

COMPLIANCE IS NOT A SPECTATOR SPORT

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Eleanor talks to Mortgage Magazine about the proposed Consumer Protection Code due to come into force at the end of the year, and what it means for brokers.

Mortgage Intermediaries have not had to wait for the publication of the Consumer Protection Code to get some idea of the standards the Financial Regulator (FR) expects to see when visiting the office of a mortgage intermediary.

Although the Mortgage Intermediaries are aware of their obligations under the Interim Code of Practice published in 2003, clarity was given to the General Principles outlines in the Code when the FR wrote to all mortgage intermediaries earlier this year. In summary, the mediation of a mortgage product to a consumer now has great similarity with the manner in which a life assurance product is mediated.

A great cause of concern to the FR is the authenticity of documentation used to support mortgage applications. As the use of false documentation may constitute fraud, which is a criminal offence, this type of activity will involve the Gardai and possibly other government agencies - as well as the FR. The FR requires that every mortgage intermediary is able to demonstrate its diligence with regard to the reasonable checks it has conducted on documentation submitted to a lender through its agency. The FR has a number

of regulatory actions available to it, including refusing to grant a mortgage intermediary licence, suspending or revoking a licence and imposing sanctions.

The FR's latest annual report describes a situation where, upon foot of a complaint about a mortgage intermediary, the FR inspected a mortgage intermediaries office where it transpired that approximately half of the P60s, a number of bank statements and a quotation for building work was falsified. As a result of the inspection, the mortgage intermediary's authorisation was not renewed and the incident was reported to the Gardai.

The mortgage business is probably one of the most paper intensive businesses around, and all mortgage intermediaries face the practicalities of storage difficulties on a daily basis. That being said the FR has given an indication of what he expects to see on a mortgage file, see Figure 1 opposite.

There are no surprises here, it's largely what you would expect to see on a file. It's also worth noting that the client may request a copy of their data under Data Protection legislation. As well as this, under the proposed Consumer Protection Code, a regulated entity

may be required to provide a customer with a copy of their records when requested [as currently applies to insurances intermediaries].

Other findings from FR inspections include mortgage intermediaries not making adequate disclosure of fees charged. The key issue is that the client must be informed at the outset of the relationship of the firm's policy in respect of fees, including the amount of fee the client will be charged (if any) or the basis on which a fee is calculated.

SUGGESTED MORTGAGE FILE CONTENT

- Copies of client identification documents
- Client contact details
- Evidence of research
- Mortgage application form
- Details of each transaction carried out
- Details of advice given
- Copy of receipts given
- Correspondence from the client
- Copies of original documentation submitted by the client to support the application

Figure 1



The FR requires that the intermediary records on the client file, evidence that the mortgage lender and mortgage product recommended to the client is the most appropriate given the client circumstances. In short, evidence of research should be maintained on the file.

Lastly, where business is conducted outside of the office, the FR recommends that a copy of the Authorisation to conduct business as a Mortgage Intermediary is provided to the client, this is probably best done by including a copy with your terms of business document.

So the practicalities for 'To Do' list resulting from the FR's letter:

- ✓ Include a copy of the mortgage intermediary authorisation with the terms of business;
- ✓ Construct a Mortgage Checklist to ensure that the FR requirements are met for each transaction;
- ✓ Ensure Client Files are ordered, neat and logical viz-a-viz the transaction taking place;
- ✓ Ensure that there is evidence on file of the research conducted when advising the client of the mortgage product recommended;
- ✓ Ensure that there is transparency and disclosure to the client in respect of fees and commissions;
- ✓ Ensure all staff are diligent and monitor documentation authenticity provided by the client to support the mortgage application.

The Consumer Protection Code is expected to be published in final form within the coming months. Its function will be to provide consumer focused protection - the same level of protection for the purchasers of all financial products - and to facilitate competition for financial services providers through a level playing field. Some of the features of the Code are:

- A single code covering all financial services providers (i.e. intermediaries, banks, insurance companies, etc);
- General Principles which is in line with a principles based regulatory environment;

- Common Rules for all regulated entities;
- Service specific rules;
- Rules in respect of Advertising.

The Code is expected to be issued by the end of this year followed by a period of approximately 6 months during which time all financial services providers should work towards achieving compliance with the code.

In the meantime we are awaiting the Financial Regulator's document entitled "An Outline of the Administrative Sanctions Procedure" due out later this month which will describe the process by which the sanctioning process will be conducted in the future.

Also, from October 1, the Financial Services Ombudsman commenced the handling of complaints received from consumers in respect of mortgage and insurance brokers.

Other topics to watch out for are competency levels, pricing and transparency, to name but a few!

Remember, Compliance is not a spectator sport!!!!

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