the principal and do not always understand or pay due attention to the interest rate being applied. The quotation below highlights how borrowers may not consider the impact of the repayments as they seek loans during periods of stress or crisis:

> *I am in a desperate situation at the moment. I recently took out a loan from [named money lender]and this is really crippling at the moment. I am finding it very hard to keep up with bills and basic groceries for my baby nappies and baby formula.*

We therefore believe that the overall cost of credit should be clearly stated in plain English in the warning statement and that cheaper alternatives such as the “It Makes Sense Loan” should be included. See question 11 for suggested wording.

Q9. Do you agree that the enhanced warning statement should be included in all moneylending advertisements?

Yes, all information should adhere to the National Adult Literacy Agency plain English guidelines

5.2 Requiring moneylenders to prompt consumers to consider alternatives

Q10. Do you have any views on the proposal to require moneylenders to provide consumers with an Information Notice at pre-contract points?

Providing an alternative at the pre-contract point is too late in the process. Alternatives should be listed in the warning statement as suggested below. This would be similar to the regulation in Australia.

Q11. Do you have any suggestions in relation to the format and content of the enhanced warning statement (referred to at Section 5.1) or the Information Notice to enhance the quality, relevance or impact of the information provided?

Yes, the warning statement needs to be easily understood and should adhere to the National Adult Literacy Agency plain English guidelines.

"Warning: This is high-cost credit. For example a €500 loan paid over XX weeks will cost XX. Consider alternative options before applying for this credit, including cheaper alternatives from other lenders regulated by the Central Bank of Ireland.

Check your options before you borrow:

- You may be eligible for a Personal Micro Credit loan with a maximum APR of 12.68%. This means a 500 loan paid over XX weeks will cost XX. Check with your local credit union or www.itmakessenseloan.ie
- For information about other options for managing bills and debts, ring the Money Advice and Budgeting Service on XXXX to talk to a free and independent financial advisor.
- Talk to your electricity and/or gas provider to see if you can work out a payment plan. A MABS advisor can assist you with this process.
- In you are in receipt of social welfare, contact the Department of Employment Affairs and Social Protection to see if you qualify for an Urgent or Exceptional Needs Payment. For more information please visit http://www.welfare.ie/en/Pages/SWA---Exceptional-Needs-Payments.aspx

See Appendix A for an example of a warning statement in Australia. This type of warning work best as a pop up for online application. Given the relationship that can exist with an agent calling to a home on a weekly basis, we would also suggest that a minimum "cooling off" period, where customers are given time to explore their options outlined in the warning statement applies once the agent makes a home visit.

It is clear, there are numerous consideration in examining the feasibility of introducing a debt-to-income ratio and SVP would be happy to engaged with the Central Bank at a future date to examine potential unintended consequences.

5.3 Heightened protection for consumers using moneylending loans to pay for immediate basic needs

Q12 A. Do you agree with these proposals? (Heightened protection for consumers using moneylending loans to pay for immediate basic needs)

B. Do you foresee any practical difficulties arising from the implementation of these proposals?

SVP agree that there should be heighted protections for customers using loans to pay for basic needs, however we see many practical difficulties in trying to monitoring as it is currently proposed. We are proposing that in addition to requesting that moneylenders have proper systems in check during the credit assessment process, we are asking that the warning statement is enhanced as outlined above. The proposing "cooling off" period as outlined above would also be effective in this regard. In addition, moneylender firms should be requested to complete a return to the Consumer Protection division of the Central Bank detailing loans where the purpose is that above. Incorrect reporting should carry a penalty. The levels of this type of lending can then be examined to understand the scale of loans that relate to basic needs.

Q13. What do you suggest be included with in the concept of 'immediate basic needs' to which these proposals would apply?

Housing costs including mortgage and rent, food, clothing including school uniforms, school books, and utilities including gas, electricity and solid fuel (oil and coal).

5.4 Aggregate information to consumers with more than one moneylending loan

Q14. A. Do you seen any reason why the Central Bank should not prevent moneylenders from providing a second or further loan to a consumer unless the consumer is provided with the aggregate loan information set out above?

B. Is there any other information that a moneylender should provide to the consumer at the same time?

SVP is aware that individuals and/or households are receiving multiple loans, although it is hard to ascertain specific information about this issue, including whether such loans are 'roll-over' loans or additional loans granted for specific items of expenditure. SVP believes that this practice could be ended if money lenders were regulated on the number and quantity of loans they could issue to individual households. For example, 3 loans per year, with a minimum time prescribed before a new loan is entered into after conclusion of the previous loan. Repeat borrowing is a prevalent feature of moneylender customers. Weekly repayments should be affordable and sustainable. They need to be clearly outlined for the customer on a regular basis. This information should be viewed as part of the financial education of the borrower in outlining the aggregate information, the costs involved and the alternatives available. The availability of alternatives needs to be made very clear. The overall amount borrowed – including the proposed loan - the interest rate repayable by the moneylender and the interest rate repayable on a standard loan should be given in monetary terms.

Section 6 Reducing the possibility of consumers over-extending themselves in respect of their borrowing from licensed moneylenders

Q15. Are you in favour of the introduction of a debt servicing ratio restriction as outlined above?

SVP strongly believes that there is a contradiction in permitting high cost loans which are significantly targeted at the most financially vulnerable. Emphasis must be given to people's ability to pay, so that loans would only be authorised on proven information and we are therefore in principal in favour of introducing a debt servicing ratio restriction as outlined.

It is noted that under the Australian model, in conjunction with a debt to income ratio, a cap on fees and charges was also introduced. Therefore, as the debt service ratio includes the interest repayment, the amount of credit that a person can access when it is from high cost moneylenders is less, as the interest rate makes up a disproportionate amount of the repayment. This is why the feasibility of introducing an interest rate cap should be considered alongside this measure. Furthermore, we would also recommend that only one loan per adult in a household should be permitted and that there should be a minimum time delay between one loan and the next.

Q16. Do you have any views on what percentage of income the restriction should be set at and whether it should be based on gross or net income? Please provide any data or analysis you have to support your response.

The restriction should be based on net income after basic needs have been met. In assessing the percentage for any restriction the information available under the Insolvency Service of Ireland, Guidelines on a reasonable standard of living and reasonable living expenses based on the Minimum Essential Standard of Living Research should be taken into account:
http://www.isi.gov.ie/EN/ISI/PAGES/RLE_INFORMATION

Q17. Should such a restriction also apply to forbearance arrangements for moneylending consumers in arrears? Do you have any views on how it should apply in an arrears case (e.g. do you consider that different factors also need to be taken into account in such a case)?

Yes restrictions should apply in the cases of forbearance. In the case of arrears different factors should be considered such as the ability to make lump sum repayments as mentioned. Early referral to MABS which can provide money advice and assistance to a borrower dealing with arrears is essential.

Q18. Do you have views on the potential impact the introduction of a debt servicing ratio restriction might have on consumers and the licensed moneylending sector?

As table 1 above showed income for social welfare is either inadequate in meeting minimum basic needs for most household types, it is therefore likely that the introduction of a debt to income ratio that accounts for the basic needs of households would impact the supply of credit. This is crux of the issue and the wider issues requires an integrated approach to the wider issues including the introduction of a interest rate restriction that reduces the cost of credit, the availability of the low cost alternatives such as the "It makes sense loan", financial inclusion of mainstream financial institutes and the adequacy of social welfare support and the cost of living for low income groups.

Q19. Are there any circumstances which you consider should be exempted from such a debt servicing ratio restriction?

No

Q20. How would such a restriction operate in the case of 'running account' credit provided by moneylenders? For example, should it operate on the basis of the consumer's credit limit on that account?

We agree with the view of the PMC Implementation Group who state that the restriction should operate on the basis of the upper credit limit in cases of running account credit i.e. if a credit limit of €2,000 exists then such a restriction should be applicable to this limit.

Section 7: Enhancing the professionalism of the sector

7.1 Training of staff and agents

Q21. Do you agree with the proposal to introduce an explicit requirement that money lenders provide on-going training to staff and agents in respect of the firm's lending policies and procedures?

Yes we agree with the proposals that would introduce an explicit requirement that moneylenders provide on-going training to staff and agents in respect of the firm's lending policies and procedures.

Moneylending companies should be made responsible for the lending and payment collection activities of their agents. Protection needs to be afforded to customers who wish to make a complaint against a money lending company. This complaints process should be independent and preferably be vested in the office of the Financial Services and Pensions Ombudsman.

7.2 Lending policies and procedures

Q22.A. Do you agree with the proposal to require moneylenders to have written lending policies and procedure in place?

B. If you agree with the proposal, should moneylenders be required to address any other matters within their lending policies and procedures?

Yes, in addition to the proposal, moneylending firms should have an element of financial education in their policies and procedures. A requirement for moneylending firms to maintain evidence of compliance and complaint procedures would also be useful.

***Q23.	Do you have any comments on the proposal to require moneylenders to retain records of income and expenditure relied upon to assess a consumer's creditworthiness?***

Moneylenders should be brought in line with other financial services and this information needs to be retained for monitoring and audit purposes.

7.3 Engagement with third parties acting on behalf of borrowers

***Q24.	Do you have any comments on the proposal to introduce explicit obligations on moneylenders to engage with third parties who are acting on behalf of borrowers?***

Agree with these proposals. Further evidence as to why training, policies, procedures and record keeping are required.

7.4 Repayment books and collections

***Q25.	Do you agree with the proposals outlined above in relation to the additional rules specifically targeted at tightening the rules in place around repayment books and collections?***

Yes.

Section 8: Additional enhancements to the Moneylenders Code of Conduct

Q26.	***Do you have any comments on the changes proposed above, that is:***

A. Applying relevant requirements under the 2010 Regulations to loan amounts below €200

B. Introducing a specific protection for vulnerable consumers

C. Introducing strengthened requirements for communicating with consumers

D. Requiring that consumers in arrears are signposted to MABS earlier; and

E. Aligning the wording of requirements with the wording of similar provisions in the CPC 2012, where appropriate

A: Yes, we agree that moneylenders should comply with the requirements set out in the 2010 regulations for loans under €200.

B: Yes, it is logical to replicate requirements and the definition of "vulnerable consumer" from the CPC 2012. Cognisance should also be taken of the National Safeguarding Committee's work on protection for vulnerable adults and its definition of vulnerability[4]. We would request that consideration is given to extend the definition of vulnerable consumer to reflect the committee's work.   There also needs to be checkpoints for vulnerability as circumstances change.

[4] http://safeguardingcommittee.ie/wp-content/uploads/2016/12/NSC-Strategic-Plan-2017-2021.pdf

C: Yes, it’s rational to strengthen requirements for communicating with consumers, consistent with other Central Bank codes and regulations.

D: Yes, we agree with moneylenders referring consumers to MABS after 3 missed payments.

E: Yes, it is logical to align the wording where appropriate with the Consumer Protection Code 2012.

Q27. Do you have comments on the attached draft Regulations?

No, all relevant amendments are outlined above.

Q28. Do you have any suggestion for further reform in the moneylending sector, e.g. are there any gaps or areas omitted from the protections proposed in this Consultation Paper?

A comprehensive protocol in relation to complaint procedures should be published and made freely available. This should be written in plain English, and should outline the different stages of the process and provide relevant contact details. The protocol should be given to each customer as part of every loan transaction.

The Consumer Protection and Competition Authority should produce information brochures and financial education tools as a way of indicating to vulnerable consumers the advice services, planned payment methods, and savings and loan options that would help to avoid the need to resort to loans from money lenders.

Appendix A: Warning Statement Australia