



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

CP158

Consultation Paper on the Consumer Protection Code

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A portrait of Deputy Governor Derville Rowland, a woman with red hair, wearing a black shirt, standing in front of a modern building with large glass windows.

Deputy Governor Derville Rowland
Consumer & Investor Protection

Foreword

Under the Central Bank's broad ranging, integrated mandate, one of our core objectives is the proper and effective regulation of financial service providers and markets, ensuring that the best interests of consumers of financial services are protected. We exercise our powers to achieve financial and price stability, the protection of consumers, and the orderly and proper functioning of financial markets. The breadth of our mandate enables us to harness our expertise across the full scope of regulation to ensure consumers' interests are protected.

At the core of consumer protection are well-functioning financial services markets. The financial sector delivers for consumers day to day through the provision of a range of banking and payment services, loans, insurance, savings and investments. It plays a critical role in funding the broader economy and managing financial risk within the system.

Firms exist in the first instance to pursue commercial objectives. Our regulatory approach seeks to underpin a resilient and trustworthy system where sustainably profitable, resilient, well-run firms, operating in a well-functioning market, meet the needs of the

economy and of consumers. In meeting consumers' needs, firms have an obligation to protect their interests.

While the Consumer Protection Code (the Code), has served consumers well, a review is timely. Our 2022 Code Review Discussion Paper facilitated a wide-ranging public conversation on consumer protection issues. It was complemented by our research, an online survey and extensive stakeholder engagement. The diverse feedback we received has deepened our understanding of the issues, and it has been a key input into our own policy considerations, which are reflected in the proposals set out in this paper.

So what is changing in terms of the Code, and why? Our goal is to deliver an updated and modernised Code that reflects developments of recent years and the services and delivery channels being accessed today. The General Principles and Requirements of the existing Consumer Protection Code will continue to provide its backbone. The revised Consumer Protection Code (the revised Code) will continue to reflect the existing obligation on firms to act in the best interests of their customers.¹ Additionally we are seeking to assist firms to effectively incorporate customers' interests into their commercial decision-making, through [Securing Customers' Interests](#), which will support firms to effectively implement all their consumer protection obligations. The introduction of [Securing Customers' Interests](#) is not about introducing new, more extensive customer best interests obligations for firms – rather it is about providing firms and their customers with increased clarity and predictability on already existing requirements to support effective implementation.

Overall, we are seeking to address consumer protections in a changing world while enhancing clarity and predictability for firms by:

- A. **Clarifying** how firms should meet their existing best interests obligation in a way that reflects a consumer-focused mind-set and delivers positive consumer outcomes, where firms proactively take ownership of, and responsibility for, consumer issues. We seek to provide this increased clarity and predictability in setting out the obligation of firms to secure their customers' interests.

¹ General Principle 2.1 of the Consumer Protection Code 2012.

B. **Modernising** the Code through reframing, clarifying and enhancing consumer protections across a range of issues. These include:

- **Digitalisation**
- **Informing effectively**
- **Mortgage credit and switching**
- **Unregulated activities**
- **Frauds and scams**
- **Vulnerability**
- **Climate risk**

C. **Integrating** the regulatory format and structure of the Code by:

- Consolidating a range of existing Central Bank rules and codes into the revised Code, to address fragmentation and enhance framework coherence; and
- Converting the revised Code into two new Central Bank regulations - which sit within the broader Irish consumer protection framework also comprising a range of important EU and domestic consumer protection laws.

D. **Enhancing accessibility** of the Code to support consumers, users and firms in navigating the information they need through the use of digital tools, explainers and guides. For consumers we will be making available a Consumers' Guide to the Consumer Protection Code, which will set out in easy-to-read terms, what protections are provided for consumers and what their responsibilities are when dealing with firms. For firms and practitioners, online tools can also help them to navigate the Code and clarify the consumer protection obligations of specific relevance to them.

The proposals set out in this consultation paper build on the existing protections within the framework on a proportionate and effective basis, to deliver a modernised Consumer Protection Code.

We look forward to engaging with you and hearing your views on our proposals.

Executive Summary

Background

Financial services play a central role in the functioning of the economy. Ireland has a well-developed financial sector, providing consumers with access to a broad range of products and services today. However, the financial services landscape is rapidly evolving and over the course of the next decade, we will continue to see ongoing transformation, driven by innovation and technology, climate change and the evolving expectations and needs of consumers and businesses.

This transformation can play a key role in ensuring markets can function more effectively. It has the potential to bring significant benefits to both firms and consumers. Our focus is to ensure that, underpinned by high quality regulation, the financial system is positioned so that consumers and the broader economy can realise these benefits while also ensuring that risks are mitigated.

Review of the Consumer Protection Code

The Code is a key component of the Irish financial regulatory framework. We have continued to update the Code since it was first introduced in 2006, ensuring it has remained fit for purpose.

Recent developments - including those arising from the tracker mortgages failure, business interruption insurance during COVID and differential pricing - have resulted in an evolution in the understanding of consumer protection. A key driver of the Code Review is to reflect these developments – in a way that provides enhanced clarity and predictability to both firms and their customers – in our framing and explanation of the demands and limits of consumer protection.

A recurring demand - from firms and their customers - has been for increased clarity on how to ensure that the interests of customers are effectively incorporated into firms' culture, strategy, business model and decision-making. This obligation forms part of a regulatory approach which recognises that firms exist in the first instance to pursue their commercial objectives and needs to be consistent with a well-functioning market. The

revised Code will seek to bring increased clarity in this regard, and in this consultation paper, we set out the components of our revised regulatory approach for achieving that.

Our proposals reflect our focus on high quality regulation and our strategy – see below. They have also been guided by international best practice including the [G20/OECD High Level Principles on Financial Consumer Protection](#) (G20/OECD Principles)² which set out the foundations for a functioning financial services market which serves the interests of consumers. Our policy considerations were informed by a range of important inputs. These included our consumer research and analysis of views and feedback provided from stakeholders through our Discussion Paper engagement, together with an online public survey.

The evolution of consumer protection at both an EU and domestic level has resulted in structural fragmentation across the regulatory framework. This has resulted in multiple amending addenda being added to the Code over time. Through the Code Review, we are therefore seeking to address such fragmentation and lack of framework coherence.

A Modernised Code

The proposals set out in this consultation paper bring forward a modernised Code, which builds on the existing Code, reflects the provision of financial services in a digital world, and enhances clarity and predictability for firms on their consumer protection obligations.

Consumers will benefit from a package of protections under the revised Code that reflect how most consumers are accessing financial services today. Regulated firms will benefit from an integrated regulatory format, a more coherent structure and a clearer articulation of their Code obligations, including towards their customers' best interests. Figure 1 outlines the key elements of the revised Code, highlighting what is being retained and what is changing in terms of both requirements and structural changes.

² <https://www.oecd.org/finance/high-level-principles-on-financial-consumer-protection.htm>.

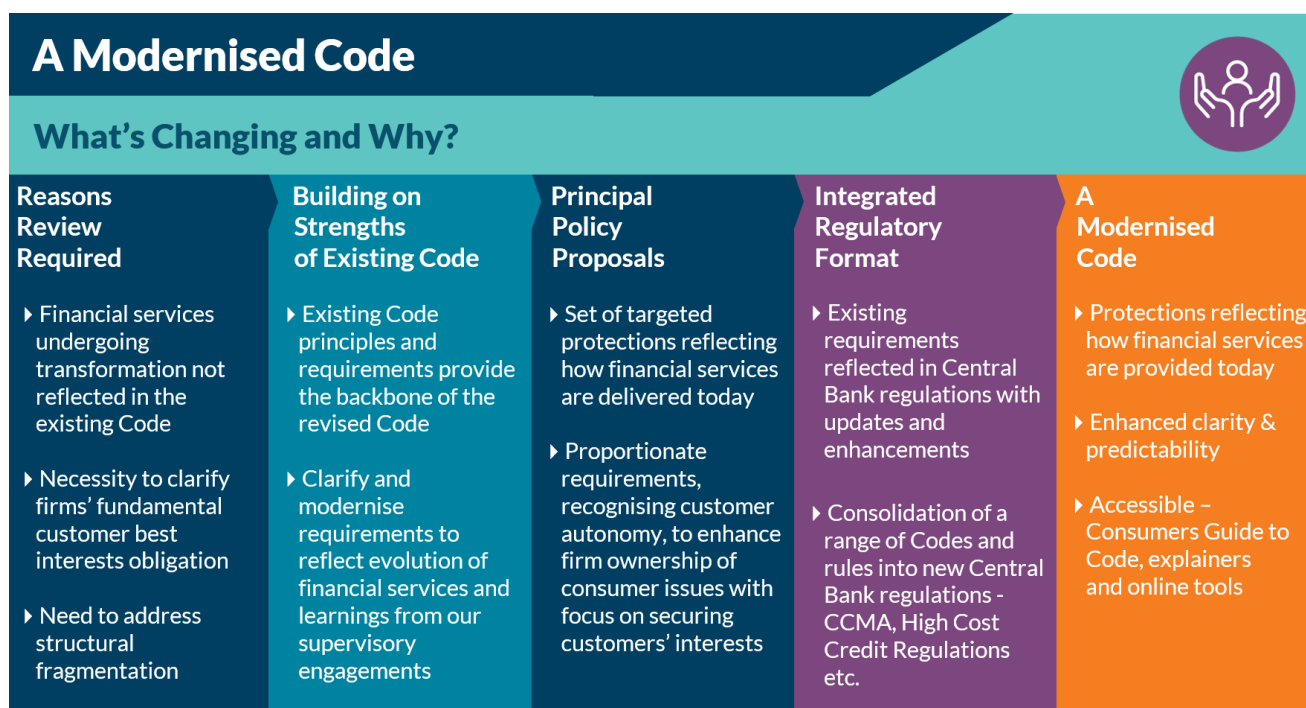


Figure 1 – A Modernised Code – Source: Central Bank of Ireland

Our proposals focus on clarifying, modernising, and integrating consumer protections to ensure they are accessible for consumers and firms. The revised Code will be contained in two new Central Bank Regulations. The first will set out Standards for Business, complemented by Supporting Standards for Business, which will replace the existing General Principles of the Code. The second will set out General Requirements, which will include new protections and existing requirements set out on a cross-sectoral and sector-specific basis. The revised Code will also consolidate a number of existing Central Bank codes and requirements into the Code. In addition, we plan in future to support consumers and firms in accessing the information they need through new digital tools, explainers and guides.

Principal Policy Proposals

In pursuing their objectives, firms make their own commercial decisions. In doing so, it is necessary that they effectively incorporate the interests of consumers into their strategy, business model and decision-making process, reflecting their overall obligation to act in the best interests of their customers. The **Securing Customers' Interests** obligation seeks to provide a clear articulation of how firms should approach meeting their best interests obligation. It is designed to support firms in the effective implementation of all their consumer protection obligations – for example in how they meet their disclosure

obligations in practice or what actions they should take in the absence of any specific requirement, in order to secure customers' interests. It does this, on a non-exhaustive basis, by describing what firms need to consider, the actions they need to take, and the mind-set they should have, towards their customers. [Securing Customers' Interests](#) can support firms meeting all of their consumer protection obligations on a basis that delivers positive customer outcomes.

We are proposing to introduce new [digitalisation](#) requirements. Their aim is to ensure incumbent firms, and new entrants, deploy a customer focus in the design and implementation of digital services and delivery channels. As with all delivery methods, firms need to ensure that the use of technology is not applied in a way that would seek to exploit the behaviours, habits, preferences or biases of customers where it has the potential to cause customer detriment. Additionally, firms transitioning to a digital-based business model must carefully consider customer impacts and identify appropriate mitigants.

We want firms to communicate with customers more effectively - in a way that enables understanding and empowers customers to make decisions in their own interests. New requirements reflect a shift, from requiring firms to disclose information to customers, to requiring them to meet their disclosure obligations in a way that [informs effectively](#).

Given the significance of [mortgage credit and switching](#) for many consumers, we are proposing a number of new and enhanced requirements, including disclosure requirements on switching options and the cost of incentives, to ensure consumers are supported to make informed decisions in relation to mortgage credit. We are also proposing the consolidation of the Code of Conduct on Mortgage Arrears (CCMA) into the Code along with a number of enhancements to existing CCMA requirements.

Recognising the risks associated with the 'halo effect'³ when regulated firms undertake [unregulated activities](#), we are proposing new requirements concerning the provision of unregulated activities by regulated firms. These will place obligations on regulated firms, to ensure that their customers can have no impression or misunderstanding that they are

³ The 'Halo Effect', Theme 3: Unregulated Activities, Consumer Protection Code Review Discussion Paper.

purchasing regulated products and services where that is not the case. We will issue guidance to firms on the use of branding, noting that the use of branding should not contribute to confusion on the regulatory status of products and services including in the case of similarly branded sister companies.

Customers of financial services are being targeted by increasingly sophisticated **frauds and scams**. We are proposing new requirements to ensure firms are vigilant to the evolving risks to the system and their customers, and that they take appropriate actions to protect customers, particularly in a digital context.

In line with international thinking, we are updating the definition of **vulnerability** and expectations on firms in that regard. Our proposed approach reflects a better understanding of the dynamic nature of vulnerability, which recognises that customers can move in and out of circumstances that make them vulnerable. This is reflected in improved requirements, which will be supported by guidance, which will ensure that firms are able to balance the needs and interests of their vulnerable customers, with an approach that is grounded in reasonable steps and proportionality.

Given the important role financial services and consumer preferences will play in the transition to a **climate** neutral future, we are proposing new suitability and advertising requirements for firms. Firms will be required to ensure they communicate fairly and clearly on product sustainability features. This is aimed at tackling the risk of greenwashing alongside broader, existing climate-related requirements at EU level.⁴

Additional Policy Proposals

We are proposing a number of new and enhanced requirements in the areas of consumer credit, SME protections, insurance, and investments and pensions. We are also proposing a range of additional modifications and enhancements to current requirements, which will contribute to the modernisation of the Code and assist with effective implementation.

⁴ Including ongoing implementation of the Sustainable Finance Disclosures Regulation, the Taxonomy Regulation and work being undertaken by the European Supervisory Authorities.

Guidance and Implementation

The revised Code will be underpinned by guidance and other supports to assist firms with ongoing implementation. We know that industry will need time to consider how they will implement the changes under the revised Code. We want to balance the need to maintain momentum on the modernisation of the Code, while allowing time for in-scope firms to ensure high quality and consistent implementation. Accordingly, we are proposing a 12-month period for implementation, starting from the final date of publication of the revised Code, following completion of this consultation process.

Listening to Your Views

Your views are sought on the proposals set out in this consultation paper. The consultation will remain open for 3 months from 7 March 2024 to 7 June 2024. Please see [Chapter 5](#) for details on how to respond to this consultation.

Chapter 1: Introduction

Background

Ireland has a highly developed financial services sector, providing businesses and householders with a broad range of financial services. The scale of consumer service provision by the sector is reflected by the provision of over 7.9 million current accounts and 8.7 million insurance policies,⁵ and through the processing of c.3.5 billion payment transactions annually (in 2022 they totalled €10.4 trillion by value).⁶ Financial services firms are also central to funding of the economy, providing €101 billion in credit to households⁷ and €22 billion in credit to SMEs.⁸

Internationally, governments have intervened in financial services by putting in place central banking, regulatory, supervisory, enforcement and resolution frameworks, in order to protect consumers and their funds, and the stability of the system.

In Ireland, consumers are protected through macro-prudential requirements (such as the Central Bank's Mortgage Measures⁹), designed to ensure the banking system and borrowers are resilient, and micro-prudential requirements (such as capital and liquidity requirements), designed to ensure individual firms are stable and resilient to shocks. In addition, the EU and domestic retail conduct frameworks apply consumer protection requirements to firms.

Our Regulatory Approach

A well-functioning market exhibits appropriate levels of competition, fair and transparent price formation and provides consumers with access to the products they need or wish to have.

⁵ Data from Conduct of Business Returns June 2023 – data relates to Irish personal consumers.

⁶ Payment data represents transactions recorded by Irish-based Payment Service Providers during 2022 - <https://www.centralbank.ie/statistics/data-and-analysis/payments-services-statistics>.

⁷ Central Bank Statistics December 2023- <https://www.centralbank.ie/statistics/data-and-analysis/credit-and-banking-statistics/bank-balance-sheets/bank-balance-sheets-data>.

⁸ Central Bank Statistics September 2023 - <https://www.centralbank.ie/statistics/data-and-analysis/credit-and-banking-statistics/sme-large-enterprise-credit-and-deposits> - SME figure includes €4bn in non-bank credit: Central Bank Behind the Data April 2021 - <https://www.centralbank.ie/statistics/statistical-publications/behind-the-data/the-role-of-non-bank-lenders-in-financing-irish-smes>.

⁹ <https://www.centralbank.ie/financial-system/financial-stability/macro-prudential-policy/mortgage-measures>.

High quality regulation has an important role in underpinning a well-functioning market. Our regulatory approach seeks to support a resilient and trustworthy financial system; with sustainably profitable, resilient, well-run firms serving the needs of consumers and the economy.

Regulated firms must have sufficient resources, sustainable business models and effective risk management to mitigate risk. They must be overseen and managed by fit and proper persons with clear responsibilities and accountabilities. Firms, and the individuals working in them, must adhere to appropriate standards of conduct.

In this period of significant change in financial services, one of our key objectives is to create the regulatory context in which the potential benefits of innovation for consumers, businesses and society can be realised, while applicable regulatory standards are met by firms, and risks are effectively managed and mitigated, in order to protect the economy, consumers, and their funds.

Overall, it is important that firms have clarity on their regulatory obligations. This requires high quality regulation that is forward looking, connected, proportionate, predictable, transparent and agile. The proposals set out in this paper follow these key principles aligned with an assessment of the benefits and costs of the proposed changes - further details of which are set out in [Chapter 4](#).

The Current Consumer Protection Architecture

The Irish consumer protection framework comprises a range of EU and domestic legislation aligned with the OECD/G20 Principles.

EU laws and domestic legislative requirements, together with various Central Bank codes and regulations (supplemented by guidance and supervisory expectations) provide the foundations for the Irish consumer protection framework. Domestic legislation sits within, and aligns with, the broader EU framework. This recognises the importance of regulatory harmonisation and convergence to the operation of a single EU market for financial services. Where EU laws apply consumer protections, they take precedence over

domestic legislation and/or Code provisions, and we may amend the Code to remove overlapping or conflicting protections.

The Central Bank strives to ensure that all consumers of financial services in Ireland benefit from the same protections. We seek therefore to apply provisions of the Code, not otherwise covered by EU law, to all firms to ensure a similar level of protection across all financial services.

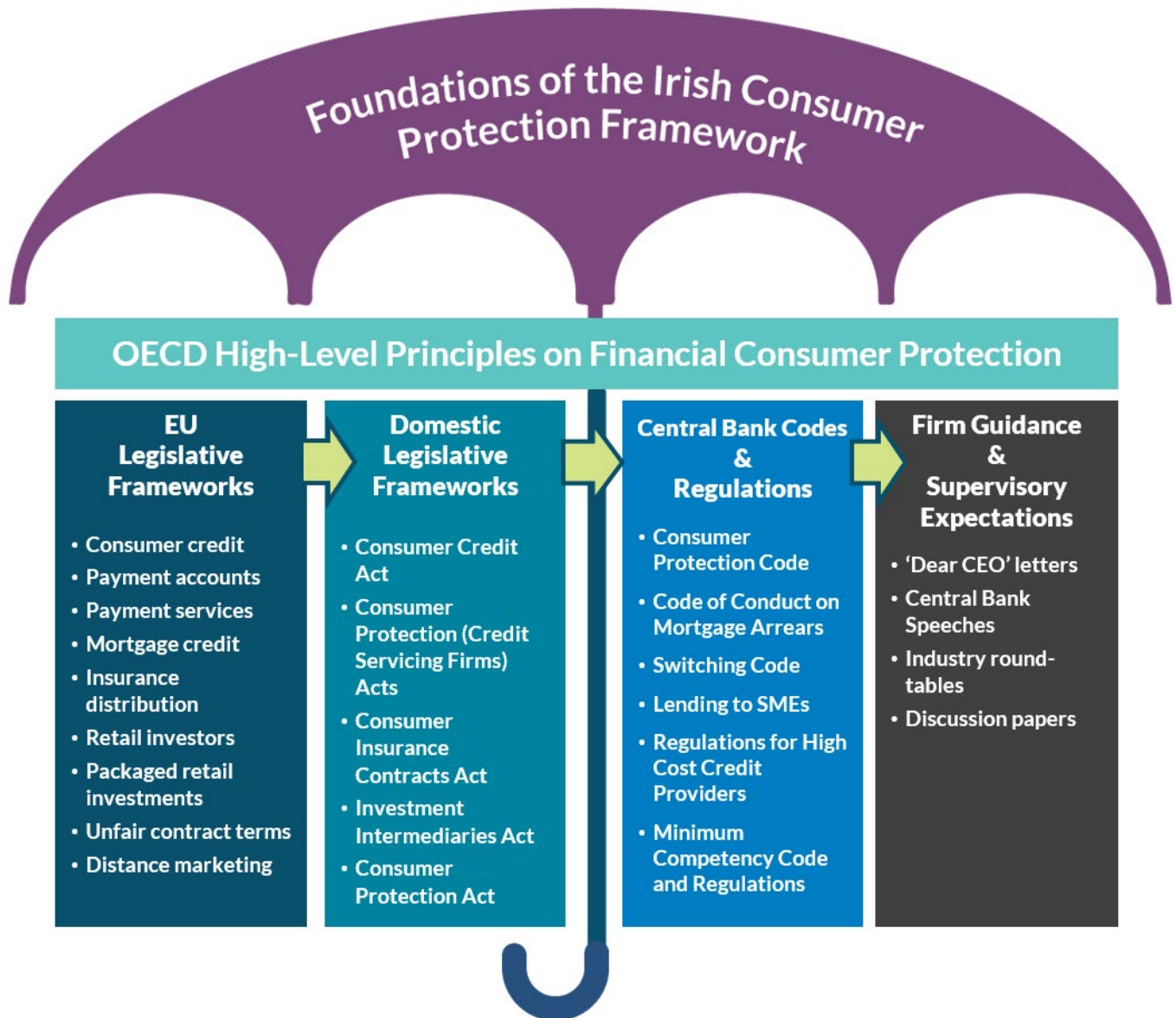


Figure 2 – Representative Overview of the Irish Consumer Protection Framework – Source: Central Bank of Ireland

The Consumer Protection Code

The Consumer Protection Code is a cornerstone of the Central Bank's consumer protection regulatory framework. Since its publication in 2006, it has served consumers well. It has established a set of rules and expectations for how firms should treat their customers, and it has allowed us to intervene to protect consumers when we need to.

We have continued to update the Code since its introduction, ensuring it has remained fit for purpose over time. However, the evolution of consumer protection at both an EU and domestic level has resulted in structural fragmentation across the regulatory framework. This has resulted in multiple amending addenda to the Code. Through the Code Review, we are therefore seeking to address such fragmentation and lack of framework coherence.

Context for Review of Consumer Protection Code

The nature of financial services and how they are delivered to consumers is undergoing transformational change and the Code needs to reflect this.

Internationally, there have been significant developments in the area of financial services consumer protection in recent years. This has included the OECD's recent review of the G20/OECD Principles, which introduced new principles in relation to access and inclusion and the quality of financial products, along with new cross-cutting themes covering the areas of digitalisation, sustainable finance and financial well-being. Through high quality regulation, the Central Bank wants to ensure that firms are supporting consumers to harness benefits as well as addressing risks and challenges through this period of change.

Effective consumer protection requires firms to have a strong customer focus as they pursue their fundamental commercial goals. Experience has shown how failing to do so can lead to poor outcomes for both consumers and firms. We have also seen examples where firms taking a system-wide approach, which reflects a consumer focus, has supported positive customer outcomes, including the recent large-scale migration of business and household current accounts between banking providers. We believe a clearer articulation of how firms meet their consumer protection obligations, informed by

the learnings from past experiences, can support firms in meeting all their consumer protection obligations.

This is the broader context to our extensive review to deliver a modernised Code, which supports effective consumer protection and reflects the changes that are taking place in financial services.

Central Bank Strategy

The Code Review is being undertaken in the context of the Central Bank's own strategy. [Our 2022 to 2026 Strategy](#)¹⁰ is designed to ensure that we can meet the challenges of a changing world and deliver on our mission and vision. It is centred around four strategic themes - Safeguarding, Future-focused, Transforming and Open and Engaged.

Engagement

In undertaking the Code Review, as a first step we wanted to better understand, anticipate and be forward-looking and responsive to the emerging context and the far-reaching changes taking place in financial services. To support these objectives, in October 2022 we launched our Discussion Paper seeking the views and perspectives of key stakeholders on the issues facing consumers today.

Our Discussion Paper had two broad themes at its centre. The first was **Availability and Choice** – examining the role a well-functioning financial market, founded on high quality regulation and effective competition, has in delivering the financial products and services consumers need at fair and reasonable prices. The second was **Firms Acting in Consumers' Best Interests** – examining the importance of ensuring that while delivering a profitable and sustainable business model, financial service providers place the best interests of their customers at the centre of how their products and services are designed and delivered.

The publication of the Discussion Paper was complemented by an extensive six-month engagement programme with the public and our other stakeholders, including representatives from civil society, industry, other public bodies and state agencies. This

¹⁰ <https://www.centralbank.ie/publication/corporate-reports/strategic-plan>.

was undertaken through a range of interactions including roundtables, bilateral meetings, an online public survey and direct engagement with members of the public.

The proposals put forward in this paper are informed by our research, analysis, supervisory experience and the feedback we received during our engagement on the Discussion Paper. An overview of the feedback we received and how it has informed our thinking is set out in our [Consumer Protection Code Review Discussion Paper Engagement Update](#)¹¹ published in July 2023.

Consumer Research

As part of the Code Review, we also conducted consumer research to help us further understand the perspectives of those who rely on the protections of the framework. A nationally-based survey among a representative sample of 1,000 Irish adults was carried out to gain an understanding on public opinions and attitudes on the themes identified in the Discussion Paper. A report on our research is available on the Central Bank website.

Supervisory Experience

We have also reflected on the learnings from our supervisory engagement with regulated firms and on the consumer-related developments that have taken place. This provides us with insights into how firms approach their consumer protection obligations, highlighting both good and bad practices. Our proposals seek to reflect these learnings, and to articulate, in a way that is predictable and proportionate, the developments that have taken place in the consumer protection context over recent years.

International Considerations

Looking beyond our own experience, we have also considered developments globally including best practice internationally in terms of the evolution of the G20/OECD Principles.

¹¹ <https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/other-codes-of-conduct/consumer-protection-code-review/consumer-protection-code-review---discussion-paper---engagement-update.pdf>.

Retail Banking Review

As part of the Code Review, we also considered specific recommendations from the Government's 2022 Retail Banking Review¹² relating to changes to branch services, SMEs, switching and the provision of information to customers in relation to the Ombudsman/Alternative Complaints Resolution services. The outcome of our consideration of these recommendations and our proposed approach is set out in this consultation paper. Under section 2.2, we consider the recommendations relating to changes to services and outline our proposed policy response in each case. Our considerations of the recommendations relating to switching, SMEs and the provision of information relating to the relevant Ombudsman/Alternative Dispute Resolution service are set out in sections 2.4, 3.2 and 3.5 respectively.

A Modernised Consumer Protection Code

Our goal is to deliver a modernised Code that can facilitate a well-functioning financial system, supporting the economy and delivering appropriate levels of availability and choice to serve the financial services needs of consumers into the future.

We want to ensure the revised Code reflects the significant consumer protection developments of recent years and enhances clarity and predictability for firms on their consumer protection obligations. The existing General Principles and Requirements of the Code provide the backbone on which to build a modernised Code that will address consumer protections in a digital world and provide an integrated regulatory format and a more coherent structure.

Our proposals are focused on modernising, clarifying and integrating consumer protections while ensuring they are accessible for both firms and consumers. We are seeking to provide enhanced clarity for firms on their consumer protection obligations through a reorientation and clearer articulation of a number of important obligations, including **Securing Customers' Interests**. We are also proposing a targeted package of new measures, as firms and consumers navigate financial services transformation. Figure 3 below sets out the key areas where we are proposing to introduce these requirements. Further details on our proposals in these areas are set out in **Chapter 2**.

¹² <https://www.gov.ie/en/organisation-information/3c122-retail-banking-review/>.

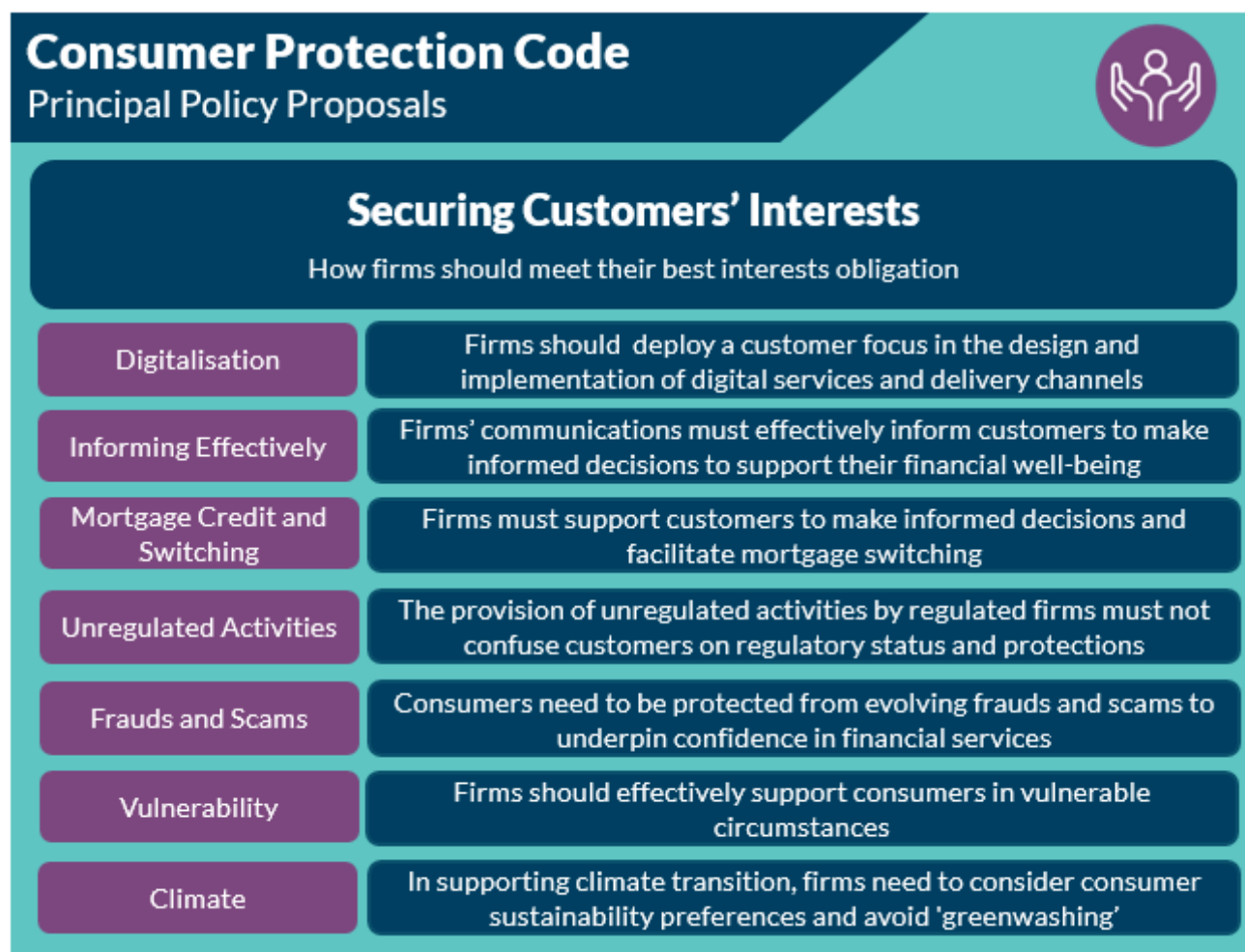


Figure 3 – Principal Policy Proposals – Source: Central Bank of Ireland

The revised Code will be reflected in new Central Bank Regulations. A first regulation¹³ will set out Standards for Business, which will include standards relating to governance, resources and risk management, along with firm conduct standards, which build on and update the existing General Principles of the Code. These will be complemented by Supporting Standards for Business which provide further detail on firms' obligations.

A second regulation¹⁴ will set out General Requirements. These will comprise both cross-sectoral and sector-specific requirements which will reflect existing, enhanced and new

¹³ This regulation will be made under the power provided to the Central Bank under Section 17A of the Central Bank Reform Act 2010 to make regulations prescribing standards for the purpose of ensuring that in the conduct of its affairs a regulated financial service provider – (a) acts in the best interests of customers and the integrity of the market, (b) acts honestly, fairly and professionally and (c) acts with due skill, care and diligence.

¹⁴ This regulation will be made under the power provided to the Central Bank under section 48 of the Central Bank (Supervision and Enforcement Act) 2013 to make regulations for the proper and effective regulation of regulated financial service providers.

requirements, and will address structural fragmentation by bringing a number of existing Central Bank standalone codes and rules together in one place.



Figure 4 – Components of the Revised Consumer Protection Code – Source: Central Bank of Ireland

Interaction of Code and Individual Accountability Framework

The application of individual conduct standards under Individual Accountability Framework (IAF) aligns with the Code’s conduct-related Standards for Business, by

ensuring that the behaviour and actions of the individuals working in firms, contributes to firms' adherence to their obligations under the Code. Overall, the IAF seeks to enhance the operation and oversight of firms by requiring clarity on where responsibility and decision-making lies in firms' senior management and the application of individual conduct standards, while the Code applies firm conduct Standards for Business and General Requirements, which seek to ensure firms appropriately protect consumers' interests.

This consultation paper provides an overview of the key changes and amendments that will be reflected in the revised Code. Draft regulations reflecting the proposed Standards for Business are set out in Annex 3, with the draft regulations reflecting General Requirements set out in Annex 4. Draft [Guidance on Securing Customers' Interests](#) and [Guidance on Protecting Consumers in Vulnerable Circumstances](#) is set out in Annex 5. Further detail on the legal basis and structure of the revised Code is set out in Annex 1. We plan to develop supports for consumers and firms to make the revised Code accessible. In addition to guidance, we will develop explainers and guides and explore how digital tools can be utilised to present information in accessible formats. For consumers we will publish a Consumers' Guide to the Consumer Protection Code, which will set out in easy-to-read terms what protections are provided for consumers and what their responsibilities are when dealing with financial services firms. For firms and practitioners, proposed online tools will support improved navigability and provide clarity on relevant obligations.

[Scope of the revised Code – who it protects?](#)

The revised Code will continue to protect individuals and small businesses¹⁵, as is the case under the existing Code. The Standards for Business and Supporting Standards for Business apply in respect of all of a firm's customers (and potential customers) because of the general nature of the standards they impose.

With reference to the Standard for Business and Supporting Standards for Business addressing Securing Customers' Interests, these apply to firms when doing business with

¹⁵ 'Consumer' is defined in the Standards for Business and the General Requirements as those customers who are: natural persons, or groups of natural persons, or incorporated entities with a turnover of up to €5m.

consumers, which includes individuals and small businesses, which reflects the heightened protection required for individuals and small businesses.

The General Requirements will apply to in-scope regulated financial services providers when providing services to individuals and small businesses in Ireland.

Scope of the revised Code – who must comply with the requirements of the Code?

The Standards for Business will apply to all regulated financial service providers, other than those providing MiFID¹⁶ services and crowdfunding services (for which there are equivalent regimes in EU legislation), and credit union savings and lending activities.¹⁷ The General Requirements similarly apply to all regulated financial service providers, other than, reinsurance undertakings, firms providing MiFID services, and credit union savings and lending activities.

It is our intention in due course to undertake further engagement with the credit union sector on the extension of the scope of the Code to all credit union activities when the revised Code is close to finalisation.

Other Policy Developments and Initiatives

The proposals set out in this paper reflect the outputs of our Code Review process. Amongst other things, this includes our consideration of feedback received from stakeholders throughout our Discussion Paper engagement. In our engagement, we also heard about issues and potential risks to consumers which are beyond the scope of the Code. Examples include issues relating to financial education, data protection and assisted decision-making.

Figure 5 provides an overview of the overall themes identified in our Discussion Paper and our key areas of focus from a Code perspective. It also outlines where feedback received is being addressed beyond the Code through other relevant work of the Central Bank, or other key initiatives being undertaken by other domestic public authorities and at an EU level.

¹⁶ S.I. No. 375 of 2017 European Union (Markets in Financial Instruments) Regulation 2017.

¹⁷ The revised Code will continue to apply to credit unions when acting as insurance intermediaries.

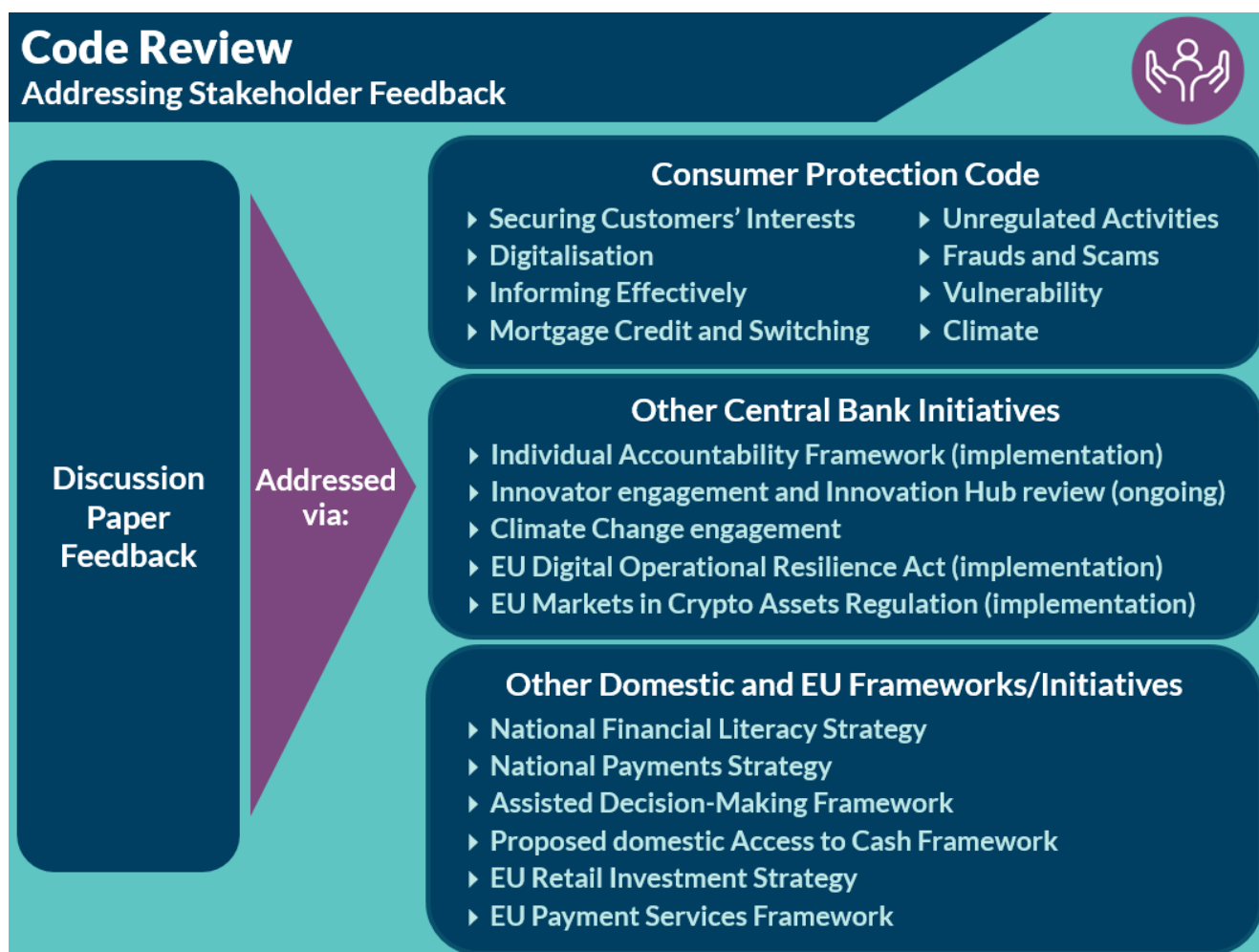


Figure 5 – Code Review Addressing Stakeholder Feedback – Source: Central Bank of Ireland

Other key Central Bank regulatory initiatives include implementation of the IAF (Conduct Standards for individuals came into force on 29 December 2023) and the Senior Executive Accountability Regime (SEAR) which will come into force on 1 July 2024. The Central Bank has also consulted on proposed changes to our approach to innovation engagement.¹⁸ Work is also progressing on the implementation of the EU Markets in Crypto Assets Regulation (MiCAR)¹⁹, which will come into full effect by Q1 2025, and the EU Digital Operational Resilience Act²⁰, which will apply in full by January 2025. Further communications and engagement will be undertaken by the Central Bank regarding these regulatory developments in due course.

¹⁸ <https://www.centralbank.ie/publication/consultation-papers/consultation-paper-detail/cp156---central-bank-approach-to-innovation-engagement-in-financial-services>.

¹⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R1114>.

²⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R2554&from=EN>.

We are also providing input into key national initiatives such as the development of Ireland's first National Financial Literacy Strategy and the development of a new National Payments Strategy. We recognise the importance of financial literacy in empowering consumers to make sound financial decisions and support the important work being undertaken to develop a national strategy. The National Payments Strategy is designed to ensure all consumers can have trust in, and access to, payment instruments and systems. As reflected in our response to the [Department of Finance's consultation on the National Payments Strategy](#), the Central Bank's ultimate vision for the payments ecosystem in Ireland aligns fully with the core pillars outlined in the Department's consultation paper. Our vision is for a payments' ecosystem which: ensures access and choice; improves security and resilience; fosters innovation and inclusion; and promotes sustainability and efficiency.

We will continue to actively engage and collaborate with other public authorities with responsibilities and competences for consumer protection domestically, to deliver on our shared purpose of strong protections and fair outcomes for consumers. We will also continue to engage at an EU level to influence the ongoing evolution of the EU consumer protection regulatory framework.

Further Evolution of the Code

The financial landscape is continually changing. We want to ensure that the revised Code continues to safeguard consumers of financial services into the future. Following delivery of the revised Code, we will continue to consider further enhancements in a number of specific areas. This will allow us to build on changes proposed in this consultation paper, and to develop further changes based on ongoing legislative developments at a domestic and European Union (EU) level that are likely to follow the publication of the revised Code. For example, anticipated changes under domestic and EU legislation relating to access to basic services such as Access to Cash, the National Payments Strategy, the EU Retail Investment Strategy (RIS) and the evolution of the EU Payment Services Framework. At a domestic level, there will also be a consideration in due course of the full application of the Code to credit unions, in order to ensure their members are afforded the same protections as other consumers.

Structure of the Consultation Paper

Chapter 2 sets out our principal policy proposals.

Chapter 3 sets out additional policy proposals.

Chapter 4 provides an overview of our consideration of benefits and costs.

Chapter 5 provides details on how to respond to this consultation.

The consultation paper also includes the following annexes:

- **Annex 1:** Provides details on the legal basis and structure of the Code.
- **Annex 2:** Maps the provisions of existing codes and regulations to the new regulations.
- **Annex 3:** Standards for Business - Central Bank Reform Act 2010 (Section 17A) (Standards for Business) Regulations.
- **Annex 4:** General Requirements - Central Bank (Supervision and Enforcement Act) 2013 (Section 48) (Conduct of Business) Regulations.
- **Annex 5:** Draft Guidance.
 - Part 1 - **Guidance on Securing Customers' Interests.**
 - Part 2 - **Guidance on Protecting Consumers in Vulnerable Circumstances.**

Next Steps

This consultation paper sets out changes that we are proposing to make under the revised Code. We want to hear the views of stakeholders and the public on our proposals, so we can consider their feedback before we finalise the revised Code. Following completion of the consultation process, we expect to publish the revised Code in early 2025.

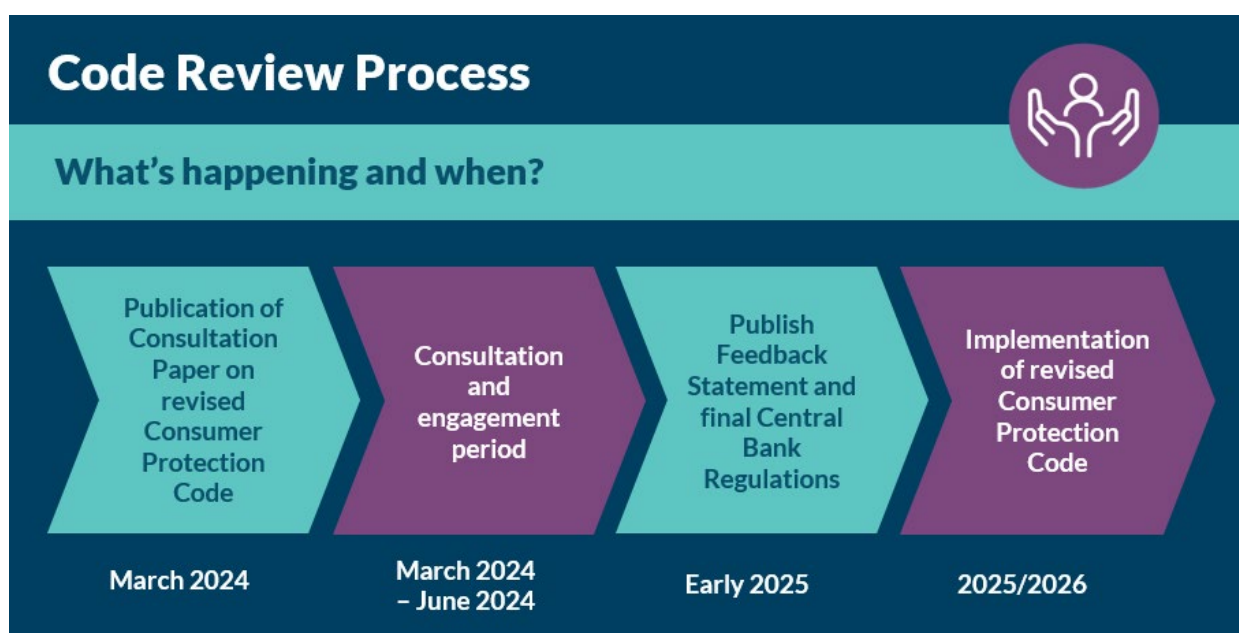


Figure 6 - Timeline of Revised Consumer Protection Code – Source: Central Bank of Ireland

Chapter 2: Principal Policy Proposals

This chapter provides an overview of the principal policy proposals that will be reflected in the revised Code. These proposals take account of the evolving nature of financial services and reflect key developments from our supervision of firms over recent years. Experience across a range of developments - including tracker mortgages, business interruption insurance, differential pricing, bank account migration, and responding to rising interest rates – has resulted in a significant evolution of the lived experience of consumer protection. In this context, there is a strong demand for a clearer articulation of the consumer protection obligations on firms. This is a central aim of our policy proposals.

Firms should effectively incorporate their customers' interests into their culture, strategy, business model and decision-making, to support a well-functioning financial services market. The revised Code addresses how firms can achieve this through [Securing Customers' Interests](#).

We are also proposing a number of new requirements and enhancements to existing requirements, reflecting feedback from stakeholders and our policy priorities in the key areas of:

- [Digitalisation](#)
- [Informing Effectively](#)
- [Mortgage Credit and Switching](#)
- [Unregulated Activities](#)
- [Frauds and Scams](#)
- [Protecting Consumers in Vulnerable Circumstances](#)
- [Climate Risk](#)

The following sections of this chapter provide a high-level overview of our proposals in each of these areas.

We look forward to hearing your views on what we are proposing, and we have included questions within each section below to prompt your feedback.

2.1 Securing Customers' Interests

Consumer interests are best served by well-functioning financial services markets providing appropriate levels of availability and choice from sustainably profitable, resilient, well-run, consumer-focused firms who secure their customers' interests.



Background

Financial products and services provide many benefits to consumers and are critical both in their day-to-day lives and in safeguarding their future financial needs and objectives. We want to see a trustworthy and resilient financial services system underpinned by sustainably profitable firms acting in their - both existing and potential - customers' best interests.

Feedback

In the feedback to the Discussion Paper, many stakeholders agreed that the fundamental responsibility of firms to act in the best interests of customers is at the core of consumer protection. Stakeholders suggested that there was a lack of clarity on what this obligation means in practice, and some questioned how the obligation can be balanced with the obligations firms have in relation to their shareholders.

Our consumer research carried out as part of the Code Review, showed that further work is needed to build consumer trust in the financial system, and demonstrated strong support for the provision of guidance to firms on their existing obligation towards customers' best interests. Given the importance of this fundamental obligation to the protection of consumers, we have sought to provide clarity on how firms should approach meeting this obligation in practice.

Obligation to Secure Customers' Interests

Firms exist in the first instance to pursue their commercial objectives. However, in this pursuit, financial services firms are required to act in a manner that places their customers' (and potential customers') interests at the heart of their culture, strategy,

business model and decision-making. This reflects the nature of financial services activities as complex, important and dependent on high levels of trust and confidence. Overall, the existing Code is designed to provide the legal framework for delivering on this obligation, but it is clear that a key issue for firms and consumers is achieving enhanced clarity and predictability on the general expectation that consumer interests will be protected.

Firms are currently subject to a range of consumer protection obligations including the fundamental obligation to act in the best interests of customers.²¹ The revised Code aims to continue to reflect this fundamental obligation.²² Additionally we are seeking to assist firms in meeting their obligations in practice, recognising the importance of proportionality and customer autonomy. This is addressed through the [Securing Customers' Interests](#) Standard for Business and the associated Supporting Standards for Business along with detailed [Guidance on Securing Customers' Interests](#)²³, which will apply when firms are doing business with individuals and small businesses. Together these elements are designed to support firms in the effective implementation of all their consumer protection obligations by describing what they need to consider, the actions they need to take, and the mind-set they should have towards their customers.

Why is Securing Customers' Interests being introduced?

Developments over recent years - including those arising from the tracker mortgages failure, business interruption insurance during COVID, and differential pricing - have resulted in an evolution in the understanding of consumer protection. A recurring demand - from firms and their customers - has been for increased clarity and predictability on the obligations on firms and consumer expectations in light of these developments.

In setting out, and providing guidance on the requirement for firms to secure their customers' interests, we are seeking to provide this increased clarity and predictability. We want to improve understanding of the substance and limits of the existing best interests obligation, which has determined many important consumer protection outcomes over recent years. This will support firms in taking ownership of, and

²¹ General Principle 2.1 of the Consumer Protection Code 2012.

²² See regulation 4(1)(d) of the draft Central Bank Reform Act 2010 (Section 17A) (Standards for Business) Regulations set out in Annex 3.

²³ See page 4 and 5 of draft Guidance on Securing Customers' Interests set out in Annex 5.

responsibility for, their approach to meeting their consumer protection obligations on a basis that delivers good customer outcomes. It should also improve customers' understanding on what they should expect from firms.

Guidance

To help firms to embed the obligation to secure customers' interests, we are introducing detailed [Guidance on Securing Customers' Interests](#). The guidance explores the need for firms' culture, strategy, business model, decision-making, systems, controls, policies, processes and procedures, to reflect a consumer focus.

The guidance explores the overarching principles of firm ownership of their consumer-related obligations, customer autonomy and the role of firms in securing good customer outcomes. It also includes more specific guidance on the types of practices and actions that firms should adopt to meet their obligation to secure customers' interests, and includes a number of examples and case studies to illustrate what this means in practical terms.

We have set out the proposed [Guidance on Securing Customers' Interests](#) in Annex 5 and welcome any feedback on the structure or content of the guidance.

We expect firms providing MiFID services to consider and apply this guidance in the context of their obligation to 'act honestly, fairly and professionally in accordance with the best interests of its clients' under Regulation 31 of the [MiFID Regulations](#).²⁴

For crowdfunding service providers, we also expect firms to consider and apply this guidance in the context of their obligation to 'act honestly, fairly and professionally in accordance with the best interests of its clients' under Article 3 of the [EU Crowdfunding Regulations](#).²⁵

²⁴ S.I. No. 375/2017 - European Union (Markets in Financial Instruments) Regulations 2017.

²⁵ Regulation 2020/1503 on European Crowdfunding service providers for business.

Firm Ownership of Consumer-Related Obligations

The obligation to secure customers' interests does not conflict with a firm's pursuit of commercial objectives. Rather it is a key part of the context in which a regulated financial services firm pursues its commercial agenda. Commercial decision-making reflects multiple factors including the market environment, consumer demand, competition and the need for firms to generate sustainable profitability and to build financial and operational resilience.

While it is a matter for firms to make their own commercial decisions, it is essential that the obligation to secure customers' interests is incorporated into that decision-making process alongside these other factors. Firms targeting a sustainable, reasonable return on capital over an appropriate time horizon, and who incorporate consumer interests into their culture, strategy, business model and decision-making, will be successful in meeting their obligation to secure customers' interests. On the other hand, firms seeking to unfairly exploit or take advantage of consumer behaviours, habits, preferences or biases to benefit the firm in a way that causes customer detriment, will fail to do so.

Complying with the obligation to secure customers' interests requires firms to take ownership of how they meet this obligation. Adhering to the obligation will never be achieved by tick-box compliance. It requires an approach and mind-set which runs deeper and should operate at the centre of a firm's culture, strategy, business model, decision-making and operations.

Customer Autonomy

The obligation to secure customers' interests does not confer a responsibility, or a right, on firms to make decisions on behalf of customers – this would clearly encroach on the decision-making autonomy of individuals. **Securing Customers' Interests** reflects that customers have a right and responsibility to make their own decisions as to what products and services they wish to purchase, and how they plan to meet their financial needs and objectives. It does not mean that a financial services firm is 'acting on behalf of' a customer or taking responsibility for making decisions that should be made by the customer.

However, customers can only be expected to take responsibility for their decisions where they are empowered to do so. Firms must provide customers in an effective manner with the information which is material to making an informed decision as to which product or service meets their needs.

Consumers should have confidence that firms will act in a way that helps, rather than hinders, their ability to make decisions in their own interests. They should also be able to trust that firms will not seek to unfairly exploit or take advantage of them through their behaviours, habits, preferences or biases to benefit the firm in a way that causes customer detriment.

Outcomes

The way in which a business measures its success should include consideration of outcomes for its customers. Protecting consumers requires a focus, not only on the actions taken by firms at a point in time but also, more importantly, on the ultimate outcome for the customer. Our proposed **Securing Customers' Interests** Standards for Business and guidance recognise the importance of positive customer outcomes. While acknowledging the role that both firms and customers play in influencing such outcomes, we want to ensure firms focus on delivering positive outcomes for consumers in all their actions and decisions, meaning, for example, product and delivery channel design, and communication with customers, should contribute to positive outcomes.

We want to hear your views on our proposals:



Do you have any comments on the Securing Customers' Interests Standard for Business, Supporting Standards for Business or the draft Guidance on Securing Customers' Interests set out in Annex 5?



Do you have any comments on our expectation that firms offering MiFID services and firms offering crowdfunding services should consider and apply the Guidance on Securing Customers' Interests?

2.2 Digitalisation

Digitalisation has brought many benefits for firms and consumers and has the potential to bring many more. It also brings challenges and risks for firms and consumers. We want to ensure that firms support their customers to harness the benefits of digitalisation and take action to mitigate risks.



Background

While digital transformation can bring benefits for firms in terms of access to a broader range of customers and cost efficiencies, it can also raise important issues such as access to basic services and supports for consumers, the appropriate use of personal data, and how consumers can be protected from unfair practices in the use of new technologies that negatively exploit or take advantage of consumer behaviours, habits, preferences or biases.

Feedback

In the feedback to the Discussion Paper, stakeholders highlighted the many benefits that digitalisation of financial services brings to consumers, individually and collectively. These include access to, and availability and choice of, new products and firms. Also highlighted were the potential challenges and risks, including financial exclusion issues and challenges arising from a reduction in human interaction.

Our consumer research, undertaken as part of the Code Review, identified a lack of in-person contact as an issue for some consumers, noting also that digital services are not accessible to all consumers, including those who are not computer literate. Concerns were raised in relation to the impact of bank branch closures, including on access to cash as a basic financial service. Both the feedback to the Discussion Paper and our consumer research highlighted consumers' concerns around the use and security of data.

The changes proposed in the revised Code are designed to ensure that firms are able to take advantage of the significant opportunities digitalisation provides while supporting

their customers so that the key challenges facing some customers in a digital context are addressed. Our proposals also reflect the G20/OECD Principles, which include the impact, risks and opportunities of digitalisation as a cross-cutting theme, highlighting the importance of its consideration in the implementation of all the G20/OECD Principles on consumer protection.

The revised Code is designed to remain technology neutral, this means that the same principles apply regardless of the means by which a firm engages with its customers – in person, by telephone, in writing or online (including through new forms of technology). We believe that it is important to ensure that the quality of the engagement through digital means is sufficiently high to support positive customer outcomes.

Our proposals are future-focused. Use of technology is constantly evolving. By avoiding regulating individual forms of technology, our regulatory approach remains agile to future developments and does not inhibit the development of new technologies for the delivery of financial services. Our proposed revisions to the Code therefore reflect this.

Proposed Requirements

New requirements proposed will require all firms that use digital technology to provide services to ensure that the technology is designed and implemented with a customer focus. Firms that use digital technology to provide information to customers will have to comply with requirements to ensure that customers are effectively informed.

Where established firms are transitioning from traditional to digital business models they must carefully consider customer impacts and identify appropriate mitigants to address identified issues for customers. This should include careful consideration of the impact on consumers in vulnerable circumstances and what reasonable assistance might be provided to mitigate potential adverse impacts.

Under the proposals, firms will also be required to ensure that their products and services, including the use of technology in their delivery, are not designed in a way that seeks to unfairly exploit or take advantage of behaviours, habits, preferences or biases of

customers, which might result in customer detriment. This is key to the maintenance of consumer trust and confidence in digital technology.

The proposed new requirements focus on the use of digital platforms. A digital platform will be defined as the use of technology to deliver regulated financial services to customers. Regulated firms using digital platforms will be required to ensure that those platforms are designed to be easy to use and navigate from a customer standpoint and that associated technology is tested, and that it produces consistent and objective outcomes for users. Consistency requires that the same input produces the same output, and the requirement that outputs be objective will ensure that the decisions or choices presented to the consumer are based only on valid and justified objective criteria without subjective or unjustified criteria being applied.

In addition, firms must ensure that where digital platforms are used, guidance, support and assistance is available to customers.

It is important that when regulated firms are selling financial products or services through digital platforms, that platforms are designed in a way that effectively supports customers' decision-making and in particular, ensures that the decision-making process is suitably paced so that customers can take the appropriate time to consider and reflect on their choices. Reflecting this, and to improve the digital experience for customers, we are proposing to introduce requirements for firms using digital platforms to sell financial products and services, which require firms to:

- slow the digital transaction process to ensure review of key information by customers before decisions are executed;
- avoid the use of certain pre-ticked boxes; and
- provide customers with reminders of 'cooling-off' options.

In addition, where consumers access their financial records through a firm's online systems, and access to those systems is to be withdrawn, firms will be required to notify consumers that they can download or print this information before access is withdrawn.

Guidance

In order to support ease of use of digital platforms, we will also provide guidance for firms, alongside the revised Code, on how they can support customers in accessing information digitally. This will cover areas including filtering of information, scrolling and use of hyperlinks. Under the guidance, we will also clarify that where firms are required under the revised Code to provide or store information through a durable medium, this includes providing and storing information through digital means. As international regulatory approaches develop over time, we can learn from and build upon these developments to guide industry towards international best practices on the use of digital technology in financial services delivery.

The EU Digital Services Act

The changes that we are proposing to the Code are being introduced in the context of other developments at an EU level. The EU Digital Services Act package, comprising the Digital Markets Act (DMA)²⁶ and the Digital Services Act (DSA),²⁷ has introduced new requirements to regulate digital services with the goal of creating a safer digital space in which the fundamental rights of all users of digital services are protected. While the Central Bank is not the competent authority in Ireland for this package of EU legislation, it nonetheless represents an important development within the broader EU consumer protection framework alongside the Code.

The DMA has introduced clear rules for big platforms (online search engines, social networking services, app stores, messaging services, etc.) which aim to stop them from imposing unfair conditions on businesses and consumers. The DSA seeks to give consumers more control over what they see online. Users must be provided with better information on why specific content is recommended to them and are able to choose an option that does not allow profiling.

These new rules also help protect users from harmful and illegal content – and significantly improve the removal of illegal content, ensuring it is done as quickly as

²⁶ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).

²⁷ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services.

possible. The DSA has also introduced rules making sure that products sold online are safe and follow the highest standards set in the EU. Users will now have better knowledge of the real sellers of products that they buy online.

Targeted Advertisements

In the Discussion Paper, the Central Bank indicated that targeted advertisements would be considered as part of the Code Review. Taking account of existing Code requirements and the subsequent publication of the DSA, we are not proposing to introduce additional requirements in the revised Code on targeted advertisements. Targeted advertising is now banned for minors based on profiling under the DSA, and the use of sensitive data such as sexual orientation, religion or ethnicity, is not allowed. Additionally, under the DSA online targeted advertising must be identified as such (e.g. through use of prominent markings) with the following information provided:

- the identity of the natural or legal person on whose behalf the advertisement is presented;
- the identity of the natural or legal person that paid for the advertising (if different from the person mentioned above); and
- meaningful information about the main parameters used to determine the recipient to whom the advertisement is presented and, where applicable, information on how to change these parameters.

When firms provide recommendations to customers on financial products, they must meet certain requirements under the Code including ‘Know Your Customer’ obligations and suitability requirements. Where firms use targeted advertising to make a personal recommendation to a customer on specific products based on information on the customer’s activities, firms will need to ensure that they comply with all relevant requirements of the revised Code.

Material Changes to Services

Digitalisation can result in significant changes in products and services and how they are delivered for existing customers. Securing customers’ interests would require that a decision to materially change a firm’s product or service offering, or the mode of delivery of products and services, would include a consideration and assessment of the impact and

outcomes for customers. Firms should proactively assess the risks and customer impact that material changes to products and services, and their delivery, pose to customers. They should develop comprehensive action plans to mitigate these risks whilst ensuring that customers understand what such changes mean for them. Customers should be adequately supported through change. In particular, firms should consider the impact of their decisions on consumers in vulnerable circumstances and provide necessary assistance. This should include specific and effective processes and communication to support customers in vulnerable circumstances.

Customers should also be provided with appropriate notice of material changes to services.

Retail Banking Review

The importance of appropriately managing material changes to banking services informed a number of the recommendations of the report of the Government's Retail Banking Review (RBR) relating to bank branch closures or withdrawals of services.

This included recommendations relating to increasing notice periods for changes to banking branch services (from one month to four months) and for branch closures or a credit institution leaving the market (from two months to six months). The RBR also recommended that the Central Bank require banks to conduct, publish and submit to the Central Bank, board-approved assessments when they are planning to significantly alter the services provided through branches or when planning to close a branch. These assessments should examine the impact on customers, the suitability of alternative service provision arrangements, and the plans for migrating customers to those alternatives, especially at-risk customers.

In the case of bank branch changes, the RBR recommended that the Central Bank require ex-post assessments from banks, to include a survey of impacted customers, nine to 15 months after the change or closure and a requirement to rectify material issues that may have arisen.

Finally, the RBR recommended that the Central Bank require all providers of retail banking products and services to set out and publish customer charters, incorporating service standards.

The revised Code will reflect the following changes which have been informed by the recommendations of the RBR:

- increasing the minimum notice period for banks to six months where they intend to close, merge or move a branch; and to four months where they intend to significantly change services in a branch;
- requiring banks to publish board-approved assessments of the impact of the changes on customers; and
- requiring banks to conduct an ex-post assessment to include a survey of impacted customers nine months after the change, which must be completed before 15 months has elapsed since the change.

In relation to the recommendation that banks conduct, publish and submit to the Central Bank, board-approved assessments when they are planning significant service changes, or to close a branch, firms will continue to be required to notify the Central Bank of an intention to close a branch and we will continue to engage with firms on these notifications and on proposed material changes to services. As part of this process we will consider the board-approved assessments undertaken by firms, as appropriate, by requesting firms to submit them or by accessing the publically available assessments.

The Central Bank has considered the RBR recommendation on customer charters and service standards. Given the Central Bank's role and recognising the need for proportionate and effective regulation, we are not proposing to directly reflect this requirement within the revised Code. It is important that firms take ownership of communicating on service standards in line with their obligations under the Securing Customers' Interests and Informing Effectively Standards for Business in the revised Code. Our guidance on Securing Customers' Interests highlights the importance of firms being clear and transparent on their offering to their customers, allowing them to make informed decisions on whether a firm's offering meets their needs and means, and aligns with their expectations.

We want to hear your views on our proposals:



Do you have any comments on the proposed Code enhancements with regard to digitalisation?



What are your views on the proposed requirements on banks where they are changing or ceasing branch services?

2.3 Informing Effectively

Informing customers effectively enables them to make informed decisions to meet their financial services needs, by allowing them to compare products and services and shop around for better value, on a basis that ensures they interact with financial services with trust and confidence.



Background

Well-functioning markets require consumers to have access to clear and unbiased information. Clear disclosure of product features, risk and price, allows consumers to select the provider and product that best serves their needs.

Consumers have a responsibility to ensure that they inform themselves, and take time and care to read the information presented to them. However, the imbalance between firms and their customers in terms of knowledge, expertise and time available, means that the information provided to customers must be fully, fairly and clearly presented to support customer decision-making. Customers can often receive information that is not easy for them to navigate, digest or understand, on a basis that enables them to make an informed decision.

Feedback

We received a significant amount of feedback on this topic during our engagement on the Discussion Paper. Stakeholder feedback noted the challenge of information overload and welcomed the shift in the Central Bank's approach, agreeing that informing customers effectively should be less about merely 'providing information' but also about 'ensuring understanding'.

Our consumer research undertaken as part of the Code Review showed that consumers consider transparent, understandable information provided by firms as one of the most important aspects of a well-functioning financial system. Standardisation and simplicity of information and language as well as access to an in-person contact, were identified as effective tools in addressing issues and challenges relating to disclosure.

The revised Code will set a clearer standard and expectation on how firms should seek to inform customers. Firms must consider their overall approach to communicating customer information, to make sure it supports customers to make effective, timely and informed decisions. As noted in the Discussion Paper, a firm's overall approach should not be about simply 'providing information' to meet their regulatory disclosure obligation, but also about 'ensuring practical understanding' by the customer. This applies throughout the customer journey – so that customers can take decisions that are in their best interests.

We expect firms to give the same level of consideration to the design, delivery and impact of regulatory disclosures, as they do to their consumer marketing.

A New Standard for Business

We are proposing a new Standard for Business in the revised Code. This Standard will shift the focus of firms from meeting disclosure requirements in a 'tick-box' way as an exercise in compliance, to a duty to present information to customers so that through their communication and disclosures, firms are seeking to **effectively** inform their customers.

In line with the G20/OECD Principles, under the Supporting Standards for Business, the proposals will also expand on the general duty on firms to ensure that all information that it provides to a customer is clear, accurate, up to date, and written in plain and accessible language, avoiding the unnecessary use of technical terms. Firms must also continue to provide information to customers on a timely basis, and to bring key information to the attention of customers. These requirements are underpinned by a desire to ensure that the consumer has full and meaningful understanding of the product or service they are accessing, its costs, risks, and relative advantages and disadvantages.

The proposals under the Code also include a new requirement for product producers to monitor and review customer communications to assess their effectiveness. Firms will be required to ensure that communications are effective, meaningful and well understood, having regard to the target market, to facilitate customers' decision-making.

We want to hear your views on our proposals:



Do you have any comments on the 'informing effectively' proposals?



Are there any specific challenges regarding implementation of the new Informing Effectively Standard for Business?

2.4 Mortgage Credit and Switching

It is important that consumers are protected at all stages of their mortgage journey. Firms must enable mortgage customers to make informed decisions, facilitate switching and support them when they are experiencing financial distress.



Background

Taking out a mortgage is one of the most important financial decisions that consumers may make in their lives. It is important that they are protected at all stages of their mortgage journey and ensuring they understand the costs, benefits and risks of a mortgage is a key aspect of this.

Under the existing Code, and in the context of the broader European consumer protection framework, there are a number of requirements to ensure that consumers are protected. Additionally, where borrowers are facing financial difficulties, they are afforded specific protections under the CCMA.

Feedback

Stakeholder feedback to the Discussion Paper highlighted the importance of firms providing clear and understandable information on mortgage products, with information on mortgage incentives and lifetime mortgage products particularly emphasised. Feedback highlighted the importance of the provision of clear information for consumers on mortgage offers and incentives, such as cashbacks²⁸, so that they fully understand the cost of credit and can make informed choices that meet their financial needs. Some stakeholders were of the view that mortgage cashbacks may pose a high risk of consumer detriment.

Recognising the significance of mortgages for many consumers, we are proposing a number of new and enhanced requirements, including improved disclosure requirements,

²⁸ A cashback is receiving a percentage of the mortgage value back in cash or a cash lump sum either when you take out the mortgage, or after a number of years, or both.

to ensure consumers are supported to make informed decisions in relation to mortgages. We are also proposing the consolidation of the CCMA into the Code along with a number of enhancements to existing CCMA requirements, informed by previous stakeholder feedback.

Mortgage Incentives

Incentives have become a regular feature in the mortgage market in recent years, with many mortgage providers using incentives to attract new mortgage customers. These include, for example, cashbacks, deferred starts and payment breaks. The upfront benefit of these offers can create a potential risk that borrowers discount other important cost indicators (i.e. applicable mortgage interest rates) when choosing a mortgage product, and may not be aware of the total cost of credit²⁹ of the mortgage on offer at the point of decision-making.

Mortgage application research undertaken by the Central Bank in 2021, assessed certain risks for first time buyers (FTBs) relating to their experience of the mortgage application process. The research found that cashback offers influence FTBs' choices and decisions and highlighted that FTBs are not fully aware of the implications of these choices and the impact these mortgage features have on the total cost of credit.

While mortgage incentives can provide a benefit to consumers, the Central Bank has a concern they may unduly distort the borrower's choices in the short term, and hinder the borrower's opportunity to choose the optimal mortgage for them based on the total cost of credit over the lifetime of the mortgage.

In our proposed [Guidance on Securing Customers' Interests](#), we articulate the importance of firms ensuring that the inclusion of incentives in mortgage products aligns with the interests of customers, and that incentives are designed and provided in a way that supports customers' ability to act in their own interests, in line with their financial needs. Over the coming period, the Central Bank plans to undertake further research and

²⁹ The total cost of credit means the total cost which a borrower is required to pay for a loan. The total cost of credit is calculated by adding together all costs (interest payments, fees, charges, commissions, etc.) which the borrower is required to pay over the life of a loan.

analysis to understand the consumer impact of cashbacks, and potential further actions will be considered once this is complete.

One clear drawback regarding mortgage incentives is that they make price comparison more difficult. Instead of simply comparing rates, customers also have to analyse and compare the terms of the incentive. Early disclosure of the total cost of credit may mitigate the risk of consumer confusion when presented with cashback/incentive information, and therefore empower consumers to make the most suitable choice for their circumstances.

Proposals on incentives in the revised Code include:

- a definition of what constitutes a mortgage incentive to set out clearly to firms when the requirements relating to incentives apply;
- a requirement for a warning statement on a 'mortgage approval in principle' provided by the lender to the consumer where an incentive is a feature of a mortgage. The purpose of this warning statement will be to bring to the attention of the consumer, the importance of considering the impact of the incentive on the total cost of credit; and
- additional requirements in relation to mortgage calculators and advertisements to enhance the disclosure of the 'total cost of credit' to potential customers.

Mortgage Switching

Provision of Information to Enhance Internal Switching

In recent years, the Central Bank has undertaken consumer research to understand how to make it easier for customers to compare mortgages and identify potential cost savings.³⁰ On foot of this, we are proposing new requirements in the revised Code on the provision of information to enhance internal switching (switching to another mortgage product with the existing provider). This aligns with the RBR recommendation that the Central Bank considers enhancing existing requirements on how regulated firms provide information on alternative mortgage products to existing customers.

³⁰ <https://www.centralbank.ie/news-media/press-releases/targeted-communications-with-mortgage-borrowers-can-help-to-improve-uptake-of-refinancing-opportunities-8-december-2022>.

Mortgage providers are already required to issue an annual notification to variable rate mortgage holders and at fixed rate maturity for fixed rate holders, which among other items shows a summary of alternative mortgage products available from that provider. Informed by our research, we are now proposing that lenders include within these notifications a personalised euro savings estimate alongside each alternative mortgage refinancing option presented. Additionally, lenders will be required to provide a specific reminder to customers concerning mortgage refinancing options, issued between four and eight weeks from the first notification.

Switching to a New Lender

Central Bank research³¹ has identified a number of barriers to mortgage switching including that:

- the switching process is viewed as complex and time consuming;
- there is a lack of clarity on cost savings available; and
- the mortgage switching process is viewed as costly, given associated costs of getting a property valuation and the cost of conveyancing fees.

Unlike other forms of consumer switching such as household utilities, where the customer's role can be minimised, switching a mortgage requires more extensive engagement by the customer, i.e. deeper involvement of the borrower in the process. This reflects the need to redeem and release security on the existing mortgage and submit an application for a new mortgage to the new lender (involving a formal credit decision and the taking of associated security over the property etc.). The involvement of the borrower, the complexity of dealing with legal security, and the need for a formal credit decision, can limit the potential to automate the process, therefore reducing the benefits of a switching code in this context.

We are therefore engaging with mortgage providers via the Banking & Payments Federation Ireland (BPFI) to examine how certain barriers to mortgage switching can be overcome. This would involve identifying any common process enhancements amongst lenders that could be reflected in an industry protocol or charter. This could enhance

³¹ <https://www.centralbank.ie/docs/default-source/publications/economic-letters/economic-letter-12-mortgage-switching.pdf>.

consumer experience of switching by standardising aspects of the process, including the information needed to engage with a new lender on a switching opportunity.

Lastly, the Central Bank has, in the context of higher interest rates, also engaged with mortgage providers to ensure that they are taking a system-wide approach and are collaborating to support optimal overall functioning of the system. This is important to ensure switching is facilitated within the system and that all performing borrowers have access to switching irrespective of who their current lender is or has been in the past.

Lifetime Mortgages and Home Reversion Agreements

Given the high costs and specific consumer risks associated with lifetime mortgages and home reversion agreements, it is important that adequate warnings are provided to consumers. For example under a home reversion agreement, the inheritance a customer passes on to their beneficiaries could be substantially reduced and may not include the property itself.

In order to further inform consumers of the risks associated with lifetime mortgages, strengthened disclosure requirements are proposed. This includes a requirement for firms to provide consumers with information on which party is liable for any redemption costs, and whether the consumer or their estate will be liable for any shortfall following the eventual sale of the property. In relation to home reversion agreements, an enhancement is proposed to the warnings already required in the existing Code that will include prompting consideration of the connection between transferring a share in the home and the potential negative impact on ability to fund future needs.

We want to hear your views on our proposals:



Do you have any comments on the proposed enhanced disclosure requirements for mortgages?

Code of Conduct on Mortgage Arrears

The CCMA requires that each borrower who is facing difficulty in keeping up with their mortgage repayments is treated in a sympathetic and positive manner by lenders, acknowledging that each mortgage arrears case is unique and needs to be considered on its own merits. Under the CCMA, lenders must follow the Mortgage Arrears Resolution Process (MARP) and work with distressed borrowers to determine if suitable Alternative Repayment Arrangements (ARAs) can be put in place. The CCMA is part of the strong consumer protection framework in place for borrowers facing mortgage difficulties, and it has played a central role in reducing the scale and impact of mortgage arrears in Ireland.

Proposed Amendments to CCMA

As part of the Code Review, we are proposing to make a number of changes to the CCMA informed by previous feedback from stakeholders. Our proposals include a requirement in the revised Code to ensure firms consider an appropriate and sustainable range of ARAs, which are broad enough to meet the needs of impacted borrowers. We also intend to issue updated guidance on what we mean by appropriate and sustainable within the revised Code, reflecting our engagement with firms in relation to the application of sustainable resolutions for mortgage arrears in practice.

In addition, the following specific changes are also being proposed for the CCMA:

- A requirement for the provision of additional information by firms to borrowers in relation to the offering (or not) of ARAs as set out in the Central Bank's letter to firms of 22 March 2019;³²
- A requirement for the provision of information on the sale of property post-repossession;
- The introduction of a 12-month validity period for a completed Standard Financial Statement;
- The introduction of limited unsolicited visits outside the MARP, so that only one unsolicited visit request can be issued every six months;
- The inclusion of the borrower's future repayment capacity as well as their current repayment capacity, when assessing potential ARAs; and

³² <https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/other-codes-of-conduct/letter-issued-to-regulated-entities-re-code-of-conduct-on-mortgage-arrears-22-march-2019.pdf?sfvrsn=6>.

- A requirement to provide additional information on the implications of a personal insolvency arrangement for a borrower and his/her mortgage loan account in a number of borrower communications.

The CCMA is a well-developed and well-functioning aspect of the Irish consumer protection framework with an established track record of facilitating borrower and lender engagement-based solutions in the case of mortgage distress. Given this, it was decided that a full review of the CCMA would not be undertaken as part of the Code Review. However, we would welcome any further feedback from interested parties on potential additional enhancements to the CCMA as part of this consultation.

We want to hear your views on our proposals:



Do you have any comments on the proposed enhancements, or any further suggestions on the CCMA?

2.5 Unregulated Activities

Consumers need clarity on what is regulated and what is not. Where regulated firms provide both regulated and unregulated activities, there is a heightened risk that customers may misunderstand the protections they are afforded by virtue of the regulated status of the firm – referred to as the ‘Halo Effect’.



Background

Regulated firms conduct unregulated activities when they provide financial products and services to customers that are not subject to the regulation of the Central Bank. Financial services and products provided outside the regulatory perimeter can pose a significant risk to consumers as the regulatory protections afforded to regulated products and services do not apply.

The Central Bank does not set the regulatory perimeter, which is a role for domestic and EU lawmakers. However, we do regulate firms within the perimeter who at times undertake both regulated and unregulated activities. The provision of unregulated products and services by regulated firms can result in customers not being aware of the nature of the product and service they are accessing, and the risks associated with them. Customers may assume products are regulated and subject to the protections afforded to regulated products including, for example, access to compensation schemes (such as the Deposit Guarantee Scheme³³ in the case of a deposit in a bank).

In particular, the risk for customers of the ‘Halo Effect’ can be heightened where regulated firms or their unregulated subsidiaries provide unregulated financial products and services while using identical or similar branding to the branding used for regulated products and services also provided by the firm. The Central Bank has concerns that some firms confuse their customers, wittingly or unwittingly, as to whether products provided

³³ <https://www.centralbank.ie/consumer-hub/deposit-guarantee-scheme>.

by them are in fact regulated or unregulated products including through the use of their branding.

Feedback

Stakeholders gave feedback during the Discussion Paper welcoming the focus on unregulated activities, noting the risk to consumers from the 'Halo Effect'. They emphasised the need for further effective and targeted communication for consumers to enable them to clearly distinguish between regulated and unregulated products, and to understand the protections that may or may not apply.

Our consumer research also evidenced support for enhanced communications and awareness initiatives - so that consumers understand the difference between regulated and unregulated products and services.

Risk to Consumers and the Financial System

Where there is confusion regarding the regulatory status of an activity or firm or the protections available to customers, there is also a potential risk to the wider financial system given the likely impact on consumer trust and confidence where an issue arises with an unregulated product or service provided by a regulated firm. It is therefore important for firms to ensure that customers have clarity on the regulatory status of the products and services they are accessing from regulated firms. Through the revised Code, we are therefore proposing new requirements for firms to ensure that there is enhanced clarity on unregulated activities.

A New Supporting Standard for Business

In the revised Code, under the Securing Customers' Interests' Supporting Standards for Business, we are proposing to introduce an obligation on firms to take appropriate steps to mitigate the risk that a customer will misunderstand an activity to be, or to carry the protections of, a regulated activity where this is not the case. This requires firms to clearly distinguish between the firm's regulated activities and its unregulated activities.

Appropriately applied, this will mean that firms must not cause confusion for their customers as to whether the products and services provided by them are in fact regulated

or unregulated products including through the use of their branding. It will mean that firms will need to eliminate any risk that a customer thinks that they are in ‘regulated territory’ when they purchase unregulated products or services from a regulated provider. In many circumstances, to avoid this confusion, it will not be possible for a regulated firm to offer unregulated products or services.

This overarching obligation on firms will be complemented by additional requirements to ensure firms enable customer understanding of the status of unregulated products and services provided.

These additional disclosure requirements enhance the requirements under the existing Code and apply new obligations on regulated firms when conducting unregulated activities, to ensure they take all necessary measures so that customers are made fully aware of the regulatory status of the product or service they are accessing. These include that:

- the regulatory status of the firm’s products and services is clearly and effectively communicated by firms in all dealings with customers, including on digital platforms;
- appropriate information and risk warnings are provided in a prominent position on all information provided to customers;
- terminology used cannot imply that the product or service is regulated where this is not the case; and
- information provided to customers must explicitly state what investor protections are lost/not applicable when investing in a product deemed to be out of scope of regulation (including the lack of access to compensation schemes and other regulatory protections).

We intend to also apply these provisions to firms providing MiFID services (to which the revised Code does not otherwise apply) through an amendment to the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2023 (S.I. No. 10 of 2023).

Guidance

Under our [Guidance on Securing Customers' Interests](#), we explore further what the Supporting Standard for Business means for firms and that they must ensure they take all necessary steps so that customers understand both the regulatory status of the products and the protections that do not apply to the unregulated product or service.

In securing their customers' interests, firms will not seek to confuse their customers or allow confusion as to whether products provided by them are in fact regulated or unregulated products including through the use of their branding. Firm's use of branding should not contribute to confusion on the regulatory status of products and services including in the case of similarly branded sister companies.

We expect regulated firms who undertake unregulated activities to act to secure the interests of its customers, reflecting a customer-focused culture. Acting to secure customers' interests applies to a firm in the overall conduct of its affairs. Firms should view good culture and a commitment to securing customers' interests as being central to its relationship with its customers, irrespective of the regulatory status of the product or service in question. A firm securing customers' interests will not seek to avoid the new Supporting Standard for Business by setting up a new unregulated entity or subsidiary, which may be designed to sell unregulated products and services under the branding of the regulated firm.

We want to hear your views on our proposals:



Are there other actions that firms could take to ensure that customers understand the status of unregulated products and services and the potential impact for consumers?

2.6 Frauds and Scams

The sophisticated and multi-dimensional nature of financial frauds and scams requires a co-ordinated ‘whole-of-system’ approach across industry and public sector agencies. Working together with other regulatory authorities within the EU framework and law enforcement agencies in the State, the Central Bank is playing its part to address this growing, significant risk.



Background

Financial frauds and scams, create a risk of loss and distress to consumers. The Discussion Paper highlighted the increase in the number, and level of sophistication, of frauds and scams targeting consumers. This has been driven by the ease with which fraudsters can contact consumers using technology, and their ability to make their contacts appear genuine (for example by mimicking the logos, texts and websites of well-known firms).

Feedback

Feedback to the Discussion Paper highlighted the risk of real loss for consumers from frauds and scams, noting that the prevalence of digital fraud and scams has a direct impact on consumers’ willingness to engage with new digital technology. The heightened risk from scams to consumers who may be in vulnerable circumstances and who are not ‘tech savvy’ was also highlighted – an observation which was echoed in our Code Review consumer research. Feedback also raised the importance of seeking to prevent financial elder abuse.

Stakeholders and the EU Commission have identified enhanced consumer awareness and education on frauds and scams as important for consumer protection. It is recognised that closer collaboration and a concerted effort from industry across all sectors (financial services and technology firms in particular), the Central Bank and other public authorities, is important in the prevention of financial frauds and scams. It is notable that a whole-of-system approach involving public and private sector stakeholders has been a feature of prevention efforts in other jurisdictions.

A new Standard for Business

The G20/OECD Principles highlight the importance of firms' protection mechanisms against fraud and scams, and highlight the role of oversight authorities and financial service providers in addressing the risk of frauds, scams and financial abuse generally. Financial services firms, in securing their customers' interests, have a responsibility to work collectively to ensure that the system is resilient to, and responsive to the ever-evolving threat of frauds and scams from external actors, as well as the continuing problems associated with financial elder abuse.³⁴ To ensure that firms are taking the necessary steps to protect the system and their customers from financial abuse including frauds and scams, we are proposing to introduce a new Standard for Business that will require firms to control and manage their affairs and systems to counter the risks to customers of financial abuse.

Definition

In the revised Code, we are proposing to introduce a definition of financial abuse to explain the circumstances that the Standard for Business will apply to, which includes financial frauds and scams.

In the revised Code, 'financial abuse' means any of the following:

- (a) the wrongful or unauthorised taking, withholding, appropriation, or use of a customer's money, assets or property;
- (b) any act or omission by a person, including through the use of a power of attorney, guardianship, or any other authority regarding a customer, to –
 - (i) obtain control, through deception, intimidation or undue influence, over the customer's money, assets or property, or
 - (ii) wrongfully interfere with or deny the customer's ownership, use, benefit or possession of the customer's money, assets or property.

The Standard for Business will be complemented by Supporting Standards for Business which outline further obligations on firms to mitigate the risks to customers of financial abuse. These Supporting Standards include obligations on a firm to ensure that they:

³⁴ In particular, see the Law Reform Commission Issue Paper: A Regulatory Framework for Adult Safeguarding (LRC IP 18 – 2019).

- Put reasonable systems and controls in place in the context of the provision of its financial services, to mitigate the risk to its customers of financial abuse;
- Monitor financial abuse trends and in particular vulnerabilities in process and distribution channels, and ensure appropriate escalation processes where there is an increased risk; and
- Communicate clearly to customers the risk of financial abuse, the supports available to customers and the actions that customers can take in the event of financial abuse, connected to the regulated entity's product or service.

Considering the growing prevalence of digital frauds and scams, and in line with the G20/OECD Principles, it is proposed to also introduce a specific obligation in the Supporting Standards for Business to ensure that firms:

- Notify customers through clear and timely communication of any digital frauds or deception connected to its affairs, or specifically relevant to the sector in which the regulated financial services provider is operating, and of which it is aware.

Informing customers of digital frauds can help support customers to remain alert to the existence and risk of digital frauds.

Overall, these new requirements seek to complement current requirements contained in anti-money laundering and payment services legislation, which are designed to safeguard against frauds and scams.

Legislative Framework Development

It is recognised at an EU level that further improvements in the EU legislative framework are needed to address fraudulent transactions, in particular Authorised Push Payment (APP) fraud. A number of proposals are currently under active consideration at EU level, including the enhancement of customer authentication methods, to ensure all consumers can use them, facilitating sharing of fraud-related information between firms, and the extension of liability in the case of APP fraud in certain circumstances. The Central Bank will continue to engage at European level on the development and implementation of these changes which will be reflected in proposed Payment Services Regulations.

We also welcome the changes that will be introduced under the Instant Payments Regulation,³⁵ which will include confirmation of payees via an IBAN checking mechanism in all online payments (this will involve mandatory checks to ensure payees' IBAN details match with intended payee account names).

The issue of payment fraud is also being considered domestically under the National Payments Strategy, to determine if it is necessary to also introduce a national-based solution alongside the EU proposed changes.

We want to hear your views on our proposals:



What other initiatives might the Central Bank and other State agencies consider to collectively protect consumers from financial abuse including frauds and scams?



Are there any other circumstances that we should consider within the proposed definition of financial abuse?

³⁵ <https://www.consilium.europa.eu/en/press/press-releases/2023/11/07/instant-payments-council-and-parliament-reach-provisional-agreement/>.

2.7 Protecting Consumers in Vulnerable Circumstances

Consumers in vulnerable circumstances are more likely to suffer detriment or harm. Firms need to understand vulnerability and to ensure that their culture, policies and processes take account of the needs of consumers in vulnerable circumstances.



Consumers in vulnerable circumstances are more prone to suffer detriment or harm. They can make poor decisions, especially when firms are not acting with an appropriate level of care. It is therefore vital that firms consider the needs of such consumers.

Feedback

Discussion Paper feedback indicated an overwhelming acceptance of the view that vulnerability is not just an inherent characteristic of an individual but rather a spectrum of risk. The feedback recognised that individuals may move in and out of states of vulnerability, and may be vulnerable in respect of some categories of transactions but not others. Many respondents highlighted the importance of effective policies and procedures and staff training and supports to enable firms, and their staff, to identify and deal effectively with consumers in vulnerable circumstances. Our consumer research found that there was broad support for initiatives to protect consumers in vulnerable circumstances including having a clear definition of vulnerability, increased training provided for staff and the importance of online and in-person supports.

The proposals outlined in this consultation paper represent a move towards improving the culture and preparedness of firms to deal with a broader concept of vulnerability.

Our proposals complement the recently commenced Assisted Decision-Making (Capacity) Act 2015 (ADMA).³⁶ The ADMA establishes a framework to support decision-making by adults who may have difficulties making decisions without the help of others. It ensures those that may require assistance are supported by financial services firms and other businesses. Our proposals in relation to vulnerability support such individuals and other

³⁶ <https://www.irishstatutebook.ie/eli/2015/act/64/enacted/en/html>.

consumers in vulnerable circumstances by ensuring that, not only are decisions made with the required assistance, but that the features of the customer journey in financial services are designed and implemented so that consumers in vulnerable circumstances experience similar outcomes to all customers. Given the important role that financial services firms play in the lives of all customers including those in vulnerable circumstances, it is vital that firms are mindful of their statutory obligations under the ADMA.

What is a Consumer in Vulnerable Circumstances?

Vulnerability is not always a static, innate or permanent characteristic of any person. Any circumstance (whether an innate characteristic or temporary condition or life event) that makes a person more prone to suffer poor outcomes, if firms do not act with the appropriate degree of care, makes that person vulnerable to poor outcomes. These conditions can arise through health, life events, lack of capability or financial hardship. The potential for suffering harm or poor outcomes exists across a spectrum. For firms, we might describe this as a spectrum of risk – risk to customers and risk to firms where they may not be applying the appropriate standard of care.

Persons with disabilities are not by their nature vulnerable. It is the circumstances that they may find themselves in, which in some cases may result from others not acting with an appropriate degree of care, that can make them vulnerable. For example, the way in which information is provided can make persons with a disability who are otherwise wholly competent and capable of conducting their own affairs, vulnerable to not having or being able to access the full information needed to inform their choices. The forthcoming [European Accessibility Act](#)³⁷ will improve standards of accessibility, but all firms should already be taking reasonable steps to ensure that their processes and services are appropriately designed so as not to disadvantage persons with a disability.

³⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L0882>.

Definition

Reflecting this broader concept of vulnerability, and in alignment with the updated recognition of vulnerability under the G20/OECD Principles,³⁸ we are proposing to introduce the following new definition in the revised Code:

“consumer in vulnerable circumstances’ means a consumer that is a natural person and whose individual circumstances make that consumer especially susceptible to harm, particularly where a regulated entity is not acting with the appropriate levels of care and ‘vulnerable circumstances’ shall be construed accordingly.”

Proposed Requirements

The overarching duty on firms to secure the interests of customers requires firms also to secure the interests of consumers in vulnerable circumstances. This means firms should strive to ensure consumers in vulnerable circumstances are not disadvantaged and do not experience less favourable outcomes.

The revised Code maintains an existing obligation requiring firms to provide appropriate assistance where the firm has identified that a consumer is in vulnerable circumstances.³⁹

The nature of vulnerability is such that it will not be possible to identify all consumers in vulnerable circumstances. As such, our approach is to seek to embed an understanding of vulnerability within the operation of a firm, and to ensure that the needs of consumers in vulnerable circumstances, and a commitment to addressing these needs, is an integral part of a firm’s customer focus. This should allow firms to be prepared and able to assist when the needs of consumers in vulnerable circumstances arise.

The revised Code will also introduce specific requirements concerning vulnerability. These include requirements on training, reporting and disclosure, and the recognition of Trusted Contact Persons.

³⁸ The OECD High-Level Principles on Financial Consumer Protection have introduced a broader understanding of vulnerability: ‘Special attention should be paid to the treatment of consumers who may be experiencing vulnerability or financial hardship. Approaches may take into account that consumer vulnerability can take different forms and be applicable in different circumstances, and may be due to a combination of personal and economic characteristics and situations, behavioural biases and market conditions’ - Principle 6.

³⁹ Reflecting provision 3.1 of the existing Code.

Training

If staff do not understand the broad nature of vulnerability and the types of vulnerability, they will not be able to properly consider what obstacles may present for consumers in vulnerable circumstances when designing business processes, products and services, or when dealing directly with customers. Recognising this, it is proposed to introduce a requirement for all firms to train staff on vulnerability issues.

Guidance will indicate what the training should cover, but also that it does not have to be formal, third party, training procured at a cost (although larger entities may choose that option). We emphasise that smaller firms may utilise materials available from professional or representative bodies. It is for the firm itself to identify what training solutions are appropriate considering the number and experience of its staff, and the nature of the firm's business.

Reporting of Concerns by Staff

Financial abuse, or frauds and scams, remains a perennial concern, in particular for many consumers in vulnerable circumstances. Financial services firms cannot prevent all forms of frauds and scams from succeeding, but firms are often in the front-line of the transactions that are being manipulated or the actions that customers are defrauded into taking.

We want to ensure that when there are issues of concern with customers, front-line staff can at least ensure that the concerns are brought to the attention of those within the firm who are sufficiently expert and senior, and authorised to take whatever actions can be taken by the firm to seek to prevent detriment or harm to the customer. Therefore, we are proposing to introduce an obligation on regulated entities to have clear procedures for their employees to report concerns that a customer is the victim, or is at risk of being the victim, of financial abuse or a fraud or scam.

Disclosure by Customers of Sensitive Information

Unless firms record the circumstances that give rise to a consumer being in vulnerable circumstances, the firm will not be able to respond to those circumstances appropriately or at all. However, considering that consumers in vulnerable circumstances will not

always be willing or able, without discomfort or difficulty, to communicate those circumstances to a financial services firm, it is important that they are assisted in doing so, and are not required to repeatedly explain their circumstances on multiple occasions.

We are proposing that all firms ensure that, **with the consent of the customer**, the information that they have been given by the customer, detailing circumstances of vulnerability, is recorded and is available to staff of the firm when the firm is dealing with that customer on a later occasion.

Trusted Contact Person

We are proposing to introduce a requirement for firms to facilitate customers who wish to do so, to provide the name and contact information of someone - a trusted contact - who a firm may communicate with where there may be difficulty in dealing with a customer, or where financial abuse, including fraud, is suspected. This initiative has been successfully introduced in the United States and Canada and is something we believe can be effectively introduced into the Irish regulatory framework. Significant support for this proposal was highlighted in the feedback to the Discussion Paper.

Guidance

In order to promote and to foster better understanding by firms of the new approach to vulnerability under the Code, we are also proposing to introduce guidance to support firms in implementing the new approach. The draft [Guidance on Protecting Consumers in Vulnerable Circumstances](#) is set out in Annex 5.

Proportionality

Our approach to vulnerability is grounded in an expectation of reasonable steps and proportionality.

As there are different degrees of vulnerability across a spectrum of risk, the steps firms need to take in any circumstances to protect their customers will take different forms. A firm's approach to vulnerability also needs to reflect the nature and complexity of the products or services that are being offered to consumers.

Our proposals acknowledge that considering the broad understanding of what makes consumers vulnerable, firms are not expected to be able to identify all consumers in vulnerable circumstances. Firms are expected to understand and take account of the drivers of vulnerability that are relevant to the business of the firm, and to design their systems, processes and procedures so that consumers in vulnerable circumstances are reasonably protected from poor outcomes when the firm is otherwise acting properly.

Assisted Decision-Making Act

The ADMA came substantially into effect on 26 April 2023. Where firms have concerns about the decision-making capacity of an individual, the ADMA must be complied with. The proposed requirements and guidance under the Code are consistent with the requirements under the ADMA. Under both the ADMA and the revised Code, staff of financial services firms must be able to assist consumers in vulnerable circumstances. Our draft guidance outlines for firms how the requirements align, to support firms in understanding their obligations under the Code and the ADMA.

We want to hear your views on our proposals:



What are your views on the proposed amendments to the Consumer Protection Code in relation to consumers in vulnerable circumstances? Do you have any comments on the draft Guidance on Protecting Consumers in Vulnerable Circumstances?



Is the role of the trusted contact person clear? What more could a Trusted Contact Person do?

2.8 Climate Risk

Consumers increasingly want to make sustainable investments to support climate transition. Firms must ensure that they build trust while meeting customer expectations regarding product integrity. Green and sustainable products must be accurately and fairly represented to customers to avoid the risk of ‘greenwashing’.



Background

It is clear that climate change presents significant impacts for all consumers. At a fundamental level, consumers want to see the financial system and its regulation evolving to support a climate neutral future. They also need to have confidence that the financial services firms they deal with, and the broader system, are resilient to climate risks.

Consumers have an important role to play in the transition to a climate neutral future including through the provision of funding for the transition. We know that consumers increasingly want to access sustainable products and make sustainable or green investments - but they need to have trust and confidence that such products and investments are genuinely green.

Feedback

Feedback from the Discussion Paper reflected a lack of confidence in some products being marketed as ‘green’ or ‘sustainable’ with an emphasis on the importance of improving disclosure with clear, transparent, understandable information to protect consumers from ‘greenwashing.’ Our consumer research found that respondents supported a range of initiatives within the financial system to help create a climate neutral economy including offering incentives for consumers to adopt green products, providing clear information to consumers on what products contribute to a climate neutral economy and improved management and disclosure of environmental risks by firms.

EU Framework

Legal frameworks are advancing at an EU level⁴⁰ to support sustainable finance generation and to tackle greenwashing. The EU Commission has published standards for financial product manufacturers to provide clear information to consumers and investors. The proposals set out in this consultation paper have been considered and developed in the context of the evolving EU framework, including the ongoing implementation of the SFDR,⁴¹ the Taxonomy Regulation and work being undertaken by the ESAs.⁴²

Our proposals also reflect the G20/OECD Principles, which includes sustainable finance as a cross-cutting theme highlighting the importance of its consideration for consumer protection.

The proposed requirements in the revised Code seek to ensure customers are protected from 'greenwashing' and that firms take account of customers' sustainability preferences when providing them with financial products and services.

Proposed Requirements

In the revised Code, we are proposing to amend the existing advertising requirements under the General Requirements to introduce a specific requirement on firms to ensure that their advertising does not mislead customers on the sustainability features of products or services, or the 'green credentials' of the firm itself or its business model.

We are also proposing to amend the existing Code requirements relating to suitability, to introduce a specific requirement for firms to take account of customers' sustainability preferences when undertaking suitability assessments. Under our proposal, we are introducing a requirement on firms to consider customers' sustainability preferences after they have considered the other suitability criteria required under the existing Code. This approach means that consumers' needs and objectives, personal circumstances, financial situation and attitude to risk are considered in the assessment before consideration is given to sustainability preferences. This reflects the importance of these criteria to the suitability assessment for consumers.

⁴⁰ Including ongoing implementation of the Sustainable Finance Disclosures Regulation and the Taxonomy Regulation.

⁴¹ Sustainable Finance Disclosures Regulation.

⁴² European Supervisory Authorities: EBA, EIOPA, ESMA.

However, as outlined in our Discussion Paper, consumers play an important role in the transition to a climate neutral future and our consumer research shows consumers increasingly want to make sustainable or 'green' investments to support the climate transition. It is therefore important that sustainability preferences are appropriately reflected within the suitability assessments firms undertake to determine the most suitable product for their customers. By not considering all suitability criteria, including sustainability preferences, together there is a risk that sustainability preferences will not be appropriately reflected in the financial products and services provided to consumers.

Guidance

In our [Guidance on Securing Customers' Interests](#), we also articulate our broader expectations of firms when providing 'green' or 'sustainable' products and services to customers, including the importance of clear, concise and understandable disclosures that seek to inform customers, enhance understanding, and build overall confidence in the green economy.

We want to hear your views on our proposals:



Recognising the role of EU consumer protections concerning climate and sustainability, do you have any comments on the proposed Code protections relating to climate?



Do you agree with our approach to including sustainability preferences with existing suitability criteria?

Have you any suggestions on how we can ensure all suitability criteria, including those relating to financial circumstances and sustainability preferences, are given an appropriate level of consideration?

Chapter 3: Additional Policy Proposals

In addition to the principal policy proposals outlined in [Chapter 2](#), we are also bringing forward a number of additional policy proposals within the revised Code which reflect the risks that consumers face today, stakeholder feedback we have received and to provide greater clarity for firms on their consumer protection obligations. This chapter provides information on the more material additional changes we are proposing in relation to consumer credit, SME protections, insurance, investments and pensions, along with information on a number of additional miscellaneous proposals.

The revised Code will incorporate requirements from the existing Code and consolidate other existing codes and regulations including the CCMA⁴³, High Cost Credit Providers Regulations⁴⁴ and Insurance Requirements Regulations⁴⁵ to provide a more integrated Consumer Protection Code. Further information on the new legal framework of the revised Consumer Protection Code is set out in Annex 1.

We also intend to undertake further work to consolidate the SME Regulations into the revised Code. Recognising that the SME Regulations currently apply to credit unions, the consolidation of the SME Regulations will coincide with our work to extend the scope of the revised Code to all credit union activities to ensure a consistent approach to both of these initiatives.

⁴³ Code of Conduct on Mortgage Arrears https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/other-codes-of-conduct/24-gns-4-2-7-2013-ccma.pdf?sfvrsn=45fd71d_6.

⁴⁴ Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Licensed Moneylenders) Regulations 2020 <https://www.irishstatutebook.ie/eli/2020/si/196/made/en/print>.

⁴⁵ Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Insurance Requirements) Regulations 2022 <https://www.irishstatutebook.ie/eli/2022/si/126/made/en/print>.

3.1 Consumer Credit

In 2022, the provision of indirect credit such as Buy Now Pay Later agreements (BNPL),⁴⁶ along with Hire Purchase agreements (HP),⁴⁷ Personal Contract Plans (PCP),⁴⁸ and consumer hire agreements, became regulated business. The Central Bank subsequently applied the following chapters of the Code to providers of these products:

- Chapter 2 – General Principles
- Chapter 5 – Knowing the Consumer and Suitability
- Chapter 9 – Advertising

It is now proposed that the revised Code will apply in full to these lending activities, to ensure that customers of these credit providers are afforded the same protections as customers of other credit providers. These additional protections will include the general requirements of the existing Code as well as existing Code requirements relating to provision of information, arrears handling, errors and complaints resolution, and records and compliance procedures. These credit providers will be in scope of the protections set out in the Standards for Business, and the requirements in relation to digitalisation, unregulated activities, vulnerability, climate and frauds and scams, outlined earlier in this consultation paper.

In November 2023, the Central Bank published research on consumers' experience and understanding of [Buy Now Pay Later](#)⁴⁹ products. In 2024, the Central Bank will undertake further consumer-based research and study of indirect credit products to determine if additional requirements might be needed to enhance consumer awareness and to better protect consumers.

⁴⁶ 'Buy Now Pay Later agreement' (BNPL) means an agreement for the provision of credit indirectly to a consumer for the purchase of goods or services from a vendor, whereby the provider of the credit makes a payment to the vendor in respect of the goods or services and the consumer owes an equivalent amount to the provider of the credit.

⁴⁷ Hire purchase (HP) is a type of credit, often available from car dealers. Under a HP agreement, you hire the car, pay an agreed amount usually in monthly repayments, and become the legal owner of the car at the end of the agreement. The legal owner of the car is the finance company that gave you the money to buy the car and you cannot sell the car without the finance company's permission.

⁴⁸ 'Personal Contract Plans' (PCPs) are a particular type of finance which is similar to a standard Hire Purchase agreement. Many of the legal rules that apply to hire purchase also apply to PCPs. However, the major difference is that you pay less of the amount owed during a PCP agreement than with hire purchase, meaning you will still owe a considerable amount at the end of a PCP agreement.

⁴⁹ <https://edit.centralbank.ie/consumer-hub/short-term-credit>.

High Cost Credit Providers

High Cost Credit Providers (formerly known as Moneylenders) are currently subject to the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Licensed Moneylenders) Regulations 2020 (High Cost Credit Providers Regulations) amongst other regulatory requirements. As part of the Code Review, we will consolidate the High Cost Credit Providers Regulations within the revised Code to bring domestic protections together in one place. Where existing requirements for High Cost Credit Providers reflect the requirements within the existing Code, the corresponding requirements of the revised Code will apply to High Cost Credit Providers. Where there are specific requirements within the High Cost Credit Providers Regulations that currently apply only to High Cost Credit Providers, these requirements will be brought into the revised Code (for High Cost Credit Providers).

Reflecting this approach, and considering that the Standards for Business replace and enhance the existing General Principles of the Code and the High Cost Credit Providers Regulations, we are proposing to apply the Standards for Business and the Supporting Standards for Business to High Cost Credit Providers. We will also apply our updated approach to consumers in vulnerable circumstances within the revised Code to High Cost Credit Providers to ensure that High Cost Credit Providers continue to be subject to vulnerability requirements.

We want to hear your views on our proposals:



Are there specific elements of the revised Code that should be tailored to BNPL, PCP, HP and consumer hire providers?



Are there other protections within the General Requirements under the revised Code that we should apply to High Cost Credit Providers?

3.2 SME Protections

Under the RBR, the Central Bank is recommended to review and amend the [SME Regulations](#)⁵⁰ to take account of legislative changes and developments in the Consumer Protection Code.

Under the existing Code, the General Principles apply to business done with all customers, including all SMEs. The other chapters of the existing Code apply to consumers, which includes natural persons and small businesses.⁵¹

The Central Bank has considered the recommendation under the RBR. Our proposal is for the approach to the scope of application in the existing Code to be carried across to the revised Code through the application of the Standards for Business to all customers that the regulated firm does business with including all SMEs. With reference to the Standard for Business and Supporting Standards for Business addressing securing customers' interests, these will apply to firms when doing business with individuals and small businesses.

To ensure that a similar population of small businesses are afforded the protections of the Code to the firms that were protected when the Code was introduced in 2006, we are proposing to update the threshold in the definition of consumer under the revised Code to apply the General Requirements to small businesses, to include incorporated bodies with an annual turnover of less than €5m per annum (current threshold is €3m).

As noted above, it is also our intention to consolidate the SME Regulations into the revised Code as part of further work we will undertake.

As part of this consultation, we want to hear your views on whether there are further elements of the revised Code that should be extended to all SMEs to ensure that the regulatory framework provides appropriate protection for SME customers.

⁵⁰ Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) Regulations 2015 <https://www.irishstatutebook.ie/eli/2015/si/585/made/en/print>.

⁵¹ Small businesses refer to incorporated bodies with less than €3m turnover in the past year.

We want to hear your views on our proposals:



Are there elements of the revised Code that you think should be applied to SMEs?



Do you have any comments on the change to the definition of “consumer” under the revised Code to include incorporated bodies of less than €5m in annual turnover?

3.3 Insurance

Automatic Renewal of Insurance Policies

Automatic renewal is the practice whereby an insurance contract allows for a policy to be automatically renewed, unless the customer tells the insurance provider otherwise before the renewal date. As part of a public consultation on proposals to address differential pricing,⁵² the Central Bank proposed a requirement for written consent from a consumer prior to entry into an automatic renewal process. This essentially proposed to make automatic renewal ‘opt-in’ rather than ‘opt-out.’

In the feedback statement to that consultation, the Central Bank indicated that the proposal required further consideration in order to avoid any unintended consequences. This included scenarios that might lead to consumers being without critical insurance cover.

Automatic renewals can provide a valuable benefit to consumers by potentially avoiding the risk of customers not renewing their policy in time, resulting in a lapse in their cover. However, there are risks involved too. Consumers may miss out on the opportunity to engage with their insurance provider or shop around to find the most suitable or cost-effective product. They may also fail to consider the suitability of the product as their needs change over time.

⁵²<https://www.centralbank.ie/publication/consultation-papers/consultation-paper-detail/cp143---consultation-on-proposals-to-address-differential-pricing#>.

Following further consideration and assessment of the risks and implications for consumers of ‘opt-in’ automatic renewal versus ‘opt-out’, it is now proposed that explicit opt-in for automatic renewal will apply in respect of gadget insurance, travel insurance, dental insurance and pet insurance policies.

In the case of home, motor, and health insurance, it is considered that the potential consequences for consumers should they find themselves without insurance due to a lapse in policy cover, outweigh any potential benefits of requiring opt-in for automatic renewal. For example, having to re-serve waiting periods for health insurance; the potential financial distress should they find their home is uninsured where an insurance risk materialises; or the risk of driving illegally if a motor policy lapses.

In light of the specific characteristics of gadget, travel, dental and pet insurance products, it is considered that the benefits of introducing an explicit opt-in requirement outweigh the potential risks. These insurance types are often sold as add-ons to other products or services. There is also an increased risk that the consumer no longer owns the insurance risk, or it has been covered by another insurance policy. The requirement for cover in these cases is also likely to change over time as the value of the product (e.g. gadget) can decline quickly, and travel plans may change from year to year.

In the case of motor, home, and health insurance, there will be no change in the revised Code to automatic renewal arrangements. In all cases however, consumers can choose to opt-out of automatic renewal at any time.

We want to hear your views on our proposals:



Do you have any comments on the proposals to apply an explicit opt-in requirement for gadget, travel, dental and pet insurance only?

Insurance Switching

It is important that insurance customers are encouraged to shop around to ensure that they continue to access the most suitable product for them. A further enhancement is also proposed to the general renewal requirements for insurance products. In addition to the

‘renewal notice’ currently issued to holders of non-life insurance policies 20 days in advance of their renewal date, an additional ‘pre-renewal’ notification will now be required for consumers a further 20 days prior to the issuance of the ‘renewal notice’. The purpose of this additional renewal notification is to provide consumers additional time to consider their options, make enquiries, and to possibly find a product/provider that better meets their needs.

Recognising the importance of switching in the insurance market, the Central Bank also intends to give consideration to whether research to understand barriers to health insurance switching is needed to support the identification of potential measures to encourage increased switching activity in the market.

We want to hear your views on our proposals:



Do you have any comments on the proposals to introduce an additional renewal notification for non-life insurance products?

3.4 Investments and Pensions

Consumers’ financial needs change over the course of their lives and it is important that when they invest in longer-term insurance and investment products, they keep such products under regular review to make sure that they continue to be the best option to meet their needs.

Recent Central Bank consumer research on Pension Choices and Retirement Planning found that consumers often do not actively engage with their pension(s) until they approach retirement age. The research also found that there can be a gap between what some consumers expect their retirement income will be, compared to what it actually is at retirement.

It is important that when firms are providing longer-term insurance and investment products, they effectively inform customers so they understand the costs, benefits and longer-term implications of the product. The findings from our research show that

effective disclosure by firms can encourage better engagement by consumers with their pension provider or financial advisor, enabling a clearer understanding of the product, what their benefits are likely to be, and what their options will be at retirement.

Recognising the importance of consumers keeping their products under review, we are proposing to strengthen current requirements in the revised Code, so that firms inform their customers of the importance of considering the ongoing suitability of investment and pensions products for their needs at the point of sale, and in annual statements. Importantly, where the firm does not provide ongoing suitability assessments, firms will be required to explain to the customer the reasons for this.

We want to hear your views on our proposals:



Do you have any comments on the proposed enhanced disclosures for long-term investment products and pensions?

3.5 Miscellaneous Enhancements

We are also proposing some additional changes, which enhance some of the existing requirements of the Code. Some examples of these enhancements are outlined below relating to the handling of errors and complaints and record keeping. The mapping of existing codes and regulations to the draft new regulations in Annex 2 will be helpful to firms in navigating other miscellaneous enhancements to existing requirements.

Handling of Errors and Complaints

It is important that financial services firms take ownership and responsibility for managing errors identified and complaints received from customers. Amendments are proposed in the revised Code to enhance governance obligations on firms over the handling of errors and complaints. A new requirement is proposed whereby firms must have a system to track and manage complaints. Firms will be obliged to analyse errors and complaints on a regular basis and at least once every six months, in order to identify and address trends or other potential issues in a timely manner.

Firms will also be required to display their complaints procedure on any digital platform that they operate.

In light of these enhanced governance obligations, it is proposed to remove from the Code the requirement whereby firms must notify the Central Bank of any error which affects consumers, and which remains unresolved after 40 days. There will be supervisory reporting obligations on firms requiring them to notify the Central Bank of more significant errors. The Central Bank will engage with firms on this as part of ongoing engagement on reporting obligations more generally.

Retail Banking Review Recommendation

As part of the RBR, it was recommended that the Central Bank require each firm serving the retail banking market to set out clearly to its customers which Ombudsman/Alternative Dispute Resolution service will deal with complaints, where the customer does not accept the decision of the provider's internal complaints process. This information should be provided to the consumer as part of the pre-contractual information obligations and at the commencement of a complaints process.

The Central Bank has considered this recommendation and we are proposing to implement it by updating the existing Code requirements for firms to provide information on the relevant Ombudsman/Alternative Dispute Resolution service as part of the information provided at the pre-contractual stage and at the commencement of the complaints process.

We want to hear your views on our proposals:



Do you have any comments on the proposed revised requirements for handling of errors or complaints?

Record Keeping by Firms

In response to feedback from our stakeholders, it is proposed to clarify the record keeping requirements that apply to firms in cases where a consumer engages with a firm but does not proceed to become a customer, e.g. when seeking an insurance quote, or applying for a

mortgage. It is important that firms retain information on consumers in these circumstances, e.g. to enable effective handling of complaints that might arise, and to assist the Central Bank in monitoring and supervising firms' compliance with relevant rules and requirements. However, our feedback demonstrates that often consumers are not comfortable with the level of personal data retained by firms of which they are not customers.

As such, in circumstances where the consumer does not become a formal client of the firm, that firm will be required to retain these records for no more than 12 months - reduced from six years under the existing Code. We believe this is a more proportionate requirement. This requirement will be subject to provisions under the [GDPR](#)⁵³ and we will consult with the Data Protection Commission on this during the consultation period.

We want to hear your views on our proposals:



Do you have any comments on the proposed changes to the record keeping requirements?

Further Work

The Central Bank will consider further changes to the revised Code arising from ongoing policy developments at a domestic and European level. For example, anticipated changes under domestic and EU legislation relating to access to basic services such as access to cash, RIS, MiCAR⁵⁴ and the evolution of the EU Payment Services Framework.

The RIS aims to empower retail investors to make investment decisions that are aligned with their needs and preferences, ensuring that they are treated fairly and duly protected. This will enhance retail investors' trust and confidence to safely invest in their future and take full advantage of the EU's proposed capital markets union going forward. Key proposed measures in the RIS include the modernisation of disclosure rules, value-for-money proposals and addressing potential conflicts of interest created by inducements

⁵³ Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)

⁵⁴ <https://www.centralbank.ie/regulation/markets-in-crypto-assets-regulation>.

through prohibiting certain inducements and strengthening conditions where they are allowed. We will monitor the evolution of RIS proposals and consider if any Code changes are required for sectors that will not be in scope of the RIS requirements.

MiCAR will introduce a regulatory framework for European crypto-assets. The new legal framework aims to protect consumers and investors and mitigate risks to financial stability. It will support market integrity and financial stability by regulating public offers of crypto-assets and by ensuring consumers are better informed about their associated risks. We are currently considering how the Code will interact with MiCAR, whether there may be gaps in terms of consumer protection, and what steps we might need to take to address any potential gaps through the Code or other mechanisms.

To ensure that all consumers are afforded the same protections, we also intend to consider the application of the revised Code to credit unions. We will also undertake further work in a number of areas referenced in the RBR recommendations following the introduction of the revised Code. This will include further work on the area of switching which will be informed by our ongoing industry engagement on mortgage switching.

It is clear that the switching process can be made more efficient where there is effective engagement between the existing and new payment account provider, particularly in relation to standing orders, direct debits or other card-based payment arrangements. We engaged on the switching process with firms in the context of the large-scale bank account migration process resulting from the withdrawal of two banks, noting the importance of the consideration of customer impacts (including impacts on customers in vulnerable circumstances), provision of appropriate notice periods, clear, coordinated communications and firms taking a system-wide perspective. As part of this engagement we also noted, more generally, the importance of clear, simple and transparent switching processes, effective implementation of these processes and the importance of engagement with other service providers such as direct debit originators.

All of the learnings from the successful account migration process and consideration of the impacts of open banking and the move away from paper-based systems towards increasing digitalisation, will inform any future policy consideration of the need for a payment account switching code.

Chapter 4: Benefits and Costs

Background

In line with the OECD's policy framework for effective and efficient financial regulation,⁵⁵ consumer protection frameworks should be proportionate in terms of achieving the outcome sought without being unduly burdensome or costly.

Laws and rules impose costs on firms to comply with, and such costs are generally passed on to customers. Therefore, rules introduced to protect consumers' interests should seek to achieve their objective in a way that is proportionate and effective. High quality regulation is forward-looking, connected, proportionate, predictable, transparent and agile – and reflective of cost-benefit considerations.

In regulating financial services and embedding consumer protection within firms, we want to ensure the market properly serves consumers' financial services' needs. We seek to ensure that our regulation is aligned with a well-functioning financial system where there is competition and innovation. It is an important foundation of our approach that a financial system which is centred on the interests of its users, and which accordingly reflects high levels of trust and confidence, will be the most successful in the medium- and long-term. This forms a key part of our perspective in considering the benefits and costs of relevant regulation.

Research and Analysis

Our Code Review has been informed by our research and analysis (and the analysis and research of a range of other authorities and peers) undertaken as part of the development of our October 2022 Discussion Paper, and our extensive engagement with consumers and industry. This engagement included our interactions with stakeholders via roundtables and bilateral meetings, as well as our direct engagement with members of the public through our '[Word on the Street](https://www.centralbank.ie/consumer-hub/word-on-the-street)' video series.⁵⁶ To support the Code Review we have also published an online public survey to help us further understand the perspectives of those who rely on the protections of the framework, as well as those it seeks to

⁵⁵ <https://www.oecd.org/finance/financial-markets/44362818.pdf>.

⁵⁶ <https://www.centralbank.ie/consumer-hub/word-on-the-street>.

regulate. This has generated insightful and diverse input and feedback, which has deepened our understanding of the issues facing industry and consumers.

Our research and Discussion Paper engagement has provided us with a good base on which to develop our own policy considerations in reviewing the Code. By its nature, the evidence gathered was largely qualitative in nature reflecting the broad, disparate range of specific issues covered under the EU and Irish consumer protection framework. The evidence gathered has allowed us to develop a proportionate and effective package of proposals, which can deliver a modernised Code and bring critical benefits for firms and the consumers served by them.

Benefits Assessment

Informed by our engagement on the Discussion Paper and our supervisory experience, our overall goal is to deliver a modernised Code, which builds on the existing Code, reflects the provision of financial services in a digital world, and enhances clarity and predictability for firms on their consumer protection obligations. Critically, we seek to ensure that the system is one where the interests of the consumers and users of financial services are at its centre, thus optimising levels of trust and confidence, and ensuring optimal success of the system in the medium and long-term.

Our proposals under the revised Code are grounded in a desire to address the need to:

- reflect and articulate effectively the developments in financial services and consumer protection of recent years (including to evolve the regulatory framework in line with international best practice);
- bring enhanced clarity and predictability for firms on their consumer protection obligations;
- enhance the coherence, consistency and accessibility of the framework while overcoming structural fragmentation; and
- through the regulatory framework, ensure firms pursue their commercial objectives in a manner that places their customers' (and potential customers') interests at the heart of their culture, strategy, business model and decision-making.

We believe that the revised Code can deliver the following key benefits:

- ensure that the domestic consumer protection framework underpins a well-functioning financial services market that fosters high quality competition between sustainably profitable, resilient, well-run firms, providing appropriate levels of availability and choice to consumers;
- act as a driver and enabler of high quality consumer protection amongst all firms and advance the maturity of the consumer protection regulatory framework through an emphasis on ownership and accountability of firms for the protection of consumers and their role in the securing of positive consumer outcomes;
- support consumers and firms in harnessing the benefits of change and innovation;
- provide increased clarity and predictability to firms on their consumer protection obligations through enhanced coherence, consistency and accessibility of the framework;
- protect consumers from risks and challenges associated with change and innovation;
- support positive outcomes for consumers through the emphasis on the obligation of firms to secure customers' interests as they pursue their commercial goals, supported through related guidance; and
- enhance overall levels of trust and confidence in the financial system on the part of consumers and the public in general, so that it fulfils its potential in supporting the Irish and EU economies.

We therefore see significant benefits from the revised Code. We are also interested in hearing the views of stakeholders as to the benefits of our proposals set out in this consultation paper.

Costs Assessment

Alongside these important benefits, there will also be costs associated with the implementation of the proposals set out in this consultation paper, and it is important to consider if the benefits outlined above outweigh these associated costs.

Importance of sustainable profitability

The Central Bank recognises the importance of sustainably profitable firms to a well-functioning financial services market and the provision of appropriate levels of availability and choice for consumers. At the core of our proposals is a desire to support firms to pursue their commercial objectives (including sustainable profitability to support a well-

functioning financial services market) in a way that reflects a consumer-focused mindset where firms proactively take ownership of, and responsibility for, consumer issues. This has underpinned our approach to the Code Review and the development of the proposals set out in the consultation paper.

What is changing?

In terms of cost impacts for firms, it is important to recognise that the revised Code builds on the existing Code, which has been in place since 2006. The existing Code – namely the General Principles and General Requirements – provide the backbone for the revised Code.

During the period since the introduction of the Code in 2006, what it means to protect the best interests of customers has been the subject of a range of real-life examinations. These have included the tracker mortgage failure, business interruption insurance events, our differential pricing regulation and guidance, the retail banks' account migration experience, and others. All of these have meant that while the shape and meaning of the requirement to protect customers' best interests has emerged more clearly, it has not yet been clearly articulated in its realised form. It is a central aim of our proposals to do that now. In this important respect our proposals do not represent a new additional burden for firms, but rather a clarification of what is required of them in this regard under their existing obligations.

As a result our approach does not, for the most part, involve increasing further the requirements of consumer protection, but rather improves their articulation and makes it easier for firms to be clear about their obligations and how to meet them. This is not to say that there will not be associated costs, but rather that those costs are already implicit in the framework and should not be additionally significant. Addressing proposed changes and enhancements will largely require firms to enhance and refocus existing approaches and processes – rather than introducing completely new approaches and processes, limiting associated cost implications for firms. We are of the view therefore, that there is significant overlap between regulatory consumer protection obligations and the standards that responsible firms themselves would adopt, for reasons connected with appropriate risk control, internal governance and reputation management.

Proportionality

Proportionality has been and continues to be at the heart of our regulatory approach. While all consumers should be afforded the same level of protection - all firms have the same responsibility to secure customers' interests, the Code does not impose an open-ended duty that goes beyond the scope of the firm's role and its ability to determine or influence customer outcomes, or protect customers from all potential harms. For instance, firms are not expected to protect customers from risks inherent to a product, where they have complied with their obligations and have confidence that the customer understands and accepts those risks. Firms are expected to focus on the customer outcomes that may result from their actions, considering what a firm can know, or can reasonably be expected to know, at a relevant time.

Specific incremental costs

We acknowledge that implementation of new provisions and the enhancement of existing provisions, along with the application of requirements to new sectors or business lines, will have tangible incremental cost impacts as firms re-orientate existing resources and apply new resources to the implementation of the revised Code. These will include costs associated with enhancements to systems, processes, policies, and training, which will need to be applied within the proposed 12-month transition period following publication of the final revised Code. We specifically consider costs associated with our vulnerability and digitalisation proposals below.

Vulnerability

The implementation of the vulnerability proposals set out in this consultation paper will have cost implications for industry. As noted in section 2.7 above, firms are expected to understand and take account of the drivers of vulnerability that are relevant to the business of the firm, and to design their systems, processes and procedures so that consumers in vulnerable circumstances are reasonably protected from poor outcomes. This will require training and enhancements to systems, process and policies.

While many large-scale firms already have in-house systems and capabilities to support those in vulnerable circumstances, nonetheless, further costs may be borne to implement the additional measures proposed. We recognise that vulnerability will not always be

identifiable; firms can only be expected to take steps where they could reasonably be expected to be aware that an individual is in vulnerable circumstances.

Overall, we are of the view that our proposals reflect an approach that is grounded in reasonable steps and proportionality, which will deliver improved outcomes for customers in vulnerable circumstances.

Digitalisation

The implementation of the proposed new digitalisation requirements set out in this consultation paper will have cost implications for the financial services industry. However, the Central Bank considers that much of these costs should be viewed as part of the cost of transition to digital-based service provision.

The requirements we are proposing under the revised Code are focused on maintaining appropriate levels of consumer protection as financial services evolve and transform. This applies across the system to both incumbent firms and new entrants. In many cases change and innovation will bring significant efficiencies and cost savings for firms relative to traditional business models. It is reasonable to expect firms and industry to incur some incremental costs in ensuring that the models they are applying do not negatively impact on levels of service and consumer outcomes in a digital context.

We are of the view that our proposals successfully address consumer protections in a digital world in a way that is proportionate and effective.

Overall, it would not be possible for the Central Bank to offer precise, or even reliably approximate figures describing the costs to firms of the implementation of the revised Code. After all, these will depend upon where the firm is at in their business model transition, and on the maturity of each firm's existing consumer protection framework. We are therefore interested in the views of informed stakeholders on cost impacts associated with the implementation of the proposals set out in this consultation paper.

Impact on innovation and competition

Innovation in financial services has the capacity to bring many benefits to consumers, businesses and society. It is essential for a competitive economy and a well-functioning

financial system that delivers for the economy and consumers. The system needs to be able to harness the benefits of innovation while also managing and mitigating associated risks. Within that context we aim to anticipate and support innovation in central banking and financial services, which serves the evolving needs of households and businesses into the future. This aim has underpinned our approach to the Code Review.

As noted above, the requirements we are proposing under the revised Code are focused on maintaining appropriate levels of consumer protection as financial services evolve and transform. Rather than representing a barrier to innovation from incumbents and new entrants, we believe that this is key to maintaining trust and confidence in the financial system, which is fundamental to there being a well-functioning market.

All participants in the system have a role to play in maintaining this trust and confidence and we believe that the revised Code provides a clear roadmap for financial services firms on what their consumer protection obligations are and how they can meaningfully adhere to these obligations in practice. In doing so, we are seeking to contribute to a regulatory context in which positive innovation can support to a vibrant competitive financial services market that serves the needs of consumers.

Overall, it is important that the potential benefits of innovation for consumers, businesses and society can be realised, while appropriate standards are met by firms, with risks effectively managed and mitigated, in order to protect consumers and their funds and the broader economy.

Conclusion

Subject to further stakeholder input, our preliminary consideration of cost-benefits indicates that the benefits strongly outweigh incremental cost impacts of introducing a revised Code. Our proposals are grounded in the objective to bring enhanced clarity and predictability to the area of consumer protection to: support a well-functioning financial services market; to reflect and articulate effectively the developments in consumer protection of recent years; to enhance the coherence, consistency and accessibility of the framework; and to support firms to pursue their commercial objectives in a manner that

places their customers' (and potential customers') interests at the heart of their culture, strategy, business model and decision-making.

A revised Code is required to support firms to better meet their consumer protection obligations and play their role in contributing to a well-functioning financial services system. This is key to underpinning trust and confidence in the financial system, which is essential for a well-functioning market with a flow of new entrants coupled with ongoing orderly exit of firms from the market, and where appropriate levels of competition, supported by transparency and disclosure, drive fair price formation and availability and choice for consumers.

We want to hear your views on our proposals:



Do you have any views on our analysis of the overall benefits associated with the proposals set out in this consultation paper?



Do you have any views on our analysis of the costs associated with the implementation of the proposals set out in this consultation paper?

Chapter 5: Responding to the Consultation and Next Steps

Stakeholders' views are sought on our proposed approach to the revised Code as set out in the consultation paper. The draft regulations setting out the Standards for Business and General Requirements are set out in Annex 3 and 4 to the consultation paper. Draft guidance on Securing Customers' Interests and Protecting Consumers in Vulnerable Circumstances, is set out in Annex 5.

When submitting a response via email, the Central Bank asks that respondents include the following subject heading in their email 'Consultation Paper on Consumer Protection Code' and address their response to: codereview@centralbank.ie. Submissions are also welcome in writing to Central Bank of Ireland, PO Box 559, Dublin 1. It is the policy of the Central Bank to publish all responses to its consultations on our website. Accordingly, commercially confidential information should not be included in consultation responses. Information deemed potentially libellous or defamatory will not be published. The Central Bank will accept no liability in respect of any information provided, which is subsequently released, or in respect of any consequential damage suffered as a result.

What Happens Next?

The consultation period will be open for 3 months until 7 June 2024. We will then consider submissions received, and publish the final revised Code in 2025 alongside a feedback statement.

Implementation

Our proposed approach to implementation seeks to balance the need to maintain momentum on introducing the revised Code and allowing appropriate time for firms to ensure high quality and consistent implementation. Accordingly, we are proposing a 12-month period for implementation from the date of publication of the final revised Code.

We want to hear your views on our proposals:



What are your views on the proposal for a 12-month implementation period? Should some proposals be implemented sooner?

Annex 1: The Legal Framework

Legal Basis, Scope and Structure

The revised Code will be reflected in two new Central Bank Regulations. These regulations will include:

- Standards for Business - Central Bank Reform Act 2010 (Section 17A) Regulations (set out in Annex 3).

The Standards for Business set out governance, resource and risk management requirements for firms. They also set out conduct standards for firms that will replace and enhance the existing General Principles of the Code.

These will be complemented by Supporting Standards for Business which provide further detail on firms obligations. The Standards for Business and the Supporting Standards for Business will apply to the regulated business of firms done with all customers. The Standard for Business and Supporting Standards for Business addressing securing customers' interests, will only apply to firms when doing business with individuals and small businesses.

- General Requirements - Central Bank (Supervision and Enforcement Act) 2013 (Section 48) (Consumer Protection) Regulations (set out in Annex 4).

The General Requirements set out cross-sectoral requirements applying across all sectors, and other sector specific requirements applying to the provision of Consumer Banking, Credit and Arrears; Insurance; and Investments and Crowdfunding.

The General Requirements will apply to the regulated business of firms done with customers who meet the definition of 'consumer' i.e. individuals and small businesses.

These Regulations will also consolidate a number of existing conduct regulations and codes, issued by the Central Bank, into one set of regulations.

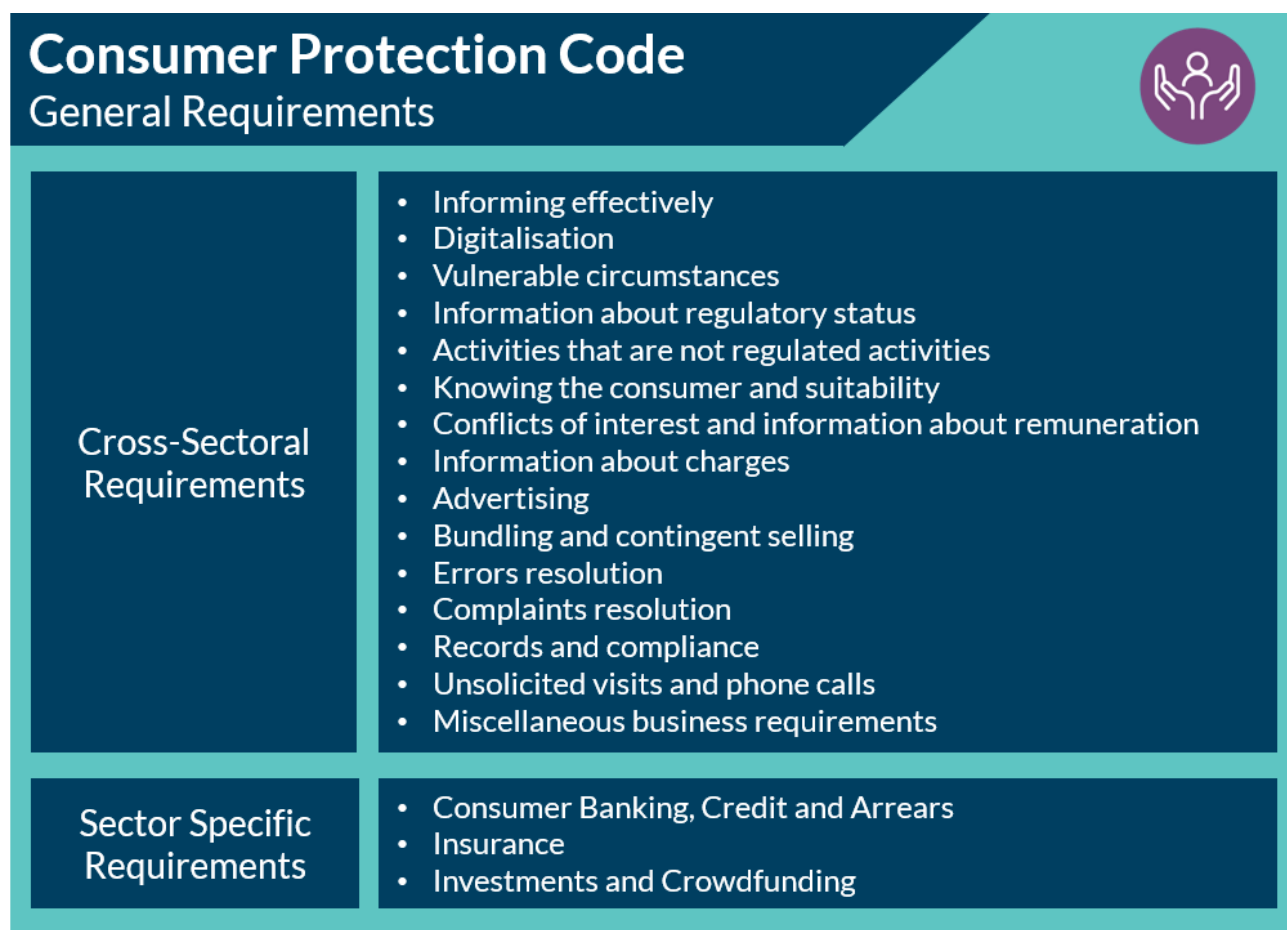


Figure 7 - Structure and Content of Section 48 General Requirements – Source: Central Bank of Ireland

Consolidation

The revised Code will bring a number of domestic consumer protection codes and requirements together in one place. It will consolidate the following Central Bank codes and regulations:

- Code of Conduct on Mortgage Arrears (CCMA).
- Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Licensed Moneylenders) Regulations 2020.
- The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Insurance Requirements) Regulations 2022.

In general, the consolidation of these requirements into the revised Code will not materially change the substance or intent of these existing requirements and they will continue to apply to specific firms as relevant. See section 2.4 of [Chapter 2](#) above for details on proposed changes to the CCMA and Section 3.1 of [Chapter 3](#) for details on how we will consolidate the High Cost Credit Providers Regulations into the revised Code.

Once the review of the Code is complete, we will publish the final regulations comprising of the Standards for Business and General Requirements along with Guidance, which together represent the revised Code. This will be accompanied by a range of supports for consumers and firms including explainers, guides and a Consumers' Guide to the Consumer Protection Code.

The existing Code will be transposed and amended into the Standards for Business and General Requirements. Firms should ensure that they familiarise themselves with the wording of the revised Code so that they can assure themselves of compliance with the requirements. Following this review and the issuance of the revised Code, the existing Code will be repealed.

Guidance

The new regulations will be supported by Guidance to assist firms' understanding of the new requirements and how to embed them effectively. Annex 5 to this consultation paper sets out proposed [Guidance on Securing Customers' Interests](#) and proposed [Guidance on Protecting Consumers in Vulnerable Circumstances](#). We will present guidance on other aspects of the revised Code with the final Regulations reflecting the revised Code.

Scope

The revised Code will continue to protect individuals and small businesses⁵⁷, as is the case under the existing Code. The Standards for Business and Supporting Standards apply in respect of all of a firm's customers (and potential customers) because of the general nature of the standards they impose. As noted above, with reference to the Standard for Business and Supporting Standards for Business addressing Securing Customers' Interests, these will apply to firms when doing business with individuals and small businesses, which reflects the heightened protection required for individuals and small businesses.

⁵⁷ 'Consumer' is defined in the General Requirements as those customers who are: natural persons, or groups of natural persons, or incorporated entities with a turnover of up to €5m.

Additional protections will continue to be provided to individuals and small businesses through the General Requirements, which will reflect new, existing and enhanced cross-sectoral and sector-specific requirements.

The Standards for Business will apply to all regulated financial service providers in Ireland, other than those firms providing MiFID services, or crowdfunding services (for which there is equivalent regimes in EU legislation); and core credit union activities.⁵⁸

The General Requirements will apply to in scope regulated financial services providers who provide services to **consumers** in Ireland.^{59, 60}

As noted above in Section 2.1, we expect firms providing MiFID services to consider and apply the [Guidance on Securing Customers' Interests](#) in the context of their obligation to 'act honestly, fairly and professionally in accordance with the best interests of its clients' under Regulation 31 of the [MiFID Regulations](#).⁶¹

While the General Requirements will not apply to firms providing MiFID services, rules aimed at protecting consumers when purchasing unregulated products or services should also apply to MiFID services. Accordingly, we are proposing to amend the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2023 to include similar provisions as in the General Requirements.

For crowdfunding service providers, we also expect firms to consider and apply the [Guidance on Securing Customers' Interests](#) in the context of their obligation to act honestly, fairly and professionally in accordance with the best interests of its clients' under Article 3 of the [EU Crowdfunding Regulations](#).⁶²

⁵⁸ The Code will continue to apply to credit unions when acting as insurance intermediaries.

⁵⁹ Save for MiFID services and credit union business (other than when acting as insurance intermediaries) and reinsurance.

⁶⁰ 'Consumer' is narrower than 'customer' and is defined in the General Requirements as those customers who are either:

- natural persons, or groups of natural persons, and
- incorporated entities with a turnover of up to €5m.

⁶¹ S.I. No. 375/2017 - European Union (Markets in Financial Instruments) Regulations 2017.

⁶² Regulation 2020/1503 on European Crowdfunding service providers for business.

Where firms are providing crowdfunding services, only the specific sections of the advertising requirements contained in the General Requirements will apply.

To ensure that consumers of regulated financial service providers are afforded the same level of protection when they engage with financial services, we are proposing to expand the full scope of application of the revised Code to:

- Bureaux de Change; and
- Providers of hire-purchase agreements, consumer-hire agreements and/or BNPL agreements.

As noted above, as part of our further work there will be a consideration of the full application of the revised Code to credit unions in due course, in order to ensure their members are afforded the same protections as other consumers.

As other sectors become regulated based on decisions taken at an EU level, or by the Oireachtas, consideration will be given as to whether and to what extent the Code will apply. For example, Member States of the EU are in the process of preparing for the application of MiCAR.⁶³ We are considering whether there may be potential gaps between MiCAR and the consumer protections under the Code and what steps we may need to take to address any potential gaps in the consumer protections that apply.

⁶³ <https://www.centralbank.ie/regulation/markets-in-crypto-assets-regulation>.

Annex 2: Mapping of Existing Codes and Regulations to Draft New Regulations

Link: [Mapping of Existing Codes and Regulations to Draft New Regulations](#)

Annex 3: Standards for Business - Central Bank Reform Act 2010 (Section 17A) Regulations

Link: [Standards for Business - Central Bank Reform Act 2010 \(Section 17A\) Regulations](#)

Annex 4: General Requirements - Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Consumer Protection) Regulations

Link: [General Requirements - Central Bank \(Supervision and Enforcement\) Act 2013 \(Section 48\) \(Consumer Protection\) Regulations](#)

Annex 5: Draft Guidance

Part 1 – Guidance on Securing Customers' Interests

Link: [Guidance on Securing Customers' Interests](#)

Part 2 – Guidance on Protecting Consumers in Vulnerable Circumstances

Link: [Guidance on Protecting Consumers in Vulnerable Circumstances](#)



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