



## UNGCP Briefing on Financial Services

### 1. About the UN Guidelines for Consumer Protection

The United Nations Guidelines for Consumer Protection (UNGCP) were adopted by the UN in 1985 and act as an international reference point of the consumer movement. They give important legitimacy to the principles of consumer rights and practical support and guidance for developing national consumer protection legislation.

The UN Guidelines for Consumer Protection are available in six languages:

[Arabic](#) [Chinese](#) [English](#) [French](#) [Russian](#) [Spanish](#)

The guidelines best known section is Art 3, the list of '*legitimate needs*' of consumers, which currently reads as follows:

- (a) The protection of consumers from hazards to their health and safety;*
- (b) The promotion and protection of the economic interests of consumers;*
- (c) Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;*
- (d) Consumer education, including education on the environmental, social and economic impacts of consumer choice;*
- (e) Availability of effective consumer redress;*
- (f) Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them*
- (g) The promotion of sustainable consumption patterns;*

For some years now, CI has 'translated' the list into our proposed clear consumer rights as follows:

- the right to the satisfaction of basic needs
- the right to safety
- the right to be informed
- the right to choose
- the right to be heard
- the right to redress
- the right to consumer education
- The right to a healthy environment.

During the current revision process we have proposed amendments and addition to the legitimate needs as follows:

To guideline 3 f) we propose the addition of: '*and for those views to be dealt with in an equitable manner*'.

We also propose two new '*legitimate needs*' as follows:

New 3 h): *Access to knowledge; that is, more equitable public access to the products and tools of human culture and learning; and*

New 3 i) : Guaranteed access to essential goods and services;

These amendments are to update the UNGCP, and indeed our own position, in the light of new developments in access to knowledge and the role of consumer associations, and to bring the guidelines closer to the 'right' to 'satisfaction of basic needs' on which the legitimate needs are too vague.

The guidelines are part of the work of the United Nations Conference on Trade and Development (UNCTAD) and their revision is being led by the Competition Law and Consumer Protection Policy section. In 1999, the guidelines were updated with a new section on sustainable consumption and production (section G) to reflect environmental concerns. In 2015 the guidelines will be updated again, this time incorporating new areas, including financial services. CI will be lobbying on this and other areas of the guidelines.

**2. CI's rationale for working on the revision of the UN Guidelines for Consumer Protection**

CI's work on this is an essential part of our international advocacy. This revision presents an opportunity to improve consumer protection for billions of consumers around the world.

Consumer Justice and Protection is a Priority Issues Programme for Consumers International. The revision of the Guidelines is a key part of that programme for 2014.

**3. Background and timetable**

**1985** UN Guidelines for Consumer Protection first adopted

**1999** Last revision of Guidelines

2012 (July) UN conference on competition & consumer protection: CI make case for inclusion of financial services and privacy in text and access to basic goods and services in *legitimate needs*.

**2013 (July)** UN conference on 2015 revision

**2013 (December)** UN establishes four working groups (Financial services, E-commerce, Implementation, other issues) to draft the 2015 revisions.

**2014 (March)** Working groups start their work

**2014-15** CI contributes to the 1<sup>st</sup> draft (June 2014) and 2<sup>nd</sup> draft (November) of the revised guidelines and lobbies for improved consumer protection on all four working groups.

**2015 (Jan)** UN meeting in Geneva with UNCTAD

**2015** Secretariat report presented to the 7<sup>th</sup> UN Review Conference. Following this the final revision of the guidelines are expected to be adopted by the General Assembly in 2016.



#### 4. CI's Activities

CI will participate in all 4 working groups. CI will:

- **Contribute to the redrafting** of the Guidelines text through the working groups.
- **Lobby** the chairs and members of the working groups.
- **Support members** with webinars, briefings and other materials to support member lobbying of their national delegations.

#### 5. Relevance of UN Guidelines for Consumer Protection to financial services

Financial services will be included in the Guidelines for the first time. As financial services has extended its reach into consumers everyday lives, the sector, and consumers relationship with it, has grown and evolved, making it essential to establish the right level of protection for consumers. CI has a clear position on the Guidelines developed with members. This will be discussed further below.

#### 6. Membership of the financial services working group

Following the UN conference in Geneva in July 2013, the following countries volunteered to join the Financial Services and consumer protection working group:

**Brazil, Bulgaria, Chile, CARICOM, Dominican Republic, France, Guyana, Germany, Malaysia (Chair), Namibia, Philippines, Peru, USA, CI, and Professor, Sri Ram Khana, Delhi School of Economics.**

It should be noted that membership of all working groups is open to all UN Members and accredited Organisations including Consumers International. The membership of the Groups may evolve over the consultation period (until the final text is agreed). The Implementation working group is chaired by Malaysia.

#### 7. Financial services areas to be considered by the working group

Following discussions at the UN meeting on the Guidelines revision in July 2013, the following areas in financial services were raised by interested experts as areas for concern and potential inclusion in the working group discussions and ultimately the guidelines themselves:

Main issues:

- **Remittances** and the important role they play in improving lives in developing countries and the need to examine the fees charged by money transfer companies.
- **Stability:** linking financial services to the issue of financial crises
- **Borrowing and credit including responsible lending**
- **Savings** and risk management
- **Bank deposit guarantees**

- **Classification of consumers** into different categories (such as the excluded, the distressed, or the bankrupt),
- **Over-indebtedness**
- **Mortgages** and securities
- **Mobile** payments and
- **Redress** mechanisms

Other suggestions:

- **Information** campaigns
- **Investigation of potential anti-competitive practices in bank rescue** packages by governments
- **Lotto** schemes (fraud and cheating)
- **Safe and unsafe financial products** and their delivery to consumers through advertisements
- **Regulatory capture** of government institutions by the financial companies
- **Tied services** to mortgages, including life insurance requirement
- **Debit card limits** to consumers set by retailers

It is not yet clear how the priorities will be determined in the working group.

## 8. CI Recommendations (financial services) overview

CI's recommendations for revision of the UN Guidelines are based on consultation with CI members. The detailed text changes are set out in tracked changes in Annex A of our evidence to the Ad hoc expert group meeting in Geneva in July 2013. It can be found here: [http://unctad.org/meetings/en/Contribution/IGE2013\\_UNGCP\\_CI\\_en.pdf](http://unctad.org/meetings/en/Contribution/IGE2013_UNGCP_CI_en.pdf)

The recommendations reflect CI's recommendations to the OECD/G20 taskforce on Financial Consumer Protection.

CI Recommends:

- **Better information design and disclosure, clearer contracts and charges:** Financial service providers should be required to take responsibility for ensuring consumers receive clear, sufficient, reliable, comparable and timely information about financial service products. Key information documents should be obligatory for purposes of comparison. The Guidelines generally meet our requirements. The issue is the poor record of the sector. The Guidelines need to be firmer regarding sanctions. The same goes for unfair contract terms and abusive practices which are referred to in paragraph 1 of the GLs (*'abusive business practices'*) and GL 21 (*'contractual abuses'*). **Proposal: strengthen Guideline 21 on contractual abuses** so that failure to meet the listed criteria should cause a contract to be voidable.
- **Universal access to basic financial services:** Basic financial services should be available to all. Since the last revision of the Guidelines the financial services market has reached further into the everyday lives of consumers. The market has grown, and continues to grow at a significant rate, especially in emerging economies and developing countries. Mobile money transfer and remittances are particularly important markets where we have concerns. CI is currently working on International standards in mobile payments and will consult with DFID on the availability of remittances in certain markets. Consumers in this market are often inexperienced and are particularly vulnerable to one-sided terms. **Proposal:** The Guidelines must reflect these market developments.

- **Remuneration structures:** There have been serious abuses in the financial services sector, including mis-selling. These have at least been intensified by remuneration structures with their emphasis on sales targets which are often in conflict with product suitability. Reform has been accepted up to a point by some institutions but the pace is too slow. **Proposal:** remuneration structures should work to the benefit of consumers.
- **Governance:** The existing text on international cooperation in section 4 relates to consumer education and information. CI proposes extending this to consumer participation in regulation and redress. Although this section deals with international cooperation, it calls upon national governments and international agencies to act in this respect. We also advocate specific reference to consumer participation in service regulation in the new financial services section (detailed below).
- **Depositor protection:** CI has campaigned for some time at international level through the G20 process for reform of consumer protection in financial services for global development of deposit guarantees. Recent events in Cyprus have shown the importance of the establishment and maintenance of depositor protection which is a major safeguard against bank runs and support for systemic stability.
- **Competition:** There is a need to reverse the market concentration, which, accelerated by the financial crisis, has contributed to the creation of institutions that are ‘too big to fail’. Independent competition enquiries need to be carried out and public interest tests applied to government stakes in the banking sector and their disposal. There is a need to remove barriers that discourage consumers from switching accounts (e.g., comparability of charges should be mandatory and portable account numbers should be introduced).
- **Responsible lending:** Existing Guideline 21 makes reference to ‘unconscionable conditions of credit by sellers’. This needs to be strengthened. Lenders should be obliged to make affordability assessments or face nullification of the enforcement of contracts. **Proposal:** a new paragraph stating lenders should be required to apply due diligence when extending loans to consumers, in particular assessing ability to repay.

#### **Proposed text amendments in sections affecting, but not referencing financial services:**

Many of the individual existing UN Guidelines for Consumer Protection are directly relevant to financial services, but do not explicitly refer to them. CI has recommended the following changes to those guidelines which we are highlighting here as applicable to financial services:

- **“Access to essential goods and services”:** CI have suggested this new point under *legitimate needs*, adding (Paragraph 3, New sub-paragraph (I)) which could include financial services according to national priorities.
- **“Universal access and service obligations for essential goods and services”.** CI proposed this new paragraph under the section *D. Distribution facilities for essential consumer goods and services*. (Paragraph 39 in Annex A CI’s proposed changes to the Guidelines (between old paragraphs 31 and 32)).
- **‘Upstream issues relating to industry structure’.** CI propose a new paragraph relating to competition policy and monopolies and cartels (no. 22 in Annex A, between old paragraphs 17 & 18 of the existing guidelines)

- **Contractual Abuses.** CI have proposed a number of changes to guideline 21 (new paragraph 26 in Annex A). This was drafted particularly although not solely for financial services.
- **Remuneration structures and comparability.** CI included these two issues in proposed changes to guideline 22 on Promotional marketing and sales practices (guideline 22 / new 29 in Annex a)
- **Consumer Education:** CI proposed additional text specifically including financial services and consumer rights (2 new sub-paragraphs (h) & (i) of guideline 36 / paragraph 45 in Annex a).

**CI proposed NEW sections specifically on financial services:**

As financial services was not previously included as a discrete subject in the Guidelines, and therefore CI recommend four new paragraphs for the revised guidelines to be inserted in the section titled: *Measures relating to specific areas. (these paragraphs would normally follow on from Para.62. However, as CI has made a number of proposed additions, these are numbered according to CI's revisions as set out in Annex a, which is CI's proposal for of how the revised Guidelines ).* CI has proposed the following text:

**82. Financial services.** Governments should formulate, maintain or strengthen national policies to improve the supply, and quality of financial services moving towards the goal of **universal inclusion in service provision**, including the development of international remittance services. Due regard should be had for appropriate levels of service for particular contexts, the need for education programmes and the importance of consumer participation in service regulation and development of innovative and inclusive products. Many of the elements of the guidelines set out above apply to this sector with particular force, notably issues of marketing, fair contracts, disclosure and information provision, redress and regulation. The **remuneration structures** of staff of financial services providers, related authorised agents and product distributors, should be designed to encourage **responsible business conduct** and the **fair treatment** of customers.

**83. Due attention must be paid to depositor protection** against systemic collapse, with the scope and level of protection clearly communicated to consumers.

**84. Credit granters should be required to abide by the principle of responsible lending.** To this end they should apply due diligence when extending loans to consumers, in particular assessing ability to repay. Failure to do so should lead to nullification of the consumers' obligations. Governments should adopt or encourage the adoption of administrative or judicial procedures enabling the treatment of over-indebtedness of consumers by reducing the liability for debts, by developing plans to pay debts or debt forgiveness for severe cases.

**85.** Allowing **competition law** to be overridden in the interests of financial stability should be, at most, a short term emergency measure, as it risks the creation of ever larger institutions and may increase the probability of taxpayers and consumers needing to provide support in the future, thus leading to significant distortions of competition. Governments facing financial sector concentration should instigate independent competition inquiries and apply "public interest tests" to the disposal of their stakes in the banking sector. This should include specific objectives for governments and regulators to **make competition stronger**, so that markets work in the interests of consumers. For example, to encourage new entrants, governments and regulators should take steps, such as those pertaining to improving comparability of products and portability of account numbers to ease switching of accounts for consumers.

## 9. CI Members role

Members made a significant contribution to CI's recommendations to strengthen the UN Guidelines for Consumer Protection. This was set out in our evidence submitted to UNCTAD for the conference in Geneva in July 2013. These recommendations will remain our position and much of the rest of the work is advocacy. Members can assist in the following ways:

- Provide CI with contacts to CI for your National delegations to UNCTAD
- Lobby your national delegation to support CI's position in financial services.

## 10. Contacts at CI

- Nicola O'Reilly will co-ordinate the financial services work on the UN Guidelines for Consumer protection [noreilly@consint.org](mailto:noreilly@consint.org) / 0207-226-6663 ex 202 (London)
- Antonino Serra Cambaceres is managing CI's programme of work across all of the Guidelines. [aserra@consint.org](mailto:aserra@consint.org) (Buenos Aires)

**11. Next Steps**

CI is already lobbying the relevant chairs of the Working Groups to advance our recommendations. Where relevant, CI will contact Members from key countries in the UNGCP revision to lobby their delegations.