

## **SCHEME OF CONSUMER RIGHTS BILL**

### **A Submission by the Citizens Information Board (August 2015)**

#### **Introduction**

The Citizens Information Board (CIB) welcomes the opportunity to comment on the scheme of a new Consumer Rights Bill. The integration of the various pieces of national and EU legislation and regulation currently governing consumer protection under the one Act is a welcome and positive development.

The proposed legislation should significantly enhance the ability of the Competition and Consumer Protection Commission to carry out its functions. In particular, the provision in the new Bill for tighter regulation of contract terms is welcome in order to ensure that people can make informed choices and are legally protected in cases where products and services do not meet the standards stated or implied in a contract of service or sale. Ensuring that consumers who purchase goods or services by means of Internet downloads or streaming have effective legal remedies is an important consideration.

While welcoming the general thrust of the Bill, the CIB has some concerns about how the legislation will relate to various consumer codes of practice, particularly in relation to financial services and to existing legislation relating to financial services, e.g., the Central Bank Reform Act 2010 and the Consumer Credit Act 1995.

#### **Consumer Issues: Feedback from CIB Service Delivery Partners**

Consumer-related issues emerge as a theme in policy-related feedback from CIB service delivery partners (Citizens Information Services, the Citizens Information Phone Service and MABS)<sup>1</sup>. The following are the main consumer issues identified:

- The power imbalance that exists between consumers and providers of goods and services, particularly between debtors and creditors
- The related difficulties that individuals have in negotiating fair contracts for goods and services in the first instance and using the redress mechanisms where they need to do so
- People being unaware that they have agreed and entered into new contracts where these are based on verbal communications (either telephone or face-

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<sup>1</sup>Citizens Information Services and the Citizens information Phone Service dealt with almost 25,000 consumer queries in 2014 and MABS handle a range of consumer related issues in their debt advice work.

to-face) with utility providers (telecommunications, electricity and gas)

- Lack of clarity on the part of consumers about how such contracts can be terminated
- People not being aware of or being advised by the provider of their right to be protected by means of a 'cooling off' period
- Inadequate response by utility companies to consumer complaints, e.g., difficulty in finding whom to talk to in the first place, getting through by phone and non-response to correspondence

Of particular significance are issues relating to utility providers especially telecommunications providers. There is regular reference in feedback to people reporting having agreed to new and binding contracts with telephone service providers without being aware that they are so doing. Examples of difficulties with contracts with telecommunication and energy providers are provided below. The main issue identified in these case examples and one that is frequently referenced by CIB service delivery partners is the fact that people were unaware that they were agreeing to new contracts or not fully aware of the terms of the contract. The cases highlight a need for more legal protection for people who may be vulnerable.

#### *Difficulties with contracts with utility providers: Indicative Case Examples*

##### *Difficulties in respect of 'contracts' with Telecommunication Providers*

A woman contacted the provider to cancel her landline and was told there was a disconnection fee of €180.95 as she had a contract with them until next May. She was unaware of having any such contract. The Citizens Information Service (CIS) contacted the provider on the woman's behalf and were advised that she had a contract since last May when she rang to disconnect but was offered a package deal and a credit on her next bill and accepted the offer. However, the next bill did not reflect the promised credit and hence her decision to cancel her landline.

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A woman had sold her house had tried to close her telephone account. When she rang she was told that she had to wait for 4 months to close the account. On contacting the provider, the CIS was advised that the woman had a 12-month contract which would expire in November. The woman stated that she had been a customer for 17 years and had no recollection of making any changes to her account previously.

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A 74-year old woman with hearing difficulties received cold call from a telecommunications company offering a telephone package. She switched over and then received a large bill from her former supplier for terminating her contract before the due date. She also received a bill from the new company which, she stated, was higher than the amounts discussed in initial call. She decided to switch back to her original provider but had difficulty in getting the Universal Account Number needed from the new company. The CIS assisted the woman in getting the matter resolved eventually,

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A man queried a bill with the provider's customer services and was informed that he had entered into a contract over the phone and this bill was for a cancellation fee. He was not aware that he had entered into a new contract for services by means of a phone conversation.

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A man in his mid-eighties was offered a telephone "Deal" by a telecommunications company. The man stated that he declined the offer and alleges that the company signed him up in any case and began billing him on a regular basis to pay a phone bill which, he claims, he does not owe as he had never agreed a contract with them.

*Inaccurate/Incomplete information from electricity provider*

A couple reported to the CIS that they were told by a door sales person that they only needed to sign the new contract to change supplier and that they could continue to pay their bills through the Post Office as previously and that there would be no additional charges. They subsequently received a Bill for €300 deposit on the basis that they were required to pay the deposit or provide Direct Debit details. The couple stated that they were misled. When the Information Provider phoned the company on behalf of the couple, the company acknowledged that the information given by the sales person was inaccurate and that they would address this matter in the training programme for sales persons. However, the deposit remains outstanding until a Direct Debit is set up.

## **Drafting the Legislation**

The CIB identifies three factors which need to be addressed in the final drafting of the Bill:

- Right of consumers to have accessible information
- Redress and complaints mechanisms
- Linkages to existing legislation and related Codes of Conduct

### ***Right of Consumers to Accessible Information***

While consumer legislation (Consumer Protection Act 2007) aims to ensure that consumers have enough information about prices and the nature of products and services to make suitable choices on what to buy, this does not always happen in practice.

The complex sets of rules and procedures governing consumer protection may leave the individual consumer in a weak and vulnerable position *vis a vis* the provider. People may have language, literacy or cultural difficulties and/or difficulties associated with financial exclusion. When faced with accessing and understanding information about products and services and related contracts, people can be overwhelmed. There is an important balance to be struck between written information about products and services and how this is communicated at the point of contact/sale. There is a need to maximise the potential of different means of disseminating information – online, print and face to face – to ensure that people clearly understand the terms and conditions of an agreement or contract.

Some people, including in particular those with disabilities and those with literacy or language difficulties, require additional assistance when faced with new decisions in respect of buying products and services. They may not have the confidence or skills necessary to critically assess information. While such assistance can be

provided by relatives and friends and by organisations such as CISs and MABS, there is a primary responsibility on providers of goods and services to ensure that people are given whatever assistance they require to distil and comprehend information. This matter should be addressed in the new legislation.

The way in which information is presented is of considerable importance in ensuring that there is absolute clarity and transparency on the part of the provider of financial products and services. In order to ensure that information is accessible to all groups, all providers of goods and services should be obliged to develop systems for ensuring that information is accessible and to use *Plain English*. This also requires that information is available in different formats as required, including Braille, large print or on CD<sup>2</sup> as well as through Sign Language Interpreting.

The legislation should include a requirement for providers of goods and services to:

- Use a Plain English approach in any written materials
- Address the communication needs of people with disabilities
- Facilitate people who may require additional time to absorb and understand the information provided
- Use a *Checklist* to ensure that all aspects of the product/service being offered are clearly understood by the consumer

### ***Redress and complaints mechanisms***

While bodies such as the Competition and Consumer Protection Commission, (CCPC), ComReg, the Financial Services Ombudsman and the Private Residential Tenancies Board (PRTB) play an important role in protecting the rights of consumers, they may not be as effective as they should be because of the power imbalance that often exists between providers of goods and services and consumers.

The Scheme of the Bill (PART 6) states that it is particularly important that the rights of consumers and the remedies available to them if those rights are breached are set out in a manner that is as clear and comprehensible as possible. This requires that redress and complaints mechanisms are clearly referenced in the legislation in a manner which ensures that there is a correct balance between the rights of consumers and those of providers of goods and services. This is important in the context of the amount of technical detail that is frequently included, not only in initial contracts and terms of agreement, but also in responses to consumer complaints. Such responses can put the consumer at a distinct disadvantage *vis a vis* the provider. There is thus a need for consumers to have assistance of a technical nature to formulate their arguments in making a complaint. For example, individual consumers may, without technical assistance be unable to avail of the Alternative Dispute Resolution (ADR) mechanism provided for under Directive 2013/11/EU<sup>3</sup>.

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<sup>2</sup>Reference to *Access to Information for All: Guidelines on Removing Barriers and Improving Access to Information for Everyone* (Citizens Information Board)

[http://www.citizensinformationboard.ie/publications/social/downloads/Accessible\\_Information\\_For\\_All.pdf](http://www.citizensinformationboard.ie/publications/social/downloads/Accessible_Information_For_All.pdf); the National Disability Authority, Code of Practice on Accessibility of Public Services and Information provided by Public Bodies [www.nda.ie](http://www.nda.ie) and NALA publications (<http://www.nala.ie>).

<sup>3</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0011&from=EN>

This is designed to ensure access to simple, efficient, fast and low-cost ways of resolving domestic and cross-border disputes which arise from sales or service contracts and which applies to online as well as to offline transactions and shopping across borders.

### ***Linkages to existing Codes of Conduct***

A 2014 FLAC report<sup>4</sup> has suggested that the codes of practice governing financial services are deficient in that they are not primary legislation in the form of an act of the Oireachtas or, indeed, secondary legislation in the form of an ministerial regulation. The FLAC report suggested that European-level developments, piecemeal domestic legislation and selective financial regulation have combined to leave many consumers of financial service in Ireland – in particular, consumers of credit and distressed mortgage borrowers – particularly exposed. Reconfiguring the legal and regulatory framework to provide better protection for consumers, including, in particular, users of financial services is an essential requirement for the proposed new consumer rights legislation as is providing a better fit between EU regulation and national legislation and related codes of conduct.

Relevant consumer codes of conduct should be referenced in the Consumer Rights Bill. The Central Bank of Ireland develops its own codes of conduct for the variety of financial service providers which it regulates. It would be important that the new legislation references the legislation governing the Central Bank and related consumer protection codes of conduct.

### **Key Points**

- The legislation needs to get a balance between the rights of consumers and those of providers of goods and services taking into account the power imbalance that frequently exists;
- The new legislation, while inevitably requiring a high level of legal detail and language, should seek to provide for transparent pathways to all the core elements of consumer protection;
- The linkages between general consumer rights legislation and legislation relating to financial services and products needs to be clearly stated;
- The legislation should require suppliers of goods and services to have in place ways of providing information about products and services that is easily understandable and accessible;
- Provision should be made for complaints and redress systems to be easily accessible to all consumers and include a requirement for providers of goods and services to provide technical assistance, e.g. in explaining the 'small print' to people seeking redress.

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<sup>4</sup> [http://www.flac.ie/download/pdf/redressing\\_the\\_imbalance.pdf](http://www.flac.ie/download/pdf/redressing_the_imbalance.pdf)