

Submission on Criminal Justice (Money Laundering) Bill 2008

April, 2008

- **Introduction**

The Combat Poverty Agency is a state advisory agency developing and promoting evidence-based proposals and measures to combat poverty in Ireland. One of the functions of Combat Poverty is to advise the government on all aspects of social and economic policy pertaining to poverty.

Combat Poverty welcomes the opportunity to comment on the Criminal Justice (Money Laundering) Bill 2008. Its interest on the topic arises from its study on *Financial Exclusion in Ireland*¹ carried out with the support of the Financial Regulator and its involvement in two European Commission studies on financial exclusion.² Our primary concern is to ensure that the Criminal Justice (Money Laundering) Bill 2008 does not prevent people on low incomes from opening bank accounts, and hence act as an obstacle to greater financial inclusion.

- **Policy Framework**

It is important that the Criminal Justice (Money Laundering) Bill 2008 is compatible with the current regulatory framework (Consumer Protection Code), social inclusion policy (National Action Plan for Social Inclusion), equality policy (Equal Status Act, 2000) and human rights legislation (European Convention on Human Rights).

Access to financial services is one of the general principles of the Financial Regulator's **Consumer Protection Code** and it emphasises that no person should be denied access to financial services if they do not possess the appropriate documentation. It states that:

A regulated entity must take into consideration the provisions of the relevant anti-money laundering guidance notes issued with the approval of the Money Laundering Steering Committee, and in particular any guidance in

¹ Corr, C. 2006. *Financial Exclusion in Ireland: An Exploratory Study and Policy Review*. Dublin: Combat Poverty Agency.

² European Commission. 2008. *Financial Services Provision and Prevention of Financial Exclusion*. Brussels: European Commission.
European Commission Study (VS/2007/0623). 2008 – 2010. *Mutual Learning on Financial Inclusion*.

such notes on how to establish identity, in order to ensure that a person is not denied access to financial services solely on the grounds that that person does not possess certain specified identification documentation.

The process of Poverty Proofing, now renamed Poverty Impact Assessment (PIA) was re-developed by the Office for Social Inclusion (OSI) in 2005. The **National Action Plan for Social Inclusion 2007 – 2016** states that:

The process requires government departments, local authorities and state agencies to assess policies and programmes at design, implementation and review stages for their likely impact on poverty and on inequalities which are likely to lead to poverty, with a view to poverty reduction.

The **Equal Status Act 2000** covers both direct and indirect discrimination. Indirect discrimination can occur where there is a practice or requirement with which everyone is required to comply but which certain categories of people will find it hard to comply. Financial institutions and all associated banking facilities are covered by the Act and must act in compliance with the Equal Status Act 2000. This means that the service provided by the banks must be non-discriminatory in practice. An analysis of the requirements under the current *Guidance Notes for Credit Institutions* (2003) by the Irish Council of Civil Liberties (ICCL) found that they were incompatible with the Act as ‘while the requirement itself is to fulfil a legitimate purpose i.e. combat money laundering and is not *per se* discriminatory, in that it applies to everyone, its implementation can have a discriminatory impact’.³

The ICCL also views access to financial services as a human rights issue. The **European Convention on Human Rights** provides that:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions (Article 1 of Protocol 1 (A1P1)).

The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth of other status (article 14).

According to the ICCL a person’s savings, financial entitlements etc. will classify as possessions. Therefore, individuals should be allowed the same rights and benefits in relation to how to manage their money, without discrimination based on status. ‘This means that the possibility to open bank accounts, access financial services etc. should be equal for all without discrimination based on a particular social status. Where access to financial institutions is also related to

³ Reidy, A., 2004. *Briefing Paper on Problems with Accessing Financial Services*. Dublin: Irish Council for Civil Liberties.

enjoyment of certain social security benefits, it is all the more pertinent that policies with discriminatory impact do not exist'.⁴

- **Access to Financial Services and Financial Exclusion**

Access to financial services is considered essential in today's society in order to participate fully in social and economic life. However a number of people in Ireland remain excluded from banking and other financial services (i.e. they are financially excluded).

*Financial exclusion refers to a process whereby people encounter difficulties accessing and/or using financial services and products in the mainstream market that are appropriate to their needs and enable them to lead a normal life in the society in which they belong.*⁵

Compared to other Member States, Ireland has relatively high levels of financial exclusion as 23% of households have no current account⁶ and 10% of individuals have no bank account⁷. Low-income consumers are much less likely to have a current or bank account.

Lack of a bank account can impact on low-income consumers in the following ways:

- Managing limited household resources outside the banking system is more costly and time-consuming
- People without bank accounts lack security in holding and storing their money, which is at risk of loss or theft
- Bill payment can be more difficult and costly without a bank account, given that an increasing number of companies require bills to be paid by direct debit or standing order
- Managing low incomes outside of mainstream financial services can result in higher charges for basic financial transactions (e.g. money transfers, cheque cashing etc.)
- Lack of access to mainstream financial services can result in people turning to alternative credit providers (e.g. moneylenders) who charge high interest rates

Social exclusion in Ireland reinforces financial exclusion as research has found that low-income consumers are less likely to possess a passport or driving licence and therefore encounter more difficulties opening a bank account or

⁴ Ibid.

⁵ European Commission, 2008. op. cit.

⁶ Central Statistics Office. (CSO). 2007. *Household Budget Survey, 2004/2005*. Cork: CSO.

⁷ Market research surveys carried out for the Financial Regulator (2003) and the Irish Payments Services Organisation (2006).

credit union account.⁸ Financial exclusion can also impact on social exclusion in the following ways:

- It is more difficult to accumulate savings for the future, which can result in people falling into poverty when circumstances change (e.g. loss of job, divorce, separation, illness etc.)
- People without a bank account have limited access to employment (as a bank account for receipt of wages is a basic requirement of most employers)
- People cannot take-up private rented accommodation which requires rent and utilities to be paid by direct debit

High levels of banking exclusion can also hinder the development of government policy. The National Payment Implementation Programme (NPIP) was established in November 2005 by the Irish Payment Services Organisation Ltd. (IPSO) and the Department of the Taoiseach. The main goals of the NPIP are to change payment behaviour in Ireland away from expensive and inefficient paper-based payments and to improve the efficiency, accessibility and inclusiveness of the payment infrastructure in Ireland. The NPIP has recognised that it will not achieve its aim until the substantial number of ‘unbanked’ are brought into the banking system. To this end it is considering how the work of the NPIP could lead to greater financial inclusion.

- **Legal Barriers to Accessing Financial Services**

The research carried out by Combat Poverty found that the main barrier low-income consumers face in accessing bank accounts is producing the appropriate identification to open an account. This is consistent with other Irish research studies.⁹ Similarly, a recent European Commission study on financial exclusion identified legal requirements regarding customer identity and impact of money laundering regulation as obstacles to accessing financial services in several Member States.¹⁰

In relation to **identification requirements**, Combat Poverty’s research showed that low-income consumers were unlikely to possess a passport or driving licence as they do not drive or travel and will probably not acquire these pieces of

⁸ Corr, 2006. op. cit.

⁹ Conroy, P. and O’Leary, H., 2005a. *Do the Poor Pay More? A Study of Lone Parents and Debt*. Dublin: OPEN – One Parent Exchange and Network.

Conroy, P. and O’Leary, H., 2005b. *Identifying How Literacy and Numeracy Difficulties Act as a Barrier to Understanding and Accessing Financial Services*. Dublin: The National Adult Literacy Agency.

National Travellers Money Advice and Budgeting Service (NTMABS), 2006. *Financial Exclusion: Failure to Access Financial Services*. Dublin: NTMABS.

Quinn, P. and NiGhabhann, N., 2004. *Creditable Alternatives: An Exploration of New Models of Affordable Savings and Credit Options in Use Worldwide which may be Adapted by the Traveller Community in Ireland*. Dublin: Exchange House Traveller Service.

Reidy, 2004. op. cit.

¹⁰ European Commission, 2008. op. cit.

identification due to the costs involved. There was also a level of confusion among low-income consumers on what is considered acceptable identification.

A further obstacle Combat Poverty's research identified was producing identification for **address verification**. Customers are typically asked for a utility bill and this is particularly difficult for young people living at home with their parents, those in private rented accommodation, women if the bills are in their husband's name, for people living in accommodation that uses prepayment meters and for people not residing in permanent accommodation (e.g. Members of the Travelling community, asylum seekers etc.).

These groups were not identified in the *Regulatory Impact Assessment (RIA)* carried out for Criminal Justice (Money Laundering) Bill 2008 which states that 'the transposing legislation should not materially affect the position' of socially excluded/vulnerable groups. The RIA also states that the Money Laundering Guidelines or Legislation should not become a barrier to access to the financial system given the use of a 'risk-based approach'. However, there is no evidence presented to show why it is expected that the legislation will not impact on socially excluded/vulnerable groups given that both national and European literature would indicate the reverse.

- **Requirements of Criminal Justice (Money Laundering) Bill 2008**

The Bill identifies a number of measures to be applied by financial institutions to ensure customer due diligence. In particular, it states that when identifying the customer, documents and data can be obtained from a 'reliable and independent source'. It is important that a range of more accessible 'independent sources' are identified than is currently accepted.

The Bill also states that financial institutions need to monitor business relationships and account transactions on an on-going basis. In relation to money laundering, it would seem more appropriate to focus attention on monitoring irregular transactions within the account rather than initial identification. This is because the size of money transactions is often the most important factor in identifying potential fraud. The groups most likely to face difficulties producing appropriate identification are probably the least likely to have access to large sums of money, or to be making large transactions.

The Bill also states that 'a credit institution may allow the opening of a bank account provided that there are adequate safeguards in place to ensure that transactions are not carried out by or on behalf of the account holder before verification has been completed'. The Bill should ensure that all individuals have a right to open a transaction bank account¹¹ in Ireland¹² and should not be denied access because of lack of appropriate identification.

¹¹ Currently transaction bank accounts are provided through banks and post offices (Postbank) in Ireland.

- **Guidance Notes**

As part of the arrangements for the implementation of the Criminal Justice (Money Laundering) Bill 2008 a new set of Money Laundering Guidance Notes will be drafted. It is important that these remain flexible as there is concern that money laundering rules will be tightened across Europe in response to terrorist attacks which will result in many people facing difficulties in getting accessing financial services.¹³

The re-drafting of the Guidance Notes offers an ideal opportunity to address the problems with the previous Guidance Notes (2003) which have been highlighted by a number of Irish commentators.¹⁴

- Financially excluded consumers are not always made aware of alternative forms of identification
- There are inconsistencies in how the guidelines are being adopted by financial institutions
- There is an assumption made that the non-financial sector will provide the necessary ID required by financial institutions and this is not necessarily the case

Another problem with the current Guidelines is that they take a much more stringent approach than is required in the primary legislation. This may explain why producing appropriate identification is a significant barrier for vulnerable consumers in Ireland (and in the UK, Belgium and Spain) and not in other Member States. There is no requirement in the proposed Bill to have a strict policy on acceptable identification and it is therefore essential that financial institutions adopt a flexible approach to this issue.

It is also questionable whether it is necessary to verify someone's address as well as their identification. Reliance on a utility bill is problematic as a utility bill may be changed into someone's name for a short period and back, and it is no guarantee that the individual will remain at the address on the utility bill once the bank account is opened.

There are also reports that the current Guidelines are being used by financial institutions in a discriminatory way to exclude potential, but in the eyes of the financial institutions undesirable customers (e.g. those on a low income), for reasons other than suspected fraud.¹⁵ This is now in breach of the Consumer Protection Code.

¹² Legislation around the right to a bank account exists in Norway, France and Belgium.

¹³ European Commission. 2008. op. cit.

¹⁴ Corr, 2006. op. cit.; NTMABS. 2006. op. cit.; Reidy, 2004. op. cit.

O'Rourke, E., 2006. 'A New Regime to Counter Money Laundering'. *About Banking*. 3: 19–21, May.

¹⁵ NTMABS, 2006. op. cit; Reidy, 2006. op. cit.

- **Recommendations**

Requirements of Criminal Justice (Money Laundering) Bill 2008

- The legislation and administrative measures implementing the Third Money Laundering Directive should not deter low-income consumers and other vulnerable consumers from opening a bank account.

Guidance Notes

- Guidance Notes should be introduced as secondary legislation to ensure practices are consistent across financial institutions.
- Guidance Notes should be poverty and equality proofed.
- Efforts to identify appropriate identification documents should be carried out in consultation with organisations working with low-income consumers (e.g. Combat Poverty; MABS, NTMABS, OPEN, SvP, INOU etc.).¹⁶
- A range of identification should be identified that will be accepted by financial institutions (e.g. PPSN numbers; Temporary Residency Card and National Immigration Bureau Card; foreign documentation etc.).
- The Department of Social and Family Affairs (DSFA) should consider issuing a social welfare card with a photograph so that this can be used for identification purposes for opening a bank account.
- A standard form to verify identification should be developed (similar to the ML10 form) which may be signed and stamped by the statutory and non-statutory sectors (including employers; community welfare officers; social welfare officers; social workers; MABS, managers of community development and voluntary organisations; FAS and CE Schemes etc.). It should not be necessary for those vouching for someone's identity to present at a financial institution.
- Alternative forms of identification accepted under the new *Guidelines* need to be displayed in financial institutions so that customers are aware of the alternative options. There should also be an information campaign involving the Financial Regulator, NGOs, MABS, community employment and business and trade unions.
- While it is necessary for people to identify themselves to open an account, it should not be necessary to prove an address as well.

Implementation

- Staff training in relation to the Criminal Justice (Money Laundering) Bill 2008 need to ensure that there are consistencies on how the *Guidelines* are implemented. Training should also include improving their awareness of the difficulties that financially-excluded consumers face with account opening and should foster a more enabling approach to account opening and operation.

¹⁶ This approach is also recommended in the European Commission study (2008).

Monitoring Impact

- The enforcement of the Criminal Justice (Money Laundering) Bill 2008 needs to be closely monitored (e.g. through mystery shopping exercises) to ensure that potential customers are not denied access solely on the grounds that they do not possess appropriate identification.
- The enforcement of the Criminal Justice (Money Laundering) Bill 2008 needs to be reviewed at different stages to assess its impact on poverty as well as on inequalities and human rights.
- There should be a formalised complaints process in place where anyone who is denied access can formally complain to the Financial Services Ombudsman.