

AT/BPC

By email:
codereview@lstdb.org.uk

9 March 2015

Dear Russel,

ICAS comments on the Lending Code

The Institute of Chartered Accountants of Scotland (ICAS) welcomes the opportunity to comment on the Lending Code. The ICAS Charter requires it to act primarily in the public interest, and our responses to consultations are therefore intended to place the public interest first. Our Charter also requires us to represent our members' views and to protect their interests, but in the rare cases where these are at odds with the public interest, it is the public interest which should be paramount.

Key points

Overall, to support effective implementation of the Lending Code, we believe that there is scope to make the Code more succinct and based on key principles. We also highlight the following observations:

- Any change in rates and charges should be actively disseminated to all affected borrowers in advance unless it is a base rate or LIBOR change, which should be notified to all borrowers promptly after the event.
- To treat customers fairly, lenders should only take a fair level of security appropriate to the amount of the loan. Secondly, on the same principle, an unarranged overdraft facility should not subject the borrower to extra charges if it is provided by the lender whether or not the borrower "opts in".
- Customers should be made aware that credit searches cause their credit ratings to deteriorate.
- We have received anecdotal feedback from members that lenders have sign posted advisers or even insisted on changes to particular advisers which result in excessive costs. Lenders should be required to guide borrowers to appropriate advice which reflects the borrowers' circumstances and is provided at a cost which is commensurate to the level of borrowing.
- To support honest and open communication, lenders should give full and frank feedback if a loan request is rejected, rather than restricting it to just the 'main points'.
- No credit line should ever be restricted unless the borrower is in breach of its terms (para 121).

Our detailed comments include:

Key commitments in Section 1

- 1) On the third bullet point: “Regular statements will be made available to customers (if appropriate). Customers will also be informed about changes to the interest rates, charges or terms and conditions” we suggest that stronger wording is needed i.e. “regular statements will be sent to customers by the means selected by each customer” not simply “made available”. We would also remove “if appropriate” as we can think of no situation where it would not be appropriate to provide a statement.
- 2) We suggest adding clarification that customers should be informed “a reasonable period in advance” about changes to terms & conditions, charges and interest rates.
- 3) On the fourth bullet point we suggest adding that subscribers should lend money responsibly “with particular regard to the circumstances of the individual borrower”.

The following detailed points on Sections 2 onwards reflect our view on how the Code could more effectively encompass the key principles:

- 4) Para 23-27: we believe that the default option should always be no marketing or cross-selling. The principle of treating the customer fairly should entail adoption of the premise that it is not acceptable for customers to be automatically opted in by doing nothing.
- 5) Para 29: additional wording is required to clarify that unsolicited promotional material should never be allowed to suggest a product has been tailored to the needs of the customer unless it genuinely has, otherwise this is misleading customers.
- 6) Para 36: this is a very important point of - the simple action of having credit checks carried out on a person will cause one’s credit worthiness to deteriorate. All borrowers should have this point emphatically made to them before any credit reference agency (CRA) check is carried out.
- 7) Para 44: for transparency we believe that as a matter of course, lenders should tell all customers which CRAs it uses.
- 8) Para 50: the third bullet states: “any known future financial commitments of the customer”. We believe a stronger statement would be more appropriate to encourage high quality assessments and suggest this should be reworded to “all relevant and reasonably determined information to reach an informed conclusion”.
- 9) Para 60: we believe that the Code should be updated to require lenders to suggest sources of independent advice that will provide that service at a cost appropriate to the amount of borrowing.
- 10) Para 61: we believe the wording should be stronger i.e. lenders should actively encourage customers to bring their professional advisers to meetings.
- 11) Para 66: we suggest removing the wording “wherever practical” as we are not convinced that it is ever not practical to provide feedback or that it reflects the improvements in the appeals process. We suggest rewording to state that feedback should always be provided, in every case.
- 12) Para 70: stronger wording is required to clarify that in the absence of independent legal advice, the lender should always explain the full details of the guarantee, to both the customer and the guarantor.
- 13) Para 71: lenders should only take a level of security appropriate to the amount of the lending - this is a fundamental element in acting fairly.

- 14) Para 75: we are not convinced that there are any reasonable circumstances where it is appropriate for a lender, acting fairly, to hold onto that security when the relevant borrowing is repaid. It is essential that the lender should act in an open and fair way and always explains upfront the circumstances under which a security will be released.
- 15) Para 78: the issue of unarranged overdrafts is highly confusing. In our opinion, if the bank has provided this facility then there should be no additional charges for using it. As a minimum, the borrower should be immediately notified before any charge for using an unarranged overdraft is incurred.
- 16) Para 90 & 113: it is not sufficient for lenders just to make available information on changes in interest rates. If the price of a service is changed the customer should be notified directly and well in advance. In the case of a base rate or LIBOR indexed facility then again changes in the rate should be sent to the customer in a timely way.
- 17) Para 106: to support full and effective communication, the lender should not just provide the main reason but the full reasons. We also believe these should be made available as a default to all and not just when requested by the customer.
- 18) Para 107: the wording "wherever practical" should be removed. If an applicant is declined a full explanation should be provided.
- 19) Para 121: wording should be clarified in the Code to state that no credit limit should be reduced without prior notice to the customer, unless the borrower is in default of the terms.
- 20) Para 123: for consistency with the principle of no hidden terms or costs, wording in the Code should clarify that the expiry of an introductory offer should be openly notified and highlighted to the customer, not hidden away. We suggest that there should be a minimum notice period of four weeks. If there is a monthly statement due just before the expiry of the offer within the four week period then the notice should be included in the prior month's statement too.
- 21) Para 124: If a customer is in breach of the terms there should be internal controls in place to reduce abuse and the risk of escalating unpaid debts. In our view, there should be an immediate notification and the account frozen. Supporting transparency and effective communication, the expiry of an introductory offer should be highlighted and not be hidden from the customer in any circumstances.
- 22) Para 136: in our view, the concept of credit card cheques, with different terms and risks to the customer compared to credit card spending, is incompatible with fair banking. We believe that unsolicited credit card cheques should never be issued, either "with or without a pre-completed amount".
- 23) Para 166: the lender should provide in full the reasons for the rejection and if provided verbally then this should be followed up with a full explanation in writing or electronically.
- 24) Para 170: we believe that it should never be impracticable for any customer not to have all relevant terms and conditions before buying any financial product. The Code should be reworded to this effect.
- 25) Para 188: some rewording is required in the Code to clarify that it is not acceptable to allow lenders to ignore a customer's wish to communicate only in writing or email. The written word is more considered and binding and banks should encourage and follow this. To protect customers from unwanted sales calls, unsolicited marketing calls from a bank should not be permitted as a default. With respect to financial difficulties, it should not be acceptable to engage in behaviour with customers which could be perceived as harassment or bullying.
- 26) Para 189: the wording "wherever possible" should be removed in the first sentence. Lenders should only engage with customers and advisers when they have the facts before them. If they do not have these facts the lender is not competent.

I hope this is helpful. Please do not hesitate to contact me if you would like to discuss further.

Yours sincerely

Alice Telfer
Assistant Director