Opening Statement to the Joint Oireachtas Committee (JOC) on Finance and Public Expenditure and Reform, and Taoiseach, concerning pre-legislative scrutiny of the Consumer Credit (Amendment) Bill 2018
Free Legal Advice Centres (FLAC)
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Introduction

One of the core focuses of the work of Free Legal Advice Centres (FLAC) over two decades has been monitoring legal developments and campaigning for law reform in the areas of consumer debt and consumer credit. FLAC therefore welcomes the opportunity to appear before the committee on this short but important Bill and thanks the Cathaoirleach and the members for providing us with the opportunity.

Since we made our submission on this Bill last November, the discussion on the question of interest caps has evolved to a substantial degree. Appearances before the Committee by the Centre for Co-operative Studies at University College Cork, who prepared the report on 'Interest Rate Restrictions on Credit for Low-income Borrowers' in December 2017; the Social Finance Foundation (SFF); the Minister for Finance, Paschal Donohoe, TD and the Director of Consumer Protection of the Central Bank of Ireland, Grainne McEvoy, respectively, have teased out some of the key issues involved in what is a difficult area of regulation. **Our statement today therefore is in addition to our submission and tries to focus on the current position with the Committee's deliberations.**

A further notable recent development has been the decision by the largest licensed moneylender in Ireland, Provident Personal Credit, to cease its moneylending operations. Its current licence only allows it to continue to collect payments on loans offered before 10th May 2021, up to the end of July 2021. Dominic Coyle reported in the Irish Times last month that Provident cited *'the tough economic situation that has resulted in us making the difficult decision to stop lending'* and confirming that *'as of May 10th, we won't issue any new loans. This includes new loans to existing customers.'*

Each licence carries its own maximum rates

The perception that there is currently no maximum rate of interest that can be charged by a licensed moneylender can be argued to be incorrect. Each lender has the maximum APR rates that it can charge set out on the licence granted to it following its annual application. These are the maximum rates that can be charged <u>by that individual lender</u>. The refrain of the scandal of moneylending rates that has often been aired in the media sometimes misses this key fact – that the State in the form of the Central Bank of Ireland currently authorises each moneylender to charge what it charges. Thus, for example, it would be very difficult to

challenge any of these rates on the basis that the total cost of credit in an agreement is excessive, an avenue open in theory under s.47 of the Consumer Credit Act 1995 (as amended). Incidentally this is not an option open to consumers, in terms of credit agreements offered by credit institutions or mortgage lenders.

The current licensing regime already allows for different maximum rates to apply for different lengths of moneylending agreement and a higher APR rate applies for 'home collected' loans, as collection charges apply and these loans are obviously more expensive to service. Only 14 of the current 35 licence holders charge 'collection charges' and as noted in our November submission, a lender has a legal obligation under s.103 of the CCA 1995 to notify a borrower that s/he *'shall have the option of making the repayment at the business premises of the moneylender'.* It is bizarre that this section has not been amended to allow a right to make electronic payments, though these were obviously facilitated during the pandemic.

It is also worth noting that the CBI states at the top of the licensed moneylender's register that:

> *'Please note that while the below register provides details on the maximum rates a moneylender can charge, each moneylender may have a range of additional products with lower APRs and costs of credit available. Full details of these products are accessible by clicking on the firm's name and also in our interactive search function'.*

This is an interesting statement. It suggests at least that there may be some element of competition between licensed moneylenders, perhaps an important question when it comes to deciding the question of maximum rates across the industry.

A potential system of tiered maximum rates

A point that we very much emphasised in our initial submission last November is that a debate about rates of interest on moneylending agreements must understand how the APR system of calculating interest actually works, particularly for short term loans. Our understanding from reading the recent debates is that this issue is now at the centre of the Committee's thinking. As a result, what is now being discussed is the introduction of a 'tiered' system of maximum interest rates that would vary depending on the proposed length of the individual loan, rather than a 'one size fits all' single rate, and this makes sense as an approach in our view.

Such an approach could potentially address the reservations expressed to the Committee by the Director of Consumer Protection of the Central Bank of Ireland (CBI) that introducing a single cap might result in the extension of the term of licensed moneylender's loans, thereby arguably defeating the purpose of a cap.

It would also deal with concerns correctly expressed by the Minister for Finance that:

> *‘While APR has benefits in the wider lending market as a comparison tool between loans offered by lenders for the same term, it has significant limitations when used in the short term credit market. APR it is significantly affected by the term of the loan if the latter is less than one year and may appear to be extremely high on shorter-term loans when, in fact, the actual cost of credit increases the longer a loan term is’.*

and

> *The proposed cap of 36% APR in this Bill would mean that the chargeable interest on a typical €500 loan for six months would be reduced from €150 to just under €41, a revenue reduction for the lender of about 74%. In APR terms, the change would be from 187.2% APR to 36% APR. In simple interest terms, 30% would reduce to about about 8%. I agree completely that the current interest rates are too high but a sudden change of this magnitude could be extremely difficult in any industry and sector and could lead to exits.*

It would appear from what we can see that the Minister’s intention may be to publish a government Bill on this matter. We would share Deputy Doherty’s fears that this could lead to a delay in addressing the question of excessively high rates when the current Bill initiated by Deputy Doherty has already been in progress and in pre-legislative scrutiny for some time. If there is to be a government Bill, it is vitally important that it is not delayed.

Collection charges

In our previous submission, we tentatively suggested that it might be time to end the charging of costs of collection and we noted that Provident itself, prior to its decision to withdraw from the market, no longer charged ‘collection costs’ though, to our knowledge, it still provided for home collection. However, collection is clearly an added expense affecting the return for the lender and may still be a service that some borrowers require, though many others would no longer wish to avail of it. Should there be a tiered system of rates introduced, based on the length of the loan, a possible option therefore might be to distinguish between maximum rates for ‘collected’ loans and maximum rates for ‘electronically paid’ loans. It is unlikely that any borrower would wish to avail nowadays of the current option under s.103 to ‘make repayments at the business premises of the lender’.

The appropriate rates

Ultimately, the extent to which even a tiered approach might lead to other currently licensed operators exiting the market remains a concern, particularly in terms of cutting off what is for some borrowers their only perceived credit option. Has the Committee sought to engage or explore interest rate caps with the Consumer Credit Association (CCA), the representative body of licensed moneylenders or, given its recent withdrawal, spoken to Provident itself about the reasons for its departure?

In the course of the discussion with the Central Bank representatives before the Committee on May 12th, Deputy Doherty stated:

> My intention, therefore, is that the cap would be a multiplier of the cost of credit in the market. Can the Central Bank provide the committee with information regarding the cost of credit for short-term loans from the retail banks and credit unions? Is it possible for the Central Bank to do that? For example, could it be done for loan terms of zero to 12 weeks, 12 to 26 weeks and then 26 to 52 weeks, to enable us to use that information in our consideration of this legislation on Committee Stage? Is it possible then for legislation that would allow, for example, moneylenders to charge up to three times the cost of credit in the market, as defined by the Central Bank at any given point in time? Is that an appropriate or better way to deal with forms of restrictions on high-cost credit?

It seems to us that this is the kind of research data that would help to identify appropriate maximum rates. Whether such maximum rates would subsequently become the minimum rates charged by licenced moneylenders thereafter would depend on the profit that might be available to them from those rates and the extent of the competition between the licence holders.

Some broader questions

In our previous submission, we raised some wider questions that remain relevant to this discussion and we reiterate some of them here (greater detail is provided on these in the submission itself).

1. Credit unions are generally seen as providing the principal alternative for potential borrowers on low incomes who have limited credit options. An assessment of the impact of the 'It Makes Sense' loan scheme that 111 of the country's credit unions were participating in as of January 2019 would therefore be timely. Our understanding is that a significant number of credit unions did not operate this scheme, particularly the larger credit unions. The effect of the current maximum of 12% per annum (12.68% APR), which it is proposed should be increased to 2% per month, may be a particularly relevant factor to examine here.

2. Measures are required to deal with the wider problem of income inequality in our society that gives rise to the need for short term borrowing at high rates of interest. These include a review of the Supplementary Welfare Allowance scheme to ensure that it provides an adequate safety net and greater availability to urgent needs payments, and consideration of the introduction of an evidenced based living wage of €12.30 per hour, as recommended by the Vincentian Partnership for Social Justice and many others. The State should also consider providing access to emergency interest free loans in urgent need situations from a designated social fund under the supplementary welfare allowance scheme.

3. Apart from a maximum rate of interest for licensed moneylenders, should maximum rates for other credit providers - banks, finance houses, HP and PCP providers and sub-prime mortgage lenders be examined?

4. There are other areas of the Consumer Credit Act 1995 concerning moneylending that could do with review - for example the (correct) prohibition on top up loans which is undermined by the fact that there is no ceiling on the number of moneylending loans that a borrower can hold simultaneously.

5. Finally, as set out in some length in our recent submission to this Committee on Pre-Legislative Scrutiny of the General Scheme of the Consumer Protection (Regulation of Credit Firms) Bill in March, it is our view that successive governments have failed to properly codify legislation relating to consumer credit in recent years, which has been compounded by a questionable practice of transposing important EU Directives relating to matters of consumer credit by statutory instrument, thereby bypassing the vital input of the Houses of the Oireachtas and its Committees.