The Money Charity's submission to the Independent Review of the Lending Code

1. As the UK's financial capability charity, we welcome this independent review of the Lending Code.

2. We believe that being on top of your money means you are more in control of your life, your finances and your debts, reducing stress and hardship. And that being on top of your money increases your wellbeing, helps you achieve your goals and live a happier more positive life as a result.

3. Our vision is for everyone to be on top of their money as a part of everyday life. So, we empower people across the UK to build the skills, knowledge, attitudes and behaviours, to make the most of their money throughout their lives.

4. We believe financially capable people are on top of and make the most of their money in five key areas:
    - Planning (including budgeting)
    - Saving
    - Debt
    - Financial services products
    - Everyday money (including wages, cash, bank accounts)

5. As a primary piece of industry self-regulation, it is essential that the Lending Code's provisions are kept up-to-date, particularly given the significant changes to the consumer credit sector that have taken place since its last full review in 2010. As an organisation, we believe that industry conduct has a significant impact on individuals' ability to manage their money well, and we believe that the lending code should provide the 'gold standard' for its subscribers.

6. The advent of FCA regulation means that in several places the Code as it is written is redundant. There are other clauses that do nothing more than stating that subscribers should follow a particular piece of regulation or industry guidance. In both cases it is pointless to have these. Such duplication is unnecessary and adds complexity for consumers and industry. More broadly, we believe that as it stands the

Code is confusingly structured and repetitive – for example, paragraphs 180 and 183 are both lists of potential indicators of financial difficulty, but it's not clear why these need to be separate, and the 'Debt and Mental Health' provisions could be better incorporated into the wider 'Financial Difficulties' section.

7. A major and welcome simplification of the Code would be to state that all subscribers are expected to comply with relevant regulatory requirements, and then limit the Code's actual content to, in clear language:
    - Clarifying the LSB's position on regulatory issues that are unclear or open to interpretation
    - Setting out measures that go beyond regulatory requirements

8. This would make the Code easier to navigate for industry and consumers, as well as more clearly setting out what additional measures to statutory regulation subscribers are signing up to. It would also be helpful if those provisions that apply to all credit products were listed once in a single section, rather than repeating the same requirements in several different sections for different credit products. Product-specific requirements could then be included in the relevant later section.

9. For the Lending Code to be a valuable and meaningful document, it needs to set guidelines for best practice that exceed the FCA's regulation. It is in that spirit that we make a number of suggestions regarding ways in which its current provisions could be built upon. Some of these are relatively minor changes that we believe clarify the existing intention of certain parts, others are more substantial and would result in greater, justified protection for customers and ultimately more beneficial outcomes, without unduly imposing burdens on industry.

10. We have made detailed comments on relevant sections below. We would be happy to discuss any of our proposals further if necessary.

Section 1 – key commitments

11. We believe that the key commitments remain relevant, but believe that there is a need for a further commitment regarding staff conduct.

[1] http://www.keepmeposteduk.com/six-point-pledge

12. Requiring subscribers to “make sure their staff are trained to put this Code into practice” is necessary but not sufficient. It is also important that the application of the Code is monitored by subscribers, and the Code would benefit from being modified to reflect this.

13. We suggest that an additional key commitment along the following lines should be added: “Subscribers will monitor compliance with this Code and conduct Quality Assurance checks on a regular basis.” We also believe that the Lending Standards Board should actively seek evidence of subscribers’ compliance with the Code’s provisions where appropriate, including reviewing their Quality Assurance checks.

Section 3 – credit reference agencies

14. Paragraph 41 should specify that the notice of the intention to disclose the default information should not solely be made by the ‘usual’ route. In the majority of cases subscribers will have multiple pieces of contact information (postal address, email address, landline and mobile number) that could be used, and a requirement to attempt to contact the customer by more than one of these routes would improve the likelihood of a customer receiving the information, such as where a postal address is out of date.

15. Paragraph 45 should be strengthened to require subscribers to give some indication of the aspect of the individual’s information held by a CRA that led to the declined application, as should Paragraph 56 in Section 4.

16. Just requiring a subscriber to tell an individual that their application was declined on the basis of information from a CRA is not sufficient and is, in our view, unlikely to lead that individual to engage with their credit rating. General understanding of credit ratings among consumers is extremely low, and unspecific information is likely to reinforce the perception of them as mysterious. It would be helpful if subscribers to the Code were required to point out that there may be steps an individual can take to improve their credit rating.

17. We also believe that the declaration referred to in paragraph 48 that an application will or may lead to information being shared with a CRA should be specifically highlighted to customers upon application. Most customers have little if any understanding of CRAs, and would not assume that an application for credit would lead to any consequences beyond the decision of whether or not to extend credit.

Section 5 – current account overdrafts

18. Paragraph 78 imposes requirements “where a subscriber provides within its current account range one or more accounts that provide customers with the ability to opt out

from unarranged overdrafts". In our view *all* current accounts should provide the ability to opt out from unarranged overdrafts, provided that a customer is aware of the potential downsides to choosing this (e.g. missed payment fees). This is important in giving customers control over their money and the charges they may or may not incur.

19. We also believe a requirement should be made that all current accounts should offer a small emergency 'buffer', to prevent customers from facing charges that are very high in comparison to the amount they have gone over their agreed overdraft limit.

20. Paragraph 80 refers to customers being offered an arranged overdraft or an increase in their existing overdraft. In these instances, we believe that the following requirements should be made:
    - If a customer does not respond to an offer of an arranged overdraft or an increase in their existing overdraft, the offer should be treated as though it has been rejected.
    - Where the customer has made a request for a particular amount of overdraft (whether new or an increase), the subscriber should not grant the customer a higher facility than the level requested.

21. Paragraph 91.1 should be amended to specify that, in the notice given before taking interest and overdraft charges, the date on which the charges will be taken should also be stated. The ambiguity at present would allow for a subscriber to send the notice 21 days in advance of the charges being taken (so satisfying the 'minimum of 14 days' notice' requirement) but not stating the date on which they will be taken. If the customer then assumes the charge has been taken, they may overestimate the 'available' funds in their account, causing them difficulty when the charges are in fact taken.

Section 6 – credit cards

22. Credit card providers should offer the option of setting up a direct debit (for the minimum payment, the full amount, or fixed amount greater than the minimum payment) at point of contract and throughout the life of the card.

23. We also believe there is scope for much better notification of when their payment date is coming up for customers who do *not* have a direct debit established. At present a customer may receive no notification between receiving their monthly statement and the payment being due, which is usually a gap of two to three weeks - increasing the chances of accidentally missing a payment. This notification could be a free opt-in service for customers, which would give an email or text notification three days before the payment is due.

24. Paragraph 121 refers to reducing an individual's credit limit and mentions giving them notification – but there is no reference to how long this period should be. Reducing an individual's credit card limit with no or very little notice could significantly impact their ability to stay on top of their money.

25. Paragraph 124 states that subscribers do not need to notify a customer of the impending expiry of an introductory promotional rate if "the account is not being used and the customer is not receiving a monthly statement". We are concerned that this may inadvertently mean that customers who are using their credit card as an 'emergency fund' may be caught out and, if they need to access the credit, they may be charged interest without realising (or having been informed) that the promotional rate has ended. We recommend that the requirement to notify a customer of the impending expiry of an introductory promotional rate should be extended to those who are not using their account or receiving a monthly statement.

26. The principle explained in the third bullet in Paragraph 127 is relatively counter-intuitive. This should be displayed clearly and as a warning, alongside the risk warning for making minimum repayments. The warning could read: "If you do not clear this balance in full in any given month, you will lose the interest-free period, meaning you will pay interest from the date of each purchase until that spending has been repaid."

27. The current way in which the minimum repayment on an outstanding credit card balance is calculated and automatically reduces over time if no new spending is charged to the card keeps customers in debt for longer and greatly increases the total amount they repay. The UK Cards Association's calculator[2] illustrates this – the example below is for a £5,000 balance at 18.9% APR with no spending, and a minimum repayment of the higher of 1% or £5:
    - If you made only the minimum repayment, the balance would be cleared in 31 years and 10 months, and would repay a total of £12,077.
    - In the first month the minimum payment would be £123. If you repaid £123 per month, you would save £4,460 in interest charges and clear your balance 26 years and 8 months sooner.

28. In principle, if someone can afford £123 in the first month they can do so in subsequent months. We propose that where a balance is decreasing, the default repayment should be at the level of the previous month's payment. The FCA has found that over 1 million customers make only the minimum payment for more than 12 months[3]; if those customers did not increase their debt and paid the same amount each month, they would make greater inroads into the principal owing. The customer should still be able to reduce their payment if they wished to, but this should be a conscious decision.

29. Where a subscriber offers payment holidays (Paragraph 133), they should also be clear to customers that their payments will rise after the holiday as more interest will have accrued on the balance.

[2] http://www.cardcosts.org.uk

[3] http://www.fca.org.uk/news/credit-cards-competition-review

30. Similarly to our comments on unsolicited increases in overdrafts in paragraph 20, unsolicited offers of credit card limit increases should only take effect where the customer has actively agreed. And when a customer applies for a credit card, they should not be granted a higher limit than they have requested, subject to a 'floor' limit the subscriber is willing to grant. If such a floor limit exists, customers should be clearly told this before application.

Section 9 – financial difficulties

31. There should be some recognition that repeatedly making the minimum payment on an interest-bearing balance is also a potential sign of difficulty. While we recognise that the list is intended to be non-exhaustive, to have no mention of minimum repayments is a significant omission. For example, the following circumstances could be considered potential indicators of financial difficulty:
    - A customer's outstanding, interest-bearing credit card balance increases for six consecutive months.
    - A customer makes only the minimum payments for three consecutive months.
    - A customer makes only the minimum repayment for six out of 12 months.

32. The contact with a customer identified as being at risk of financial difficulty (Paragraph 182) should not just be through the 'normal' channel of communications – if that normal channel is unsuccessful, there should then be a requirement to try other channels.

33. We feel that Paragraph 191 is ambiguous, and would be strengthened by requiring subscribers to give a phone number that will put the customer in contact with a named person with responsibility for their individual case.

34. In the sub-section about consolidation loans, we believe that any customer being considered for a consolidation loan is likely to be at risk of financial difficulty. Before they take out a consolidation loan, they should be clearly informed that although it might reduce their monthly payments, it will take longer to repay and cost more in the long term. They should also be informed of providers of free, independent debt advice such as StepChange.

35. We support StepChange's proposals[4] around breathing space for people in temporary financial difficulties (such as illness or job loss) and believe they should be incorporated into paragraphs 201-203.

36. Where a subscriber accepts an offer of payment that is insufficient to enable the customer to be accepted onto a formal DMP, the Code should specify that the customer must be informed that their offer has been accepted, and that information must be provided in a durable medium (i.e. not solely over the phone).

[4] http://www.stepchange.org/Mediacentre/Pressreleases/protectpeopleindebt.aspx

37. In the section on debt collection agencies and debt sales, recognition should be given to the recent commitment from major banks around making it clear when letters appearing to be from external debt collection agencies are in fact from in-house collection teams.

38. In keeping with our views on simplification set out in paragraph 7, the section on mental health could be replaced by a statement that subscribers are expected to follow the TEXAS drill when dealing with customers with mental health difficulties, endorsed by the Royal College of Psychiatrists[5].

Other

39. One set of requirements that could be made across credit products is that customers will be provided with information in a format of their choosing, that customers should be given a clear choice upon application of whether to receive paper statements, that the frequency of regular paper statements should not change without the customer's consent, and that customers who receive paper statements are still able to access their account online. These form part of the Keep Me Posted campaign's six-point pledge[1].

40. We also believe that where a customer is not able to access online statements (whether because of low digital literacy or lack of reasonable access to online facilities) they should not be charged for receiving paper information.

Conclusion

41. We believe that the Lending Code still has a place as part of the industry's guidance, but only if it is substantially revised and sets out a meaningful code of expected conduct that exceeds regulation. The proposals we make above would, we believe, be proportionate and would help to retain the Lending Code's relevance in the new era of regulation.

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[5] http://www.malg.org.uk/dmhdocuments/12%20steps%20Mental%20Health%20Nov%2014%20(1).pdf