Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

Consumer Protection Code Review

Discussion Paper

October 2022

Contents

Foreword

The next decade is likely to involve rapid change in our economy driven by technology, by an ageing society, by the need to respond to climate change, and by the move to different ways of working. The financial services sector itself is already undergoing transformational change driven by innovation and changes in consumer preferences.

The Central Bank aims to protect consumers' interests through this period of change. We want to better understand, anticipate and be forward-looking and responsive to this emerging context and the far-reaching changes taking place in financial services.

Consumers' interests are best protected through having effectively functioning financial services markets made up of sustainable, resilient and well-run consumer-focused firms who act in their customers' best interests and provide availability and choice.

Our public service mission influences everything we do as a modern, integrated Central Bank. Our guiding principle is contained the State's founding legislation which requires that our "*constant and predominant aim shall be the welfare of the people as a whole.*" The breadth of our mandate enables us to harness our wide-ranging expertise to protect consumers' interests. In short, consumer protection is embedded in everything we do.

We need to ensure we continue to evolve our consumer protection framework and ensure it addresses the challenges faced by consumers of financial services both today and in the future.

The Central Bank's Consumer Protection Code is the cornerstone of our framework. It is time to review it in light of the significant changes we are seeing in financial services. But before we identify specific revisions to the Code, we want to engage with stakeholders on some important consumer-related themes which are set out in this paper. Over the next few months, we want to hear perspectives from interested parties. We want to listen to consumers and their representatives, as well as the financial services industry, government and other authorities.

Our engagement will ultimately inform our detailed review of the Consumer Protection Code itself. I hope that it will also enhance the community's understanding of the role and work of the Central Bank in consumer protection.

Gabriel Makhlouf
Governor and Chair of the Central Bank Commission

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Introduction

Purpose

As part of our five-year strategy, the Central Bank is strengthening our engagement with stakeholders through open dialogue and by deepening our relationships and partnerships. We want to enhance our policy-making capabilities by deepening our understanding of the diverse perspectives of our stakeholders.

This discussion paper represents an important step in strengthening our engagement on consumer-related issues. We see its purpose as the facilitation of two-way discussion and engagement with a range of interested parties, to enhance broader understanding of the role and work of the Central Bank in terms of consumer protection, and to inform us as we undertake our planned review of the Consumer Protection Code (the Code). We plan to update the Code in due course, by setting out both new and existing requirements in regulations dealing with cross-sectoral conduct of business rules.

Overview

The first section of this paper provides an overview of the purpose of financial regulation and consumer protection in terms of market intervention, international best practice on which the Irish consumer protection framework is based, and the role of the Central Bank and of other authorities with whom we collaborate, in seeking to protect consumers of financial services.[1]

The second section of the paper focuses on the fundamental theme of 'securing consumers' best interests,' which is at the very core of consumer protection. In this section we set out two broad discussion themes focusing on Availability and Choice (Broad Theme A), and Firms Acting in Consumers' Best Interests (Broad Theme B).

These themes consider the conditions needed to support consumers' best interests, including the role effectively functioning markets have in providing appropriate levels of availability and choice. In order to help drive better outcomes for consumers, we consider the impact that changes in financial services are having on consumers and how firms can better protect their customers' best interests, supported by proposed guidance.[2]

The third section sets out eight further, more focused, discussion themes which seek to explore important topical issues for consumers. These have been informed by the OECD's ongoing review of, and proposed changes to, the High-Level Principles on Financial Consumer Protection, the global international standard in this area.[3]

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[1] In this regard 'consumer' includes personal consumers and small businesses.
[2] Throughout this paper we use the terms 'consumer' as in '*consumer protection*', and 'customer' as in '*acting in the best interests of customers*'. These terms are used interchangeably, and the use of one or other of the terms reflects the relationship that a person, as a consumer, has with a financial services firm.
[3] https://www.oecd.org/finance/financial-education/g20-oecd-task-force-financial-consumer-protection.htm

Section 1 - Consumer Protection: Framework and Landscape

This section covers the role and regulation of financial services, the purpose of consumer protection, and international best practice in the area, before considering the role of the Central Bank within the consumer protection landscape.

- The Role and Regulation of Financial Services
- Consumer Protection Frameworks – International Best Practice
- The Irish Consumer Protection Framework
- Role of the Central Bank
- Other Domestic Authorities

The Role and Regulation of Financial Services

Role and Impact of the Financial System

The financial system plays a primary role in the provision of finance to households and businesses across the economy. Financial services firms are central to the financial system given their role in intermediating between savers, investors and borrowers. By mobilising savings and investments, they help to ensure resources are allocated to productive activities within the economy.

Financial services continue to grow and evolve in terms of their complexity, and they are increasingly provided on a cross-border basis. This reflects the global and integrated nature of the sector.

Ireland has a highly developed financial services sector. The sector comprises both domestic-facing and international-facing firms, who serve households and businesses within Ireland, across Europe and around the globe.

From a consumer standpoint, the Irish financial system has extensive scale and reach at both a retail and small and medium sized enterprises (SMEs) level. Key services include the provision of over 5.4 million current accounts and 8.7 million insurance policies[4], and the processing of 2.64 billion payment transactions during 2021 (with a total value of €9.26 trillion).[5] Financial services firms are also central to the funding of the economy, providing €101 billion in credit to households[6] and €22 billion in credit to SMEs.[7]

Why Financial Services are Regulated

Most markets for goods and services operate without state intervention through regulation. The financial services sector is different. When financial service markets fail to operate as they should, there can be significant negative consequences for consumers. When larger firms fail, it can impact on the stability of the financial system and the functioning on the broader economy.

The OECD notes that failings can arise in financial services due to the imbalance in knowledge and power between firms and consumers, from lack of transparency and from market abuse.[8] For instance, the imbalance in the relationship between firms and consumers can increase the risk that consumers may not be treated fairly. The relatively

[4] Data from Conduct of Business Returns Dec 2021 – data relates to Irish personal consumers.
[5] Payment data represents transactions recorded by Irish-based Payment Service Providers during 2021 - https://www.centralbank.ie/statistics/data-and-analysis/payments-services-statistics.
[6] Central Bank Statistics July 2022- https://www.centralbank.ie/statistics/data-and-analysis/credit-and-banking-statistics/bank-balance-sheets/bank-balance-sheets-data
[7] Central Bank Statistics March 2022 -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 Note April 2021 - https://www.centralbank.ie/statistics/statistical-publications/behind-the-data/the-role-of-non-bank-lenders-in-financing-irish-smes
[8] https://www.oecd.org/finance/financial-markets/44362818.pdf

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high value and longer timeframe of many financial products, can increase the impact on consumers if things go wrong.

Therefore financial services markets must be regulated. Internationally, governments have intervened in financial services by putting in place central banking, regulatory, supervisory and enforcement frameworks. These frameworks put rules in place both to stop things from going wrong and when they do, to protect consumers, the stability of the financial system and wider economy. This underpins the trust and confidence of consumers in financial services generally.

Market Intervention Limitations

There should be limits to the extent of intervention in financial services through legislative and regulatory frameworks. The OECD's policy framework for effective and efficient financial regulation[9] indicates that state authorities should only intervene where there is an identified market failure that can be addressed through regulation. Where authorities do intervene, they must assess critical trade-offs and alternatives, in the public interest. They must ensure that the benefits of intervention outweigh the costs, with careful consideration of unintended consequences.

The Consumer Lifecycle

Most citizens will, at some point in their lives, need to access financial services. Financial products and services provide many benefits to consumers and they are critical both to their day-to-day lives and in safeguarding their future financial well-being.

As individuals, we go through a Financial Consumer 'Lifecycle' – as outlined in the schematic in Figure 1. The Lifecycle typically starts with our early financial education and goes from our first financial services interaction in terms of opening our first savings account, to our need for access to a car or student loan, app-based payments and insurance protection. Those wanting to buy a home will likely need a mortgage while those planning for retirement, must save and invest in a pension for their later years. At different stages of the Lifecycle, our needs change, as do the risks posed to us as consumers. Throughout our lives, it is critical that we continue to enhance our financial knowledge through education, and that we are safeguarded by consumer protection.

During the Lifecycle we all need financial service access and choice, and due to our personal circumstances, we can become vulnerable. At all times, we require firms to act in our best interests, to inform us effectively, and to be transparent in their dealings with us. As we move through the Lifecycle, a range of cross-cutting issues are central to our consumer protection and well-being – see Figure 1. These feature prominently in Sections 2 and 3 of this paper as both broad and specific discussion themes.

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[9] https://www.oecd.org/finance/financial-markets/44362818.pdf

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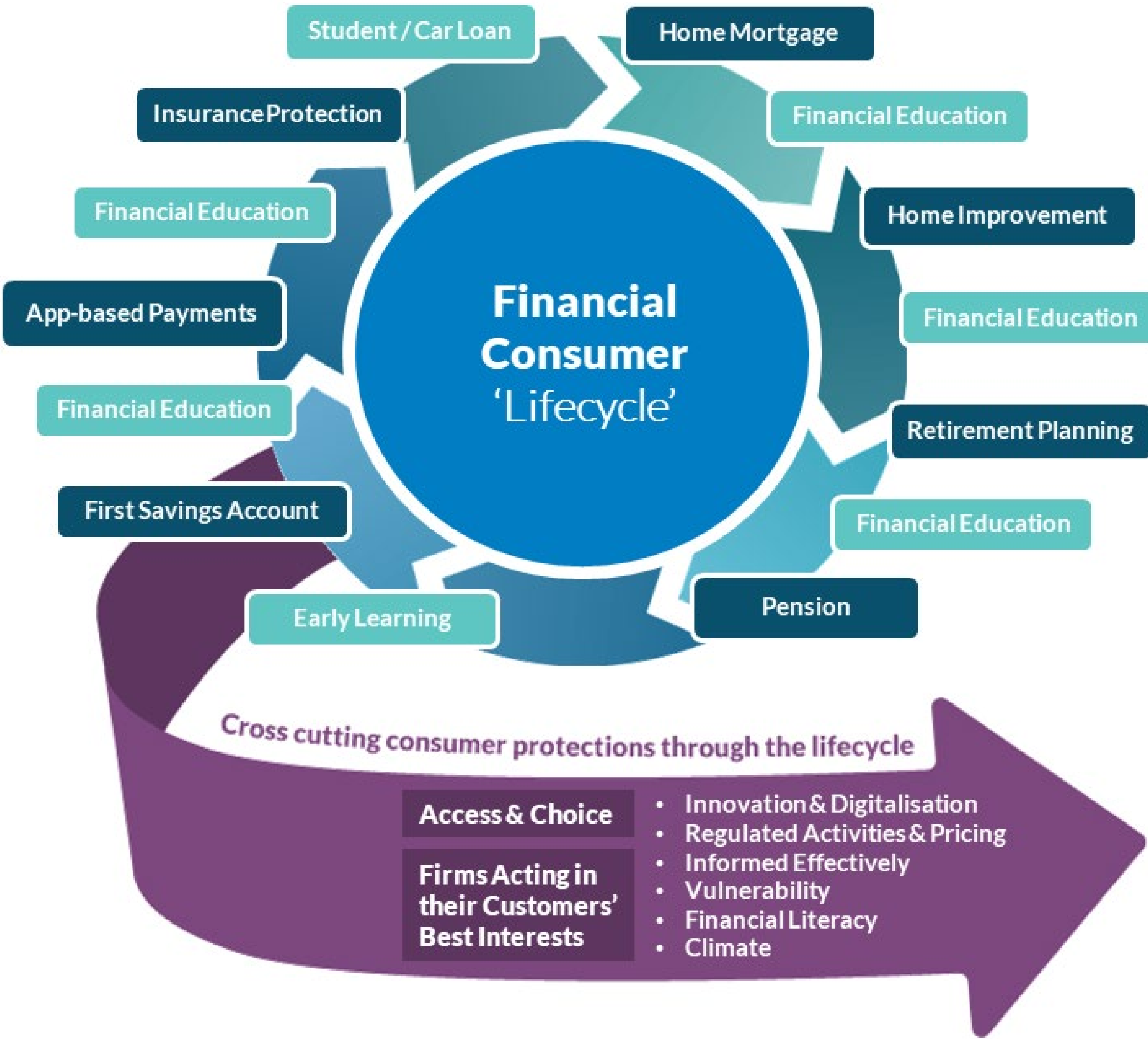

Figure 1 – the Financial Consumer Lifecycle - Source: Central Bank

Conclusion

Given their importance to the functioning of the economy and the welfare of its citizens, financial services markets must be regulated. As consumers advance through the Lifecycle, there are times when they must be shielded from the impact of market failures. While consumers should be free to contract in open and free markets, those markets must be regulated to common standards in the form of legislative and regulatory frameworks designed to protect consumers. In complying with those frameworks, firms must act in the best interests of their customers, to ensure an appropriate level of consumer protection. This is essential to promoting trust and confidence in financial services generally.

Consumer Protection Frameworks - International Best Practice

G20/OECD High-Level Principles on Financial Consumer Protection

The High-Level Principles on Financial Consumer Protection (the OECD Principles) set out foundations for a functioning financial services market which serves the interests of consumers. They are viewed as the global minimum standard for consumer protection.

Figure 2 - G20/OECD Principles. Proposed changes under review are highlighted in green in terms of new principles and new cross-cutting themes. Source: OECD

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The OECD[10] notes that consumer trust and confidence in a well-functioning market for financial services, promotes financial stability, growth, efficiency and innovation over the long term. Trust and confidence relies upon effective regulatory and supervisory frameworks which are central to the protection of consumers. As noted by the World Bank, financial regulators and supervisors are increasingly dedicating resources to financial consumer protection.[11]

Addressed to governments, regulators and firms, the OECD Principles embody fundamental consumer protections, including that:

- All financial consumers should be treated equitably, honestly and fairly at all stages of their relationship with the firm.
- Treating consumers fairly should be an integral part of the good governance and conduct within all firms.
- Firms should have as an objective to work in the best interests of their customers and be responsible for upholding financial consumer protection.
- Special attention should be dedicated to vulnerable groups.

OECD Implementation

The OECD Principles are recognised as being the appropriate benchmark for countries and for regulatory authorities at a national level, regarding consumer protection. A Report by the OECD Committee on Financial Markets reflected an evaluation of international implementation of the OECD Principles.[12, 13]

Overall, the review found that the majority of jurisdictions have fully implemented each OECD Principle, with most of the remaining principles partially implemented. From a regulatory perspective, Ireland was deemed by the OECD to have fully implemented the principles. Through self-certification however, Ireland was deemed to have partially implemented aspects of competition (in secured mortgage lending) and in respect of financial literacy (given the absence of a national strategy for financial literacy).[14]

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[10] The Organisation for Economic Co-operation and Development is an international organisation with 38 member countries. It is a forum for data and analysis, exchange of experiences, best-practice sharing, and advice on public policies and international standard-setting.

[11] https://openknowledge.worldbank.org/bitstream/handle/10986/25196/108122.pdf;jsessionid=47074FC6EAC36047D7A91384CD5181DE?sequence=4

[12] OECD - Report on the Implementation of the Recommendation of the Council on High-Level Principles on Financial Consumer Protection. C(2022)7.

[13] Findings based on responses to a questionnaire – 55 jurisdictions responded to the questionnaire including all G20 countries, FSB jurisdictions, 35 OECD Members and ten other jurisdictions.

[14] The partial implementation recorded for Ireland in 2021 relates to the principles of competition and financial literacy, where some self-reported reservations were made on the full implementation of the OECD Principles. Partial implementation of the competition principle was made on the basis of outstanding recommendations to the Government in terms of market structure, legislation and regulation to lower the cost of secured mortgage lending and improve the degree of competition and consumer protection. With regard to financial literacy, partial implementation was assessed in the absence of a national strategy for financial literacy.

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Ongoing Review of OECD Principles

As the financial services sector evolves so too must the framework, and therefore the OECD Principles are the subject of an ongoing review through consultation. As noted by the OECD: "*it is important that the Principles continue to reflect best practices globally and are forward-looking. There are trends, policy developments or approaches that have evolved since the Principles were first developed, as well as lessons from the COVID-19 pandemic that should be incorporated in a revised set of Principles.*"

The OECD has proposed new principles in relation to access and inclusion and the quality of financial products, and it has placed renewed emphasis on areas such as firm culture and consumer vulnerability (see Figure 2 above). The OECD also has proposed new cross-cutting themes covering the areas of digitalisation, sustainable finance and financial well-being. This forward-looking approach, including the OECD's proposed new principles and cross-cutting themes, has informed our choice of discussion themes outlined in this paper.

The Irish Consumer Protection Framework

Foundations of the Irish Consumer Protection Framework

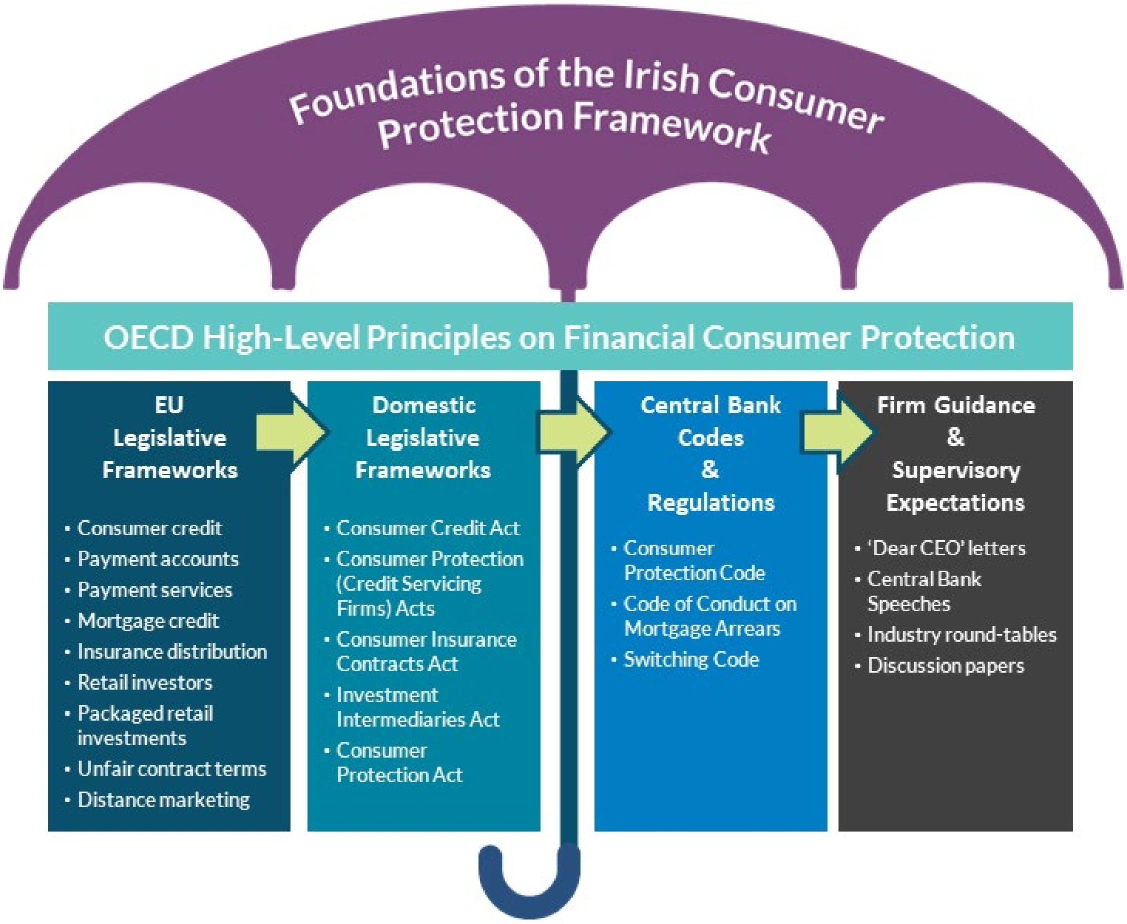

Figure 3 – Representative Overview of the Irish Consumer Protection Framework – Source: Central Bank

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The Irish consumer protection framework comprises a range of EU and domestic legislation aligned with the OECD Principles. Consumers are protected through macro prudential requirements (such as our Mortgage Measures), designed to ensure the financial system is stable, and micro prudential requirements (such as capital and liquidity requirements), designed to ensure individual firms are stable and resilient to shocks. More specifically, the EU and domestic retail conduct frameworks, together with various Central Bank codes and regulations, as well as firm guidance and supervisory expectations, provide the foundations for the Irish consumer protection framework.

EU and Domestic Legislation

Many laws relating to the regulation of financial services firms and the protection of consumers have been introduced at EU level. These take priority over domestic legislation. In areas not covered by EU laws, the Oireachtas has enacted further consumer protection legislation domestically - some of these enactments are outlined in Figure 3, and there will be more legislation introduced over time.

Consumer Protection Code

The Code is a cornerstone of the Irish consumer protection framework. The Code comprises a set of general principles and specific requirements. In their broadest terms, the General Principles of the Code require financial services firms to meet minimum standards of care towards their customers, and to ensure that firms operate to protect their customers' best interests.

Other connected regulations and codes issued alongside the Code include the Code of Conduct on Mortgage Arrears, the Code of Conduct on the Switching of Payment Accounts, Licensed Moneylenders Regulations[15] and Lending to SMEs Regulations.[16] We also seek to further complement the framework through 'Dear CEO' letters[17] or other guidance to firms,[18] as well as communication through speeches,[19] industry roundtables,[20] and discussion papers.

As such, the Code is not static – we have continued to amend and supplement it. In that context, the Code has enabled many of our key interventions to protect consumers – such as tackling the banking sector's mistreatment of tracker customers, and the unfair

[15] Central Bank Act 2013 (Section 48) (Licensed Moneylenders) Regulations 2020
[16] The Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small And Medium-Sized Enterprises) Regulations 2015
[17] For example, in September 2020, we wrote to insurance companies in relation to a review of differential pricing in the private car and home insurance markets - link
[18] Consumer Protection Code - guidance.
[19] For example, in March 2022, the Deputy Governor of Consumer and Investor Protection gave a speech on "Changing individual behaviour and culture in financial services" - link
[20] For example, in May 2022 the Central Bank held a roundtable with CEOs of some of the main banks on retail banking exits and account migrations - link

treatment of loyal customers in the insurance sector. The Code has served consumers well.

In the same vein, the Code continues to drive our work to protect consumers on a daily basis, in tandem with the aforementioned EU and domestic laws. In our annual consumer protection outlook reports, we seek to identify emerging risks and use the Code and the wider framework to ensure firms are working to mitigate those risks. The financial landscape is currently experiencing significant changes on a number of fronts. We have been clear that firms must navigate these changes in a manner that places the best interests of consumers at the heart of their commercial decision-making and avoids creating risks to consumers. And we will intervene where we judge that firms are not doing enough.

Role of the Central Bank

The Central Bank's role is reflected in our mission and is underpinned by our integrated mandate.

Figure 4 –Integrated Mandate

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Mission: to serve the public interest by maintaining monetary and financial stability while ensuring that the financial system operates in the best interests of consumers and the wider economy.

Mandate: under the Central Bank Act 1942, we are charged with the regulation of financial firms and ensuring the best interests of consumers are protected in a way that is consistent with the orderly and proper functioning of financial markets.[21]

Our Consumer Protection Role

The stability of the financial system and the financial soundness of individual institutions, ensures that the system is resilient to shocks and can continue to serve the needs of the economy and its citizens through the cycle.

All our work, from our economic analysis and publications, to our macro prudential and micro prudential requirements, to our conduct requirements and our ongoing supervision of firms, helps to ensure the best interests of consumers of financial services are protected.

The current challenging economic environment is a relevant context for this. High inflation and rising interest rates pose risks and challenges for consumers. Our macro prudential mortgage measures foster sustainable lending standards and prevent an unsustainable relationship between credit and house prices emerging. Additionally when consumers take out a mortgage, banks must stress test new loans based on a 2 per cent increase in the interest rate.

We have also put in place a number of measures to protect borrowers who get into difficulty. The Code of Conduct on Mortgage Arrears (CCMA) provides protections for those in, or facing, mortgage arrears. The CCMA provides a strong consumer protection framework to ensure that each borrower who is struggling to keep up 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 work with distressed borrowers to determine if suitable alternative repayment arrangements can be put in place. They must follow the Mortgage Arrears Resolution Process (MARP) which sets out how lenders must communicate with borrowers and assess their situation with the aim of coming to a resolution.

We have a range of regulatory powers in relation to regulated firms and markets in the areas of authorisation, supervision and enforcement. In exercising our regulatory

[21] Central Bank Act 1942, Section 5A*: subject to subsection (10), the Bank shall perform its functions and exercise its powers in a way that is consistent with: (a) the orderly and proper functioning of financial markets, (b) the prudential supervision of providers of financial services, and (c) the public interest and the interest of consumers. Central Bank Act 1942, Section 6A.2.(b): the Bank has as an objective the proper and effective regulation of financial service providers and markets while ensuring the best interests of consumers of financial services are protected.*

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functions, we work closely at EU level with the European Central Bank, the European Supervisory Authorities and other EU peers in accordance with EU requirements.[22]

We regulate firms[23] through prudential and conduct of business rules designed to ensure firms are financially sound, resilient and safely managed. We take a risk-based approach to supervision whereby the most significant firms - those capable of having the greatest impact on financial stability and the consumer - receive a higher level of supervisory engagement. In line with our risk-based approach, we do not operate a 'no failures' regime. Regulation cannot eliminate all risk or prevent all failure.

We expect firms to have consumer-centric cultures so that they protect consumers' best interests. Firms must also ensure that they can recover if they get into difficulty, and are resolvable without taxpayer recourse, if they fail. All of this together, ensures the protection of consumers.

We intervene where we see widespread or persistent patterns of behaviour by firms, which may cause extensive consumer harm or detriment.[24] We do not have a role at the level of individual consumer transactions with firms. All EU member states are required to establish alternative dispute resolution mechanisms for individual consumer disputes. The Financial Services and Pensions Ombudsman (FSPO) is responsible for the resolution of individual complaints in an Irish context.

Where individual consumers have issues with financial products or services their first line of protection is the firm itself. Firms must respond to customer complaints speedily, efficiently and fairly.[25] Firms also have a responsibility to ensure that issues identified in relation to an individual consumer, are not more widespread within the firm. If they are, they must be resolved for all impacted customers. Where individual complaints are not resolved by a firm to the satisfaction of the consumer, they can refer them to the FSPO.

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[22] The European Supervisory Authorities are: the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), and the European Securities and Markets Authority (ESMA). The EBA works to ensure effective and consistent prudential regulation and supervision across the European banking sector, EIOPA works to promote a sound regulatory framework and consistent supervisory practices to protect the rights of policyholders, pension scheme members and beneficiaries while ESMA works to enhance the protection of investors and promote stable and orderly financial markets. Further information on the role of the ESAs is available at the following link - https://finance.ec.europa.eu/regulation-and-supervision/european-system-financial-supervision_en

[23] The Central Bank regulates over 3,000 firms and over 8,000 investment funds, along with a significant number of firms passporting into Ireland for conduct of business rules.

[24] In 2021 our actions included over 200 interventions with individual firms to avoid or deal with specific cases of consumer harm, the publication of 90 warning notices in respect of unauthorised firms, and the imposition of more than €67 million in fines.

[25] Provision 2.8 of the Consumer Protection Code 2012.

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Other Domestic Authorities

There are a number of other public authorities with responsibilities and competences for consumer protection domestically, including the FSPO and the Competition and Consumer Protection Commission (who are responsible for promoting competition and financial education). Figure 5 provides an outline of the roles of some of these other authorities.

We actively engage and collaborate with the other public authorities and with other stakeholders[26] to deliver our shared purpose of strong protections and fair outcomes for consumers. This includes drawing on their oversight of individual consumer complaints and their insights on financial information and education.

Figure 5 - Examples of Irish Authorities with a role in Consumer Protection – Source: Central Bank

[26] Including the Consumer Advisory Group, consumer representative groups, other State agencies, the financial industry, Government departments, European Supervisory Authorities, and peer regulators.

However, consumer protection is not only the preserve of these agencies. There is a broad network of other public and private sector organisations – from charities and support services to legal agencies and the courts - that provide vital services to consumers, including consumers of financial services. We continue to enhance our own knowledge and understanding of consumer issues through our engagement with civil society organisations, and we expect to build on this through our engagement on this paper.

Integrated Mandate

The Central Bank's integrated mandate covers the maintenance of price and financial stability, the safety and soundness of individual firms and the protection of consumers. It applies across all regulated financial services sectors. Our integrated structure provides key benefits by enabling us to ensure that consumers are holistically protected.[27] The single regulator model enables a cross-sector understanding and oversight of system level, firm level and consumer level risks, and provides economies of scale compared with a multi-agency approach. Jurisdictions that have a multi-agency approach have had to invest heavily in information exchange between agencies, to replicate the synergies available under a single regulator model. A reciprocal peer review of the Consumer Protection Function of the Central Bank of Ireland undertaken in 2015[28] found that we exhibited a strong commitment to consumer protection, and commended a number of our regulatory and engagement initiatives as areas of good practice.

Conclusion

Given the importance of financial services to the functioning of the economy and the welfare of all of its citizens, it requires state intervention in the form of regulation, including consumer protection regulation. The EU and domestic retail conduct frameworks, together with Central Bank codes and regulations and firm guidance and expectations, provide the foundations for the Irish consumer protection framework.

All of the work of the Central Bank across our integrated mandate, is aimed at ensuring that the best interests of consumers of financial services are protected. Our work is informed by our collaboration with other authorities in the national consumer protection landscape, including drawing on their insights from individual consumer complaints, and in terms of market competition and financial education. We must all work together to deliver on a shared purpose of ensuring strong protections and fair outcomes for consumers.

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[27] As noted by the World Bank, the financial crisis revealed the interdependence between financial stability and consumer protection, prompting an increase in the number of financial regulators and supervisors dedicating resources to financial consumer protection: Arrangements for Financial Consumer Protection
[28] Undertaken with the Netherlands Authority for the Financial Markets (AFM).

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Section 2 -
Securing Consumers' Best Interests

This section examines the conditions needed to support the securing of consumers' best interests; developing high quality consumer protection regulation; and the ongoing changes in retail financial services. This provides the context for our two broad discussion themes which we view as central to securing consumers' best interests, namely:

A. Availability and Choice - effective market functioning

B. Firms Acting in Consumers' Best Interests

Conditions to Support Consumers' Best Interests

Features of a Consumer Protection Framework

Financial consumer protection refers to the framework of laws, regulations and other measures designed to ensure fair and responsible treatment of consumers in their dealings with firms and their purchase and use of financial products and services.

We view a consumer protection framework as needing to contain a number of key features. Our thinking reflects international best practice, our existing consumer protection framework (which is grounded in EU and domestic legislative provisions) and our supervisory experience.

In Figure 6, we set out the key features of a consumer protection framework. These features are aligned with the OECD High-Level Principles on Financial Consumer Protection as outlined above.

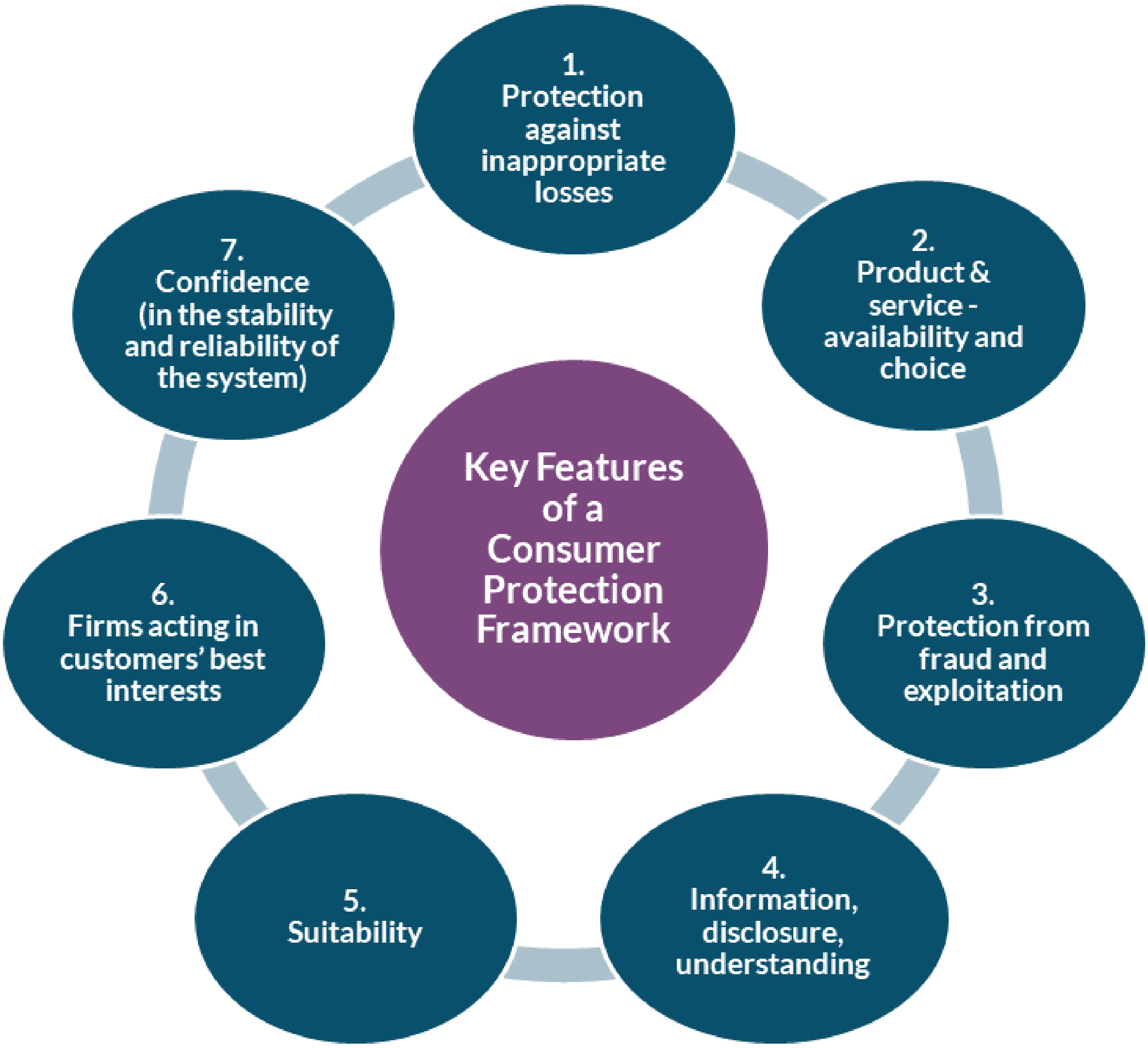

Figure 6 - Key Features of a Consumer Protection Framework – Source: Central Bank

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Many of these features are well understood and regulation seeking to achieve them is well developed. That is not to say that the framework of laws and regulations cannot be improved or enhanced as the consumer environment changes. For example, technology can have a significant consumer impact, positive and negative, including on the effectiveness of the disclosure of information and on enhancing consumers' understanding. We explore relevant consumer impacts in more detail under our specific discussion themes set out in Section 3 of the paper including Theme 1:Innovation & Disruption and Theme 2: Digitalisation.

Some of these features are less well developed than others and our role as a regulator includes ensuring that the consumer protection framework adequately addresses them. For example, the features of 'Product and Service - Availability and Choice' and 'Firms Acting in Consumers' Best Interests' need to be developed further in light of the lessons from recent consumer experiences and the nature of the changing financial services landscape. As a consequence, these issues are a key focus in this paper and we expect to have a wide ranging engagement with stakeholders on them reflecting their importance to consumer protection.

At the core of consumer protection is the need for markets and firms to serve the interests of consumers. Consumer interests are best served through effectively functioning financial services markets providing appropriate levels of availability and choice, from sustainable, resilient, well-run, consumer-focused firms, who act in their customers' best interests.

We view the conditions to support the securing of consumers' best interests as being a function of our first two broad discussion themes.

Our first broad discussion theme, Availability and Choice: Effective Market Functioning, explores how efficient and effective markets can support availability and choice for consumers. We consider the impacts of changes in financial services on the functioning of the market and on availability and choice in terms of meeting the needs of all consumers.

Our second broad discussion theme, Firms Acting in Consumers' Best Interests, explores how firms operating within an effective financial services market must appropriately balance their shareholders' interests with the interests of their customers.

Effective Consumer Protection Regulation

In the context of consumer protection, there is a balance to be struck between seeking to reduce risks to consumers through the imposition of regulatory requirements, and ensuring this does not impose costs on consumers and negatively impact on their freedom to choose the most appropriate provider and product for them. As set out in section 1, there are limitations to market interventions in financial regulation.

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In line with the OECD's policy framework for effective and efficient financial regulation,[29] consumer protection frameworks must 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. We see effective regulation as having:

- Clear objectives aligned with the broader framework
- Predictability
- Proportionality and
- Effective cost-benefit alignment.

In regulating financial services, we must consider whether the market properly serves consumers' needs in terms of effective market functioning, a key theme in the context of the Government's ongoing Retail Banking Review,[30] and one that we want to consider more broadly across all regulated financial services. Consumer protection measures must be balanced to avoid limiting competition between firms, or stifling innovation which can be beneficial for consumers.

Changes in Retail Financial Services

The nature of financial services and how they are delivered to consumers is undergoing transformational change. Areas of change include:

- A rapid evolution in how traditional banking, insurance and other financial services are being provided to customers, including mobile (app based) and online delivery channels
- Transformation in the electronic payments area, including the emergence of, and consumer demand for, instant payments
- Technology-driven development of new Fintech business models targeting the more attractive aspects of traditional financial service provision
- The development of new business models and product categories, driven by the advent of open banking or new cloud and block-chain based technologies
- A range of structural changes taking place within retail banking service provision arising from consolidation through mergers and acquisitions, Brexit impacts, branch closures, withdrawal of cash and other in-branch services, and outsourcing
- The ever-increasing role of data and data-analytics in financial services provision
- The pivot to a climate neutral economy and the need for the financial sector to be at the heart of that transition.

[29] https://www.oecd.org/finance/financial-markets/44362818.pdf
[30] https://www.gov.ie/en/organisation-information/3c122-retail-banking-review/

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A number of the key cross-sectoral risks identified in our Consumer Protection Outlook Report 2022 reflect the impact of these changes on consumers. We expect firms to identify, mitigate and manage these risks so the best interests of consumers are protected. Firms need to navigate change, including the structural changes occurring in Irish retail financial services, while acting in the best interests of their customers.

In this section we consider how changes in financial services are impacting, both positively and negatively, on availability and choice for consumers, and how both new entrants and existing firms can act in customers' best interests as the market for financial services evolves. For each of the themes, we have set out our observations and posed a number of questions for stakeholders. Our overall objective is to listen and engage with stakeholders to inform our future policy considerations at this time of fundamental change.

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Broad Theme A: Availability and Choice - Effective Market Functioning

An effectively functioning market with appropriate levels of competition, and fair and transparent price formation, provides consumers with access to the products they need.

Consumers require appropriate levels of product and service availability and choice to meet their financial needs. The OECD Principles highlight the importance of choice for consumers and the role of competition in providing choice, enhancing innovation and maintaining high service quality.[31] When markets function well, consumers have access to a broad range of products and services, placing downward pressure on prices and promoting higher quality products and services through innovation, as firms seek to attract and retain customers.

Competition and consumer choice in retail banking is being considered as part of the Government's ongoing Retail Banking Review. The outputs of this work and input received as part of the Central Bank's engagement process, will inform the broader discussion on availability and choice for consumers of all financial services.

Key Characteristics of Well-Functioning Markets

An effectively functioning market will have a flow of new entrants coupled with ongoing orderly exit of firms from the market. New entrants and existing firms are encouraged by commercial market dynamics to innovate so they can compete on price and delivery, by introducing efficiencies, or where they develop innovative products or services. In a market based economy it is a matter for firms to take their own commercial decisions on whether or not to enter the market to provide products or services.

Effective market functioning requires consumers to have access to clear and unbiased information in relation to products and services. Clear disclosure of product features, risk and price, allows consumers to select the provider and product that can best serve their needs, promoting competition amongst firms. Where markets function well, competition, supported by transparency and disclosure, drives fair price formation. Where consumers have access to a range of financial services providers and products and services, and

[31] OECD High Level Principles on Financial Consumer Protection - Principle 10 Competition - *Nationally and internationally competitive markets should be promoted in order to provide consumers with greater choice amongst financial services and create competitive pressure on providers to offer competitive products, enhance innovation and maintain high service quality. Consumers should be able to search, compare and, where appropriate, switch between products and providers easily and at reasonable and disclosed costs.*

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access to appropriate advice and clear and unbiased information, they will direct their 'business' to the product or service that meets their needs at a fair and reasonable price. We consider pricing further under Theme 4: Pricing Matters.

Switching

Well-functioning competitive markets depend on consumers being able to switch service providers, and between products, with relative ease. Where barriers to switching exist, such as complicated or time-consuming migration processes, consumers will be deterred from switching, and this can impede their access to the products and services that best suit their needs. Additionally, if firms find it difficult to attract new customers then the incentive to innovate or to compete on the basis of lower prices or better quality service will diminish, to the detriment of consumers.

The Central Bank has undertaken research on switching activity[32, 33] and has issued consumer communications highlighting the benefits of switching. We have put in place a statutory Code of Conduct on the Switching of Payment Accounts with Payment Service Providers to promote a clear and efficient switching process for consumers. We have also introduced requirements to provide additional transparency and facilitate mortgage and insurance switching.[34, 35]

However, switching levels in Ireland for key financial services such as current accounts[36] and mortgages[37] have been historically low. This may be due to the complexity, the cost and the time it takes to complete the switching process, as well as a degree of inertia amongst consumers when it comes to switching.

Notably, the planned withdrawal of KBC and Ulster Bank and the prospect of higher interest rates seem to have prompted an increase in mortgage switching in recent months, albeit from a very low base.[38]

The Central Bank is closely monitoring the current mass account migration process arising from the withdrawal of KBC and Ulster Bank, including assessing ongoing implementation plans at an individual firm and sectoral level to ensure the protection of affected consumers. Switching is also an area being examined as part of the Government's Retail Banking Review. As the Central Bank reviews the activities of payment account providers connected with the ongoing account migration, areas for

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[32] *S. Byrne, K. Devine and Y. McCarthy Vol. 2020, No. 12. Room to improve: A review of switching activity in the Irish mortgage market*

[33] *K. Devine, S. Frost & R. McElligott Vol 2015, No. 8. Switch and Save in the Irish Mortgage Market?*

[34] https://www.centralbank.ie/news/article/mortgage-switching-20-June-2018

[35] S.I. No. 74/2007 - Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) Regulations 2007.

[36] Central Bank Consumer Protection Bulletin - Current-Accounts

[37] Central Bank Consumer Protection Research - Mortgage Switching Research

[38] BPFI mortgage approval data for May 2022 showed re-mortgage/switching grew by 111.5% to 1,237 in volume terms year on year and by 129.3% year-on-year to €329 million over the same period.

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enhancement that are identified will need to be addressed by firms and across the industry. Once the current migration process concludes, this may also inform a future review of the 'Code of Conduct on the Switching of Payment Accounts with Payment Service Providers'- in order to ensure the regulation framework addresses any gaps which emerge from that migration process.

The Impact of Change in Retail Financial Services

Ongoing changes in financial services are having significant effects, positive and negative, on availability and choice. The domestic retail banks are at the centre of the Irish retail financial services landscape, with full service business models offering a broad range of deposit, credit and payment services to consumers and businesses. Within that landscape other traditional players include An Post and credit unions, both of whom have extensive branch footprints nationwide. While the retail banks remain the dominant providers of banking services, the banking ecosystem is in transition, driven by technology-led change and the emergence of new, innovative competitors.

Structural changes in retail banking, including the withdrawal of Ulster Bank and KBC, combined with a number of branch closures by other retail banks, impact on availability and choice for consumers including small businesses, particularly in relation to access to cash services and access to a personal interface and advice. Affected customers must move to alternative service providers and potentially use alternative channels to access basic banking services where they no longer have access to a local bank branch. The Central Bank remains focused on ensuring that all affected customers are supported by firms through the entire process of transition. Further consideration of the effective functioning of the banking ecosystem as it transitions is contained in the Central Bank's submission to the Retail Banking Review.[39] We also recognise the challenges that certain cohorts of consumers may experience in accessing appropriate and affordable insurance cover and the range of reforms that are taking place across the non-life insurance sector.

However, the emergence of new entrants, and changes to how financial services are delivered to consumers, have enhanced availability and choice in some areas. This includes the growth in the number of Fintech, payment institutions and e-money firms[40] providing increased access to alternative payment services and an increasing range of credit providers and products including Personal Contract Plans (PCP) and Buy Now Pay Later (BNPL) products. Retail banks, and other traditional credit providers, such as credit unions, are now in direct competition with non-bank lenders - with research from the

[39] https://www.centralbank.ie/docs/default-source/publications/correspondence/general-correspondence/central-bank-response-to-the-retail-banking-review-consultation.pdf?sfvrsn=d566941d_2

[40] The Central Bank has seen the number of such authorised firms grow from low single digits to over 40 in four years, with a significant number of further applicants currently in the approvals process.

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Central Bank showing that non-bank entities account for more than a quarter of new SME lending, and 13 per cent of new mortgage lending.[41]

Beyond banking and payments, we also see significant growth in technology-driven investment firms, as well as virtual asset service providers, which can bring innovative benefits to consumers and SMEs into the future.

New Delivery Channels

Technological advances and behavioural changes have driven an evolution in public expectations for the delivery and distribution of many goods and services, both from existing providers and new entrants. COVID-19 has further accelerated this trend, leading to an even greater shift towards digitalisation.

While new entrants and increasing digital delivery of services improves availability and choice for many, it is important that a focus on digital service delivery channels does not contribute to financial exclusion. Lack of digital literacy or access to digital tools, can limit availability and choice for some consumers. We consider the impacts of digitalisation further under Theme 2: Digitalisation and Theme 7: Financial Literacy.

Additionally, increased reliance on technology and third party outsourced providers to deliver services to consumers has resulted in increased digital interconnectedness and interdependencies within the financial system, and with technology providers. This leaves firms and consumers exposed to system operational weaknesses, service outages and cyber vulnerabilities which can impact access to critical services. The Central Bank published Cross Industry Guidance on Operational Resilience in December 2021 aimed at enhancing firms' operational resilience.

Regulation and Competition

Regulatory frameworks can have important impacts on the structure of markets. For good reason, they often place constraints on the entry of new firms' into markets through licensing regimes that ensure applicable regulatory standards are met, to protect the economy, consumers and their funds. In order to ensure that the flow of new entrants into the market continues to be well managed, we continually adapt our processes to the changing context. This includes publishing guidance on authorisation processes and expectations for new firms, and introducing practical improvements and efficiencies into those processes (including through the use of IT tools).

As noted in section 1, in delivering high quality regulation it is important that we consider the costs and the benefits of that regulation. Assessing impacts on the functioning of the market and on competition within the market, is an important part of how we regulate. In the context of rapidly changing financial services sectors we plan to enhance our work on

[41] Edward Gaffney, Christina Hennessy and Fergal McCann (Vol. 2022, No. 3) *Non-bank mortgage lending in Ireland: recent developments and macroprudential considerations.*

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the economics of financial regulation in line with orderly and proper functioning of markets. This will equip us to respond to the challenges of ensuring that our regulation is effective.

Regulation and Innovation

Well-functioning financial services markets depend on successful innovation. The ideas, developments and efficiencies that new entrants and incumbents can bring, along with the impact of their innovation on others, are key drivers of effective market functioning.

We support innovations that enhance financial service provision for consumers, while also remaining vigilant to the potential impacts and risks of such innovations on the stability of the financial system and on consumers. Innovation should be for the purpose of generating efficiencies or enhancements to products and services that can benefit both firms and consumers. We explore the impacts of innovation and how we can support beneficial innovation further under Theme 1: Innovation and Disruption.

Summary and Questions

Financial services are undergoing a significant transformation. These changes can improve availability and choice for consumers, but can also have negative effects. Access to basic services, including cash, raises significant social policy challenges. We think that to address some of these important and far-reaching questions, a wider social policy discussion – involving all stakeholders in the cash cycle - should be organised, as outlined in our submission to the Government's Retail Banking Review.

Assessing impacts on the functioning of the market and on competition within the market is an important part of how we regulate and we want to increase our understanding of the interaction of regulation with effective market functioning and availability and choice.

We would like to hear your views on the following questions:

What are your views on availability and choice of financial services and products for consumers?

How important are new providers and new delivery channels to serving consumers' financial needs?

In implementing its consumer protection mandate, how should the Central Bank reflect the importance of competition in its regulatory approach?

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Broad Theme B: Firms Acting in Consumers' Best Interests

While delivering a profitable and sustainable business model, a financial service provider has a fundamental responsibility to place the best interests of consumers at the centre of how its products and services are designed and delivered.

Financial products and services provide many benefits to consumers and are critical both to their day-to-day lives and in safeguarding their future financial well-being.

It is vital that customers' interests are secured at all stages of their relationship with their financial service providers. This means that a firm's management must look at the relationship through the lens of the consumer, as well as from the perspective of the firm's owners. The obligations owed to both should be held in balance, which is achieved by a business model and practices that are centred on the interests of the customer.

While the majority of firms seek to do right by their customers, this is not always the case. When standards are not maintained, this can erode consumer trust and confidence generally, and can have lasting consequences for affected individuals, for the firms involved, and for the financial system as a whole.

Consumer Protection Interventions

Our vision is for a financial services system underpinned by a strong customer-focused culture, with firms and the people working in them acting in customers' best interests.

Since the global financial crisis, we have seen a number of significant examples where firms' actions and behaviours have fallen short of required standards and our supervisory expectations, requiring consumer protection interventions. These include:

- Sale of payment protection insurance
- Treatment of borrowers in mortgage arrears
- Treatment of tracker mortgage customers
- Differential pricing in the insurance market, and
- Responses to business interruption insurance claims.

We have also seen less high profile cases, where poor customer service and consumer outcomes do not meet our expectations, based upon the standards set by the regulatory regime. For example, issues with service outages, handling of errors and call waiting times.

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While there are many examples of firms doing the right thing when faced with difficult decisions, there are also examples of poor conduct and culture. In general terms such examples include:

- Putting the financial interests of the firm (and by extension shareholders' interests) above the interests of their customers
- Taking advantage of resource and information asymmetries
- Providing insufficient disclosure of information to their customers - meaning customers were not able to make informed decisions, leading, in some cases, to decisions being inadvertently made by consumers against their own interests
- Taking undue advantage of customer behaviours and habits
- Failing to resolve identified errors speedily and efficiently.[42]

Where we identify systemic issues we use the full range of our supervisory and regulatory powers to protect consumers. It is concerning that it has required a significant level of Central Bank intervention to protect consumers' interests in these cases. Firms are expected to do the right thing by their customers, not because they are told to do so by regulators, but because it is the right thing to do. It suggests that there remains a gap between firms' practices and behaviours, and what is expected of firms in acting in the best interests of their customers.

Balancing Stakeholder Needs and Objectives

The importance of financial services to consumers' lives underscores the need for the regulation of financial services to protect the wider economy and consumers. The risk of poor outcomes for consumers of financial services is high given the imbalance in the relationship between firms and their customers, with firms often holding a material advantage in terms of knowledge and expertise, bargaining power and/or time. Trust and confidence that firms will act in customers' best interests is essential to the effective functioning of the financial system.

Firms do not have to have exclusive regard to the interests of their customers above all else. If they did, the capacity of the financial system to serve the needs of consumers on a sustainable basis would be undermined, and it is appropriate for firms to seek to deliver a reasonable return for their shareholders based on a sustainable, resilient business model.

Nonetheless, firms need to put consumer interests at the heart of all they do. As highlighted in the Central Bank's 'Behaviour and Culture of the Irish Retail Banks'

[42] See, for example, the enforcement notices published in relation to recent tracker mortgage enforcement cases where many of these failings are evident https://www.centralbank.ie/consumer-hub/tracker-mortgage-examination/aib-ebs-tracker-cases-settled

report,[43] this requires a collective understanding of what 'consumer-focused' means and the type of behaviour it requires, including how it must be reflected across a firm's culture, structures, processes and systems.

Acting in the best interests of customers and treating them fairly does not mean that a firm cannot make commercial decisions in the interests of the firm and its shareholders. It means that firms must ensure that customer interests are not disregarded or compromised, in the interests of shareholders. It is a question of maintaining both perspectives in equilibrium – by ensuring that business models and practices are centred on customers' interests while being sustainably profitable. This does not mean that firms cannot innovate and become more cost efficient and effective. It means that these objectives cannot be pursued without full consideration of how changes and developments affect customers, and how customer interests will continue to be secured.

Firms can pursue commercial goals, but they cannot seek to generate inappropriate gains or commercial advantages by leveraging consumer vulnerabilities created, for instance, through information asymmetries or consumer behaviours and habits such as inertia.

Acting in the Best Interests of Customers – Knowing What is Expected

A central question then is – given the requirement to achieve an equilibrium between the interests of its customers and the interests of its shareholders - how can a firm be confident that it is getting it right? Or, in other words, where faced with a decision in the context of evolving its business model or responding to changing circumstances, how can a firm know that it will be deemed to have secured the interests of its customers?

We think that it might be helpful to develop guidance on what it means (and does not mean) for a firm to act in the best interests of its customers and potential customers.

There are pros and cons of developing such guidance. On the positive side it can bring enhanced understanding and predictability. This can be helpful to all concerned: to firms, so that they can plan with increased confidence that they will not find themselves on the wrong side of the legal framework. And to customers, so that they understand the limits of their protection and are clearer about where their own responsibilities arise.

On the downside however, there is a risk that in seeking to specify more precisely the meaning of 'best interests', the strong self-evident imperative to 'do the right thing' becomes watered down and replaced by a more rules-based or legalistic conception.

We believe, in line with the proposed way forward set out below, that the benefits of additional guidance in this area can be achieved and the downsides mitigated. We would welcome respondents' views on this central question.

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[43] https://www.centralbank.ie/docs/default-source/publications/corporate-reports/behaviour-and-culture-of-the-irish-retail-banks.pdf?sfvrsn=2

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Developing Central Bank Guidance on 'Best Interests'

How might such guidance look? In outline form it might be structured around a number of key components such as the following:

- Acting in customers' best interests is **a holistic requirement**. Firms need to satisfy themselves that their actions further the interests of their customers, not simply comply with the rules;
- This means firms should **focus on the outcomes for customers** and whether those outcomes are what would be expected where firms are acting in the customers' best interests;
- In deciding what it means to 'act in the best interests of customers', a key determinant is the **legitimate expectations** of those customers. In determining legitimate expectations, relevant factors include:
    - The **information provided, and how an ordinary, time-constrained consumer would reasonably have understood it**;
    - **What an ordinary consumer in the relevant market would have expected**, on the assumption that that firm had the customer's best interests at heart;
- The **culture, strategy, and approach** of the firm should centralise the interests of customers;
- The firm must maintain an appropriate **balance between the interests of shareholders and the interests of customers**;
- In terms of business models, targeting **a sustainable, reasonable (risk-adjusted) return on capital** for the activity in question over an appropriate time horizon has the greatest likelihood of complying with the best interests obligation;
- **Inducements from third parties must not impair compliance** with the regulated firm's duty to act honestly, fairly and professionally in the best interests of the customer;
- **'Customers' has a collective and individual meaning**: failing to protect the interests of one customer, or group of customers, cannot be justified by protecting the interests of others;
- Diversity of cultures and business models are to be expected (and are desirable). **Different customers want different types of products and services**, with different levels of individualisation and complexity. It is important to **ensure alignment of service and product with the legitimate and reasonable expectations of customers**;
- **Asymmetries (of resource, information and expertise) must be identified and recognised, and deployed to the benefit of customers**;

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- A high level of contractual clarity must be provided to customers. **Where material ambiguity arises, this must be interpreted in favour of customers**;
- **Firms must not take undue advantage of customer behaviour or habits** to the benefit of the firm and/or at the cost of the customer. This does not mean that consumer behaviour or habits cannot be integrated into the firm's approach, but that this must only be done in a way that is designed to enhance customer outcomes; and
- Where failures or weaknesses are identified in the treatment of one customer or a group of customers, an impact assessment should be undertaken so that **issues are addressed for all customers in a similar position**. In addition, in cases where issues are to be resolved on the initiative of the firm, remediation should be accompanied by full disclosure to provide transparency and accountability on the remediation plan.

We want to hear your views on the following questions:

Do you agree that the Central Bank should develop guidance on what it means for a firm to act in the best interests of its customers?

Does the suggested outline of 'customer best interest' guidance capture the essence of the obligation to act in customers' best interests? What other guidance would you suggest?

Section 3 - Specific Discussion Themes

This section outlines eight further discussion themes covering specific topics of importance to consumer protection and our planned review of the Consumer Protection Code:

Specific Discussion Themes

- **Theme 1:** Innovation & Disruption
- **Theme 2:** Digitalisation
- **Theme 3:** Unregulated Activities
- **Theme 4:** Pricing Matters
- **Theme 5:** Informing Effectively
- **Theme 6:** Vulnerability
- **Theme 7:** Financial Literacy
- **Theme 8:** Climate Matters

Introduction

We have explored above, the broad themes of Availability and Choice: Effective Market Functioning and Firms Acting in Consumers' Best Interests. In helping to secure the best interests of consumers, we highlighted the important role of effective market functioning and appropriate levels of availability and choice, and we showed how firms need to act in the best interests of customers – including with the support of future guidance if deemed appropriate.

The consideration of these broad themes, the changes being considered in relation to the OECD High-Level Principles (under review at present), the changes in financial services landscape and the lessons from our recent interventions to address widespread consumer detriment, raise a series of further discussion themes that we explore in this section.

Many of the changes we are seeing in retail financial services can bring about benefits for consumers. In order to better understand the consequences for consumers of technology-led change in financial services and whether newer activities should be brought within the regulatory perimeter, we would like to open specific discussions on the themes of: 'Innovation and Disruption', 'Digitalisation' and 'Unregulated Products and Services'.

A consumer's capacity to make an informed choice regarding financial products and services is a key feature of effective market functioning and consumer protection. This issue raises a number of important questions which we would like to explore with stakeholders under the specific discussion themes of 'Pricing', 'Informing Effectively', 'Vulnerability' and 'Financial Literacy'. These themes permeate all consumer-focused discussions and are not unique to financial services. However, they have particular meaning and require careful consideration by all regulators in the context of the changes taking place within financial services today. Finally, we explore issues arising from 'Climate Change' from the perspective of consumers and their protection.

As in Section 2, we have set out our observations on each specific theme and we pose a number of questions for stakeholders with the objective of listening and engaging with them, to inform our future policy considerations at this time of transformational change.

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Theme 1: Innovation & Disruption

The speed and scale of innovation in financial services is bringing unprecedented change and disruption. Innovation provides many opportunities, but also risks, for consumers and firms. Consequences and effects need to be carefully considered.

Technological innovation[44] is a key feature of the environment in which we seek to deliver our mandate. We are at a moment of unprecedented technological-led transformation in financial services. The nature and structure of financial services provision, and the manner in which it is provided to consumers, is undergoing immense change. Innovation provides opportunities for firms to transform their business models in order to grow revenues and extract cost efficiencies. Innovation also presents clear benefits for consumers, who are experiencing greater choice and ease of access to financial products.

However, innovation also brings challenges such as continuing access to services for some consumers, the appropriate use of data, including personal data, and the nature of the decision making process for more financially significant and complex products. These issues need to be properly considered and understood to ensure consumers are appropriately protected, while potential opportunities and benefits for consumers are maximised. We specifically look at the effects of digitalisation on consumers in Theme 2: Digitalisation. Under this theme, we focus on innovation more broadly, considering its effect on the functioning of the market and the implications for regulation.

We seek to deploy our regulatory powers so that benefits of change and innovation are realised for consumers and for the economy, with risks appropriately mitigated. We want to help foster an innovative, resilient and customer-focused financial sector in Ireland, one which sustainably serves the evolving needs of households and businesses into the future. We also recognise the need to evolve our approach to support and keep pace with innovation. To that end, we monitor approaches and experiences in other jurisdictions to inform the evolution of our approach, including a consideration of innovation support structures seen elsewhere. We are interested to hear views on how we can foster innovations that can improve market effectiveness and benefit consumers.

Innovation Hub

In April 2018, the Central Bank launched the Innovation Hub (the Hub), supporting our open and active engagement on innovation issues. It was established to facilitate

[44] Technological Innovation refers to development of new services and products in the marketplace where technology represents significant aspects of the innovation. This innovation fulfils a need or provides a new or improved solution to existing problems or gaps in the market.

engagement and access by providing a direct point of contact for technology-led firms as well as more traditional providers looking to engage with us on innovation issues. The Hub provides the Central Bank with early intelligence on such innovation, especially where it is being developed outside of the regulatory perimeter. It has proved very successful. Annual reports on the Hub's activities can be found here.

As our approach matures and our understanding of the needs of the market develops, we think it will be desirable to enhance our engagement with innovation and innovators, and the role of the Hub. For example:

- We believe it would be useful to continue to enhance our pre-application engagement with firms that are considering seeking authorisation and are new to the authorisation process. Such engagement would also allow us to leverage our own technological, innovation, and related regulatory expertise, to enhance the efficiency and effectiveness of our authorisation processes;
- We also think it would be useful to enhance the Hub so that it becomes an active focal point for productive exchange between innovators and the financial regulatory system. On the basis that innovation brings many potential consumer benefits and that the Central Bank has a deep bank of knowledge, insight and experience into the functioning of the financial system and its regulation, there is an opportunity for us to enhance the positive impact that we could have in this area;
- We have seen a variety of approaches to providing a space where the better interaction of regulation and innovation can be supported in other jurisdictions – including different types of arrangement described as a 'regulatory sandbox'. We want to be to the fore in this area and would like to hear views on how best to achieve this. As part of our continuing review of our Innovation Hub, the Central Bank plans to consult on proposed enhancements in 2023 with any changes to be implemented over the course of our current strategic cycle.

New Types of Firms

Increasingly, technological innovation is resulting in new types of firms entering the financial services market such as Fintech and Big Tech firms. Consumers increasingly expect a consumer-centric, seamless digital experience when buying financial products and services or engaging with their financial service provider,[45] and these drivers are demanding solutions which innovation is well placed to provide.

The advent of open banking coupled with new technologies is facilitating new entrants from the Fintech sector with new business models focused on bringing improved functionality and efficiencies for firms and consumers. This is disrupting the market with

[45] Central Bank Discussion Paper: Consumer Protection Code and the Digitalisation of Financial Services (2017)

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more agile new entrants competing with traditional providers through remote online offerings, without the need for a physical branch footprint.

New payment methods and platforms are challenging the traditional role and dominance of banks in particular. Digital payment channels have lowered the barriers to entry for alternative payment providers, who can meet the evolving needs of consumers who want immediate and convenient access to payment services through technology and want to bypass traditional branch-based interaction.

The disintermediation of financial services makes it likely that large tech players may enter the market. Big Tech firms have the size, scale and capabilities to provide consumers with new products and service offerings from customer-centric digital platforms, with the capacity to target more profitable business activities using their technology and data-led expertise and innovative capabilities. It is anticipated that their large customer bases, global brands and reach, and their sizeable financial resources, could permit them to have a transformative effect on key aspects of retail financial services.

While such a development could bring positive benefits for consumers, it also carries significant risks. These include risks to financial stability from the significant scale of some of these potential entrants; risks to consumer interests arising from the different cultural profile of such firms; and financial crime and money laundering risks. The proposed Digital Operational Resilience Act[46] (DORA) and Markets in Crypto Assets (MiCA) legislative packages in the EU provide a good basis to start addressing key risks. Nonetheless, we think that the challenges remain significant and that this will be a very important area of focus during the coming period.

The Crypto Sector

The crypto sector is based on a technology known as 'blockchain' or 'distributed ledger technology'. This innovation allows payments to be made electronically and function in a similar way to standard currencies that use physical cash. Blockchain as a technology can provide important positive benefits for consumers including increased efficiency and transparency with reduced costs. However, it is also associated with the emergence of a range of complex, speculative crypto-based products, which can pose risks to consumers. We remain concerned by the consumer investment risk associated with certain crypto-based products - in particular where they are unbacked (or ineffectively backed), unregulated, and are promoted purely for speculative purposes.

[46] Proposal for a Regulation of the European Parliament and of the Council on digital operational resilience for the financial sector.

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While there is limited reliable data on crypto asset adoption in Ireland, a consumer survey from the CCPC on investment trends found that 11% of adults with investments hold crypto assets with this increasing to 25% amongst those aged 25-34 years.[47]

The Central Bank welcomes the EU Commission proposal for a new EU legislative framework for crypto activities, which seeks to address gaps in regulation. The purpose of the MiCA proposal is to address the risks to consumer protection and market integrity from crypto, along with specific risks to financial stability and monetary policy. It aims to provide a high quality, consistent framework across the EU for the ongoing development of this important field of innovation using blockchain-based technology.

MiCA will impose consumer protection measures on Crypto Asset Service Providers (CASPs),[48,49] including governance obligations, minimum capital requirements, and transparency requirements which will impose minimum standards for advertising and marketing. MiCA will also provide for prohibitions on insider dealing, market manipulation and unlawful disclosure of inside information.

We believe that a central challenge in the coming period will be to support the ongoing development of blockchain technology-based products and the realisation of their potential. This will require the provision of regulation and oversight that allows crypto products to deliver benefits and efficiencies relative to existing products and instruments, while seeking to ensure that risks do not develop that could materially undermine confidence in the financial system, create instability, or harm consumers' interests.

A Digital Euro

Within the Eurosystem, the Central Bank is investigating the potential issuance of a central bank digital currency as part of a European Central Bank-led project. A digital euro, which would complement euro banknotes and coins, would be a central bank liability similar to physical euro banknotes and coins, but offered in digital form. It is envisaged that it would be a fast, secure and easy to use instrument, which would be available for use by consumers and businesses for everyday payments. This would ensure continued access to widely accepted, safe and trusted means of payment for the digital age.

A digital euro could support wider EU policy objectives including the digitalisation of the European economy and fostering the international role of the euro. A digital euro could also help to tackle specific monetary concerns by responding to the declining use of cash as a means of payment, and ensuring the normal provision of payment services.

[47] https://www.ccpc.ie/consumers/2021/09/16/ccpc-research-consumers-are-going-digital-with-investments-as-majority-invest-online/

[48] CASPs are firms that provide crypto asset services to third parties on a professional basis.

[49] The issuance of Bitcoin and other unbacked crypto will not be within the scope of MiCA. However, CASPs - which provide the interface between the consumer and the product - will be regulated.

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Advances in the use of AI and Big Data

The emergence of increasing quantities of financial data as a phenomenon is referred to as 'Big Data'. When paired with the improvements in computing power and data storage capabilities, it is highly likely financial institutions will find new ways to leverage Big Data, expanding the range and frequency of data collected and the sophistication of analytics technologies applied to data.

The use of analytics technologies together with Big Data are foundational for Artificial Intelligence (AI), a fast evolving family of technologies that can improve prediction, optimise operations and resource allocation, and lead to more personalised financial services for consumers. Additionally, AI can remove unintended human bias in decision making processes, so long as the bias is not programmed into algorithms. In these ways, the use of AI can improve the experience of financial services for consumers leading, for example, to faster, more advanced and accurate credit worthiness assessments and underwriting decisions.

The use of Big Data and AI also presents risks to consumers, for example in terms of information asymmetries. From a consumer perspective, these asymmetries, facilitated by algorithmic profiling which is invisible to consumers, have the potential to create an inequality where a firm has much greater knowledge about the consumer, affecting how the firm markets products, prices products for the consumer and ultimately sells to the consumer. Used inappropriately, it could facilitate the exploitation of consumers, including those who are less familiar with technology, and enable unfair profiling.

Summary and Questions

The speed and scale of technological innovation in financial services is bringing unprecedented change and disruption to retail financial services. Innovation provides both opportunities and risks for consumers and firms. The consequences and impacts of innovation need to be carefully considered, to ensure consumers are appropriately protected, while potential opportunities and benefits are maximised.

We want to hear your views on the following questions:

Do you agree with our proposed approach to enhancing our Innovation Hub?

What more should be done to support innovation while ensuring consumers' best interests are protected?

How can regulators ensure that neither firms currently in the market, nor new entrants, have unfair advantages which could be a barrier to fair competition?

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Theme 2: Digitalisation

Digitalisation is changing how we access financial services. While digitalisation brings ease of access and efficiency for many consumers, careful consideration of potential risks is needed.

Under Theme 1: Innovation & Disruption, we considered the impact of technology-led innovation from the perspective of changes within the financial services market and related implications from a regulatory perspective. In this theme, we focus more specifically on the impacts of increased digitalisation on consumers of financial services.

The proportion of financial products and services provided online via digital means is growing rapidly, and the pandemic has accelerated the use of technology. Recent research carried out by the Central Bank shows that 94% of consumers in Ireland have access to a digitally-enabled device, with 80% using digital technology to access financial services.

Benefits and Risks

The increase in the use of and reliance on technology brings clear benefits to consumers of financial services. It provides 24 hour access; broadens the range of providers thereby increasing competition; provides faster, cheaper processing of payment transactions; and provides new tools to help consumers understand and manage their finances.

However, these new ways of doing business can have downsides. Consumers can be excluded from services due to limitations in their access to and/or their ability to use digital technology. As the CCPC has noted: *"to ensure a high level of consumer protection, regulation must adequately consider the risk of digital exclusion."*[50] Risks can also arise from the speed and ease at which contracts can be completed and the absence of any human interaction and/or advice to support decision making. The extent to which personal data is available to firms is open to misuse. Increased reliance on technology also leaves firms and consumers exposed to operational resilience issues in terms of system weaknesses, outages and cyber vulnerabilities.

Online Decision Making

The opportunity to read and digest important information can be reduced during digital transactions, limiting the potential for consumers to fully appreciate and understand the commitments and risks being undertaken. Transactions online can be completed speedily, and there is a lack of real-time oversight by firms of how the customer is interacting with the technology.

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[50] https://www.ccpc.ie/business/wp-content/uploads/sites/3/2022/08/CCPC-Submission-to-the-Department-of-Finance-Retail-Banking-Review-Consultation.pdf

The EU Commission has already proposed a number of measures in this area which aim to reduce the speed of the digital process, in order to prompt the consumer to pause. The aim of these 'speedbumps' is to reduce the risk of consumers entering into transactions that may be unsuitable due to the speed and ease of the process.[51]

Online Delivery of Credit

One important aspect of financial services where digitalisation is having a significant impact is in the provision of consumer credit. Many borrowers now access credit online, without any physical contact with the credit provider. The move to digital delivery of this fundamental financial service highlights key benefits and risks associated with a move away from a personal interface. The availability of and ease of access to credit can increase the risks posed by irresponsible lending for instance through aggressive and unsolicited marketing driven by on-line tracking and profiling, which can entice consumers into easily and quickly accessible loans.

Use of Technology in Insurance

The availability of digital technologies and Big Data increasingly allows firms to use data modelling techniques to assess the risks posed to them in pricing insurance cover and to inform product design and claims handling. While these changes can result in benefits for customers and insurers through more efficient new business and claims processes, there is a risk that they lead to poorer customer outcomes. The Central Bank is currently looking at the ethical use of data in the various stages of the insurance lifecycle while considering the range of potential risks that may arise for consumers and possible mitigants to risks, via a project funded by the EU.

Use of Personal Data

The Central Bank is not the regulator for the gathering, retention or use of personal data, but the availability of Big Data does raise questions of how to secure the best interests of consumers when financial services firms are using such data.

In Theme 1: Innovation & Disruption we discussed the impact of Big Data on the financial services market. Increasing digitalisation is expanding the availability of financial data facilitating digital profiling and target marketing. The internet and social media represent a deeply data-rich and data-driven environment. This allows firms to access detailed

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[51] European Commission - Directorate-General for Justice and Consumers (2019). *Behavioural Study on the digitalisation of the marketing and distance selling of retail financial services. Final Report*
Some suggested measures include:
- immediately prior to the conclusion of a binding agreement to provide a financial product or financial service on a digital platform, including an explicit advice to a consumer to take time to consider that they wish to enter the transaction;
- preventing the use of preselected options ('pre-ticked' boxes) to ensure the consumer is actively making decisions during the process and is not being nudged in a pre-determined direction;
- requiring a consumer to actively 'scroll' through key information and ensuring that a contract cannot be concluded until the consumer has actively and fully scrolled through the key information.

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information about the lives and lifestyles of consumers who, often unwittingly, provide information about themselves to internet service providers, which can be sold to other firms including financial services firms. This allows firms to directly target products and services to individual consumers based on certain data characteristics.[52]

There are risks associated with digital profiling, as consumers may not be aware of the extent to which the content they see is targeted or personalised to them. They may assume the products advertised to them are the most suitable based on the information they have provided when, in fact, they may be the most expensive products which are deemed by the product provider to be of interest to the consumer.

Personalisation and targeting can impact on consumer choices and decisions. An experiment evidenced in a report published by the EU Commission[53] found that participants were significantly more likely to purchase personalised products if they were shown targeted advertising combined with personalised ranking of offers (websites changing the order of search results when different consumers search for the same products online). This is consistent with other studies[54] which found that behaviourally targeted adverts result in increased purchase intentions for the advertised product.

The EU Commission study also tested a potential remedy to the practices of targeting and personalisation, namely providing consumers with transparent communication about the personalisation that was occurring. The experiment found that, when this transparent communication was provided, the combined impact of targeted advertising and personalised ranking of offers, was erased.

Issues relating to the collection, use, storage and manipulation of data are being considered by governments, regulators, and other stakeholders globally. Pre-existing legislation covering equality, data protection, human rights, artificial intelligence, commerce and marketing, are all impacted by data ethics. Consideration needs to be given to the extent to which financial services firms can be allowed to use personal data, particularly big data and techniques such as machine learning which are enabled by such data, where significant imbalances between firms and consumers already exist.

Gamification

Another feature to emerge with digitalisation is the use of game-like features to entice customers to transact in larger volumes and/or more frequently. For example, some online trading services offer customers rewards such as bonuses, reduced costs or privileged access (such as tutorials) based on number of trades, or amount invested. The use of gamification techniques can improve the consumer's experience and help to convey

[52] ibid.
[53] ibid.
[54] Summers, C.A. Smith, R.W. and Walker Reczek, R. (2016). *An Audience of One: Behaviorally Targeted Ads as Implied Social Labels.* Journal of Consumer Research, Volume 43, Issue 1.

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complex information in a simple and rewarding way. But the inappropriate use of these techniques can push investors to make poor decisions based on emotions rather than through rational decision-making.

Our Expectations

We expect that digital platforms are designed with the consumer's interest in mind. We expect firms to ensure that digital platforms are easy to navigate, to use and to understand, ensuring that consumers do not need specialist knowledge in the use of such technology. It is important to ensure that certain cohorts of consumers, including those with poor digital literacy, are not excluded through poor design. The use of technology by consumers should serve their interests and not be viewed as an opportunity to take advantage of their behavioural vulnerabilities, or to increase information asymmetries between consumers and firms.

Summary and Questions

Increasing digitalisation brings both benefits and risks to consumers of financial services. It raises important questions about access to services, the appropriate use of personal data and how consumers can be protected from unfair practices which can seek to use new technologies to exploit consumer behaviours and vulnerabilities. Firms need to ensure that the drive to gain commercial benefits from digitalisation does not distract from the need to act in consumers' best interests. We must ask ourselves whether there is a point at which the personal targeting of advertising blends into activities which require consideration of suitability?

We are looking at possible proposals to improve the online decision making environment. We have outlined some of the challenges we see and are looking for stakeholders' views on how to balance the protection of consumers with a marketplace that encourages the benefits of technological innovation.

We want to hear your views on the following questions:

Do you agree with our analysis of the benefits, challenges and risks around digitalisation in the area of financial services? What are the key issues for you?

How do you think the personalisation and individual-targeting of ads can be made compatible with the requirement for firms to act in the best interests of customers?

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Theme 3: Unregulated Activities

Not all financial services are regulated by the Central Bank. Regulation needs to keep pace with changes in financial services and consumers need clarity on what is regulated and what is not.

While the Central Bank is responsible for the regulation of many financial services providers, it does not regulate every financial service provider or every product. Firms that are regulated are referred to as being within 'the regulatory perimeter.' EU and domestic legislation sets out what is inside the perimeter – and is therefore regulated by the Central Bank – and what remains outside the regulatory perimeter.

Unauthorised Firms and SAFE

It is important to distinguish between firms which legitimately fall outside the regulatory perimeter and firms which operate illegally.

Fraudsters are finding increasingly sophisticated ways to target consumers. If consumers are considering buying a product or dealing with a firm through a website or social media or if they receive an unsolicited phone call, email, text message they should pause before they act. The Central Bank advises consumers to take the ***SAFE test*** before making any financial decisions or providing any personal information:

S - Stop: Stop, think and ask yourself – What? Who? Why? Do I feel rushed to act?

A – Assess: Make sure the firm is legitimate. Check for irregularities such as misspellings and grammatical errors in firm materials. Call the firm using its advertised phone number.

F – Fact-check: Seek advice from someone you trust to ensure the product is genuine.

E - Expose and report: Any concerns contact the Central Bank.

More information is available on our website: Avoiding Scams and Unauthorised Activity.

The Central Bank has a dedicated Unauthorised Providers Unit, which investigates alleged instances of unauthorised activity carried out by entities (individuals or firms) that are not authorised by the Central Bank. We monitor the market for unauthorised activity and issue regular warnings to consumers about the operation of such firms. Members of the public can report alleged unauthorised activity or potential scams to the Central Bank on our website or by phone on (01) 2244000. We liaise closely with criminal enforcement agencies and third parties, including An Garda Síochána.

Scope of the Regulatory Perimeter

Commercial transactions are governed by contract law. Legislation has also been introduced to set minimum standards to ensure that consumers generally are protected

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from unfair or misleading practices. For example, the Sale of Goods and Supply of Services Act, the Unfair Contract Terms Regulations and the Consumer Protection Act. Underpinning these protections, Ireland has an established common law system which enables consumers to seek redress from firms through the courts to protect their rights.

As set out in Section 1, because the provision of financial services is of such importance to the welfare of all citizens and because trust and confidence are so important to the proper functioning of financial services, a strong regulatory framework is required. EU and domestic legislation has determined that the Central Bank regulates banks, credit unions, payment institutions, insurance firms, investment firms, brokers and intermediaries. As a result, these firms must be authorised to do business, and are subject to various prudential and conduct requirements, relating to how they govern and conduct their business and how they design and deliver their products.

As well as enjoying the protections that come from dealing with regulated firms, including the protections from the Code, consumers of regulated products and services also benefit from access to available compensation schemes,[55] and the option to refer a complaint against a firm to the Financial Services and Pensions Ombudsman. Reading or hearing the phrase "regulated by the Central Bank of Ireland" should provide customers with the confidence that the firm in question is expected to comply with certain standards – both as to its soundness and how it treats its customers.

Bringing a financial sector under the Central Bank's oversight - making that sector 'regulated by' the Central Bank - is a social policy decision. These policy decisions are made either by European policymakers or by the Oireachtas, and are informed by the potential for a sector or activity to present risks to the financial system and/or to consumers. In deciding to bring an activity or sector within the regulatory perimeter, legislators need to strike a balance between imposing regulatory costs on a sector - which may make market entry more costly and/or increase prices - against the broader public interest in protecting system stability and consumers through financial regulation.

Unregulated Activities

There are financial activities that are not regulated, and there are a variety of reasons for this. Regulation of innovative and complex products requires careful research and consideration – this can take time. Legislators also need to balance the fostering of innovation with ensuring the best interests of consumers are protected.

As outlined under Theme 1: Innovation & Disruption, the market for crypto assets is an example of a relatively new activity which has been largely unregulated to date. The

[55] The Deposit Guarantee Scheme protects consumers in the event of a bank, building society or credit union authorised by the Central Bank being unable to pay deposits. The Scheme allows for repayment to depositors of up to €100,000 per institution. The Investor Compensation Scheme provides a similar safety net to customers of investment firms, providing for potential compensation to investors of up to €20,000.

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Central Bank is concerned that consumers are not always aware that they are dealing with unregulated firms or accessing unregulated products or services. For consumers who wish to invest, products such as crypto assets may look and feel similar to accessing other banking and investment services. This can lead to consumers placing a degree of trust in the providers of 'look-alike' financial products and services in circumstances where they are in fact not protected by financial services regulation.[56]

We also have concerns about how some unregulated products and services are marketed to consumers, with evidence of misleading advertisements, particularly on social media, where influencers are being paid to advertise products such as crypto assets to consumers. In March 2022 we issued a warning to consumers on the risks of investing in crypto assets, which highlighted the lack of protections when investing in unregulated products.

The 'Halo' Effect

Firms that are regulated by the Central Bank must present a common statement about their authorised status. This statement often takes the form of "*ABC Limited is regulated by the Central Bank of Ireland*". The purpose of this statement is to provide clarity for consumers on which firms are regulated and which are not. This should provide confidence to consumers, reassuring them that an established framework of consumer protection is in place to protect their interests, with avenues of redress should things go wrong.

However, firms which are regulated for some business activities may also do business which is unregulated. The Code contains requirements for regulated firms to ensure that any business they do which falls outside the Central Bank's remit, is clearly distinguished from their regulated activities. It is important that consumers are aware that products are unregulated and are not subject to the same standards of consumer protection.

But is that enough? Disclosures can be limited in their effectiveness, and we know that consumers frequently do not read, or appreciate the significance of, disclosures. If a consumer transacts with an established regulated business, that reputation, or 'halo effect', will often serve to provide potentially misguided reassurance in relation to unregulated activities. It can be argued that regulated firms doing unregulated business should act in the best interests of their customers, reflecting a customer-focused culture. Good culture does not turn on or off depending on the legal status of the business that they do. However, clarity for consumers remains important.

There may be opportunities to extend certain obligations that are owed by regulated firms to their customers in relation to unregulated business or activities. For example,

[56] MiCA, the EU Commission proposal for a new EU legislative framework for crypto activities, seeks to address gaps in regulation. It is expected to be implemented in 2024.

should regulated firms ensure that all services and products provided by them are suitable taking account of the consumer's needs and risk appetite? That might be considered consistent with an expectation that regulated firms will have a culture and approach which centralises the interests of their customers (see Broad Theme B: Firms Acting in Consumers' Best Interests). While firms could avoid such requirements by establishing a separate firm, nonetheless that would limit the 'halo effect' as the new firm could not claim to be regulated.

Widening the Regulatory Perimeter

Public debate and evidence around emerging consumer risks has in recent years resulted in the broadening of the scope of consumer protection regulation to include new rules in relation to crowdfunding, Personal Contract Plans (PCP), Buy-Now-Pay-Later (BNPL), and credit servicing. The need to further broaden the scope of consumer protection remains under review as financial services evolve and new consumer risks emerge.

The Central Bank cannot ban a product from an unregulated sector, nor can we unilaterally extend the regulatory perimeter to include other activities or firms. However, we can and do engage closely with Government to advocate for necessary changes where there is a clear rationale for regulatory intervention.

Summary and Questions

Not all financial services are regulated by the Central Bank. The decision to regulate firms and services is made either at an EU level or by the Oireachtas, and is informed by the potential for a sector to cause harm to the financial system and/or to consumers.

Legislators need to strike a balance between imposing regulatory costs and the need to protect the stability of the financial system and the interests of consumers. It is important that consumers have clarity on what financial services are regulated, and that they understand risks associated with unregulated products and services. Though of course, if we consider that a new activity should be regulated, we will engage with legislators to make that known and work with them to implement the best solutions.

We want to hear your views on the following questions:

The Code requires regulated firms to provide a statement indicating that they are 'regulated by the Central Bank'. Do you think this is useful for consumers?

How can the difference between regulated and unregulated activities be made clearer for consumers?

Should there be additional obligations on regulated firms when they undertake unregulated activities?

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Theme 4: Pricing Matters

An effectively functioning market, with an appropriate level of choice and competition, and where firms act in consumers' best interests, facilitates fair price formation.

Under Broad Theme A: Availability and Choice, we outlined the key features of an effectively functioning market. Under Broad Theme B: Firms Acting in Consumers' Best Interests, we considered the requirement for firms to treat customers fairly in how they disclose information. Both factors are key to fair price formation.

When We Intervene

Ireland has an open, market-based economy operating within the EU Single Market, with free movement of goods, services, capital and people. In general, prices are set by the market, determined by supply and demand, without state or regulatory interventions. A well-functioning competitive market should facilitate the formation of fair and reasonable prices without intervention. The Central Bank does not have a role in setting prices.[57] In line with market intervention limitations outlined in Section 1, we only intervene on pricing matters where there is a legal basis to do so and where we see firms engaging in unfair, hidden or discriminatory practices which seek to take advantage of customer vulnerabilities. As noted by the OECD, price discrimination, while valid in certain limited circumstances (e.g. discounts for volume), can be a concern where for example it has 'exploitative, distortionary or exclusionary effects'.[58]

Firms cannot be permitted to implement 'dark pricing' practices[59] to covertly manipulate or coerce consumers into choices that are not in their best interests or to exploit information asymmetries or behavioural vulnerabilities in order to misdirect their focus to products that are more expensive than valid alternatives, or that are ill-suited to their needs and/or risk appetite. Increasing product complexity or including features which increase the attractiveness of products can interfere with price transparency and the ability of consumers to compare products effectively.

The Central Bank has recently introduced regulations on pricing practices in the home and motor insurance market to prohibit the practice of price-walking in home and motor insurance by firms.[60] The new regulations ban the practice of charging consumers higher premiums, relative to the expected cost for the insurer, simply due to the fact that they

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[57] An exception is the Consumer Credit Act: credit institutions must notify us if they wish to introduce new charges or increase the level of previously notified charges.
[58] https://www.oecd.org/competition/price-discrimination.htm
[59] See OECD (2021), Roundtable on Dark Commercial Patterns Online: Summary of discussion, https://one.oecd.org/document/DSTI/CP/CPS(2020)23/FINAL/en/pdf
[60] The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Insurance Requirements) Regulations 2022.

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are a renewing customer / have been with the insurer for a longer time. This reflects the view that such pricing practices take unfair and covert advantage of customer behaviours and are out of line with what customers could reasonably expect. Insurance providers can continue to provide new customer discounts as this is viewed to be beneficial to consumers so long as it is accompanied by strict rules on disclosure.

We have taken a similar approach in our thinking about mortgage cashback offers, where we believe that for customers' interests to be served it is essential that there is high quality and effective disclosure as to the nature of the discount and the longer term implications. We have introduced requirements on firms to clearly explain the pros and cons of any mortgage incentives, such as cashback offers.

Disclosure and transparency is central to the formation of fair prices. Where consumers are provided with the information they need to compare products and services from a range of providers, they are empowered to select the most appropriate product for their needs which represents the best value for money for them. For this reason, regulated firms are subject to various requirements on the disclosure of prices – including how prices must be displayed, how they are presented (e.g. for comparability) and notifications of price changes. Theme 5: Informing Effectively, explores effective disclosure further.

Summary and Questions

A well-functioning competitive market should facilitate the formation of fair and reasonable prices without intervention. This requires consumers to have access to clear and unbiased information. Firms should not exploit information asymmetries or behavioural vulnerabilities. While we do not have a role in setting or controlling prices, we will intervene where there is a legal basis to do so, and where we see firms applying unfair or discriminatory pricing practices to the detriment of consumers.

We want to hear your views on the following questions:

What can firms do to improve transparency of pricing for consumers?

In relation to pricing, are there examples of firms using unfair practices to take advantage of customer vulnerabilities?

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Theme 5: Informing Effectively

The Code seeks to ensure that consumers are provided with sufficient information, at the right time and in the right way, to enable them to make informed decisions in relation to financial products and services.

The concept of '*buyer beware*' places a responsibility on consumers to examine and assess a product before purchase. However, for financial services the imbalance in information and understanding between firms and consumers means that consumers may not always be able to fully understand and assess a product or service.

Information disclosure requirements are a key consumer protection tool used by regulators to address this issue. Good quality information can empower consumers to choose the most appropriate and competitively priced product for them.

However, there is a concern that disclosure and transparency requirements do not always work effectively. Often consumers receive too much information, which is not easy for them to navigate or understand. We recognise that there is a challenge for firms in striking the right balance between too little information and information overload.

Information Overload

Information overload is where consumers are presented with so much information, or in such a manner, that it becomes difficult for them to understand the key features and terms and conditions of products or services. This can make it difficult for consumers to make effective comparisons and choices between products or service providers.

Information can only assist consumers if they read it. However, numerous behavioural studies suggest that consumers often do not access and read the information provided to them. Research published by the EU Commission has found that consumers rarely read terms and conditions when they enter into a contract.[61] The click-through data generated via websites shows that less than 1% of shoppers open the terms associated when making a retail purchase. Uninformed consent exposes consumers to the risk of making a poor decision, and one in ten consumers have experienced regret for not reading terms and conditions.[62]

Increasing Complexity

As complexity increases, so too do the risks to consumers and investors, and the responsibilities on regulated firms to protect their interests. For example, the Central

[61] European Commission - Directorate-General for Justice and Consumers (2019). *Behavioural Study on the digitalisation of the marketing and distance selling of retail financial services. Final Report*
[62] Ibid.

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Bank's Reviews of Structured Retail Products (SRPs), highlighted a number of important consumer issues. These reviews found a number of weaknesses within firms' approaches, which increase risks to consumers as investors. These include failure by firms to consider potential difficulties investors may have in understanding the complex features involved in some SRPs; failing to present past performance information in a fair and balanced manner; and not including prominent 'capital at risk' warnings in marketing materials.

Arising from these reviews, the Central Bank has highlighted that it wants to see that complex investment products are designed with real investment needs in mind; that they are targeted only at investors with those investment needs, and that risks are properly explained. Alignment with consumers' needs and risk appetite is critical. Firms must ensure these protections are reflected in the design and sale of all complex products.

Presentation of Information

How information is presented also impacts on the effectiveness of the communication to the consumer. Poor information presentation can impede consumers' ability to assess the benefits and risks of a financial product. This is more likely when the product is complex or when there are many similar types of product on the market. This can result in consumers purchasing unsuitable products, including investing in a product that is too risky for them, taking on insurance cover not suited to their needs, or paying too much in fees/charges.

Often regulators prescribe the information to be disclosed to consumers, but leave it to the firms to determine how it should be disclosed. Firms have control over the 'choice architecture,'[63] and may, intentionally or unintentionally, diminish the impact of the disclosures required by regulators. Where regulatory disclosures and warning statements are presented along with marketing and advertising material that is designed to grab a consumer's attention, the regulatory disclosures must compete for the attention of the consumer, which can reduce their effectiveness.

The Central Bank has recently undertaken a study on how improved methods of disclosure can enhance outcomes for consumers. We will shortly be publishing the results of a behavioural experiment that shows how presentation of information can improve the take-up by mortgage holders of cheaper options available to them - a finding that we will be acting on by bringing forward proposals for enhanced guidance.

Getting the Balance Right

We want to better understand the ways in which information might be better presented by firms to consumers - without being compromised by firms' commercial interests. As we saw in Broad Theme B: Firms Acting in Consumers' Best Interests, firms need to have a

[63] Choice architecture can be understood as the design of different ways in which choices can be presented to consumers, and the impact of that presentation on the decisions made.

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consumer-focused culture which must be evident in the design and delivery of their products and services, including the information that is presented to consumers.

When firms are providing information to consumers, to enable them make informed choices, the obligation should be less about 'providing information' and more about 'seeking to support understanding' by the consumer of the financial product or service. This is what acting in their 'best interests' means - supporting consumers to make informed decisions. We recognise that firms face practical limits on what they can do to inform consumers. Firms cannot guarantee full understanding by consumers, nor can they make consumers read the information that is presented to them.

What then should firms be doing? Firms should be acting in the best interests of consumers when providing them with important information. Communications should be clear, accurate and up to date, should avoid the use of technical language, and be set out in a way that is easily accessible for consumers. Moreover, design and use of information should be tested and test results should feed into revision of information presentation.

Providing Key Information

Not all information is of equal value to the consumer. Any information which is likely to influence a consumer's actions or decisions with regard to a product or service is 'key'. This concept is recognised in the Code, which already requires firms to bring key information to the attention of consumers. But there is a risk that key information gets lost within all the other information provided to consumers, e.g. terms and conditions.

We have seen ways in which regulators seek to alleviate the information burden on consumers. In EU law, there is the concept of a Key Information Document for certain products, designed to act as a sort of 'executive summary', a single reference point which concisely sets out all of the key information relevant to a transaction.[64] We are interested in learning from stakeholders' experiences of proposed solutions such as this.

Role of Technology

Increasingly, information is provided electronically, by email, online or via mobile applications. We noted earlier that the proportion of financial services and products being provided through digital technologies is increasing significantly. These

[64] This direction is supported by international research. The European Banking Authority, the OECD and European Commission have each considered information overload in the context of how it might be addressed using digital technology. In April 2019, the European Commission published a behavioural study on the digitalisation of the marketing and distance selling of retail financial services which suggested that up-front, standardised information documents help to alleviate the problems of consumers not reading terms and conditions when entering a contract, by providing information in a more easily understood and well-structured format.
The OECD has published a Policy Note on information overload in the context of online purchase of products from all sectors which makes a similar finding in relation to summary information, and suggests 'need to know' information should be presented up-front, with 'nice to have' information pared down or provided separately.

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technologies may offer an opportunity for firms to better inform, explain and educate consumers about their financial services.

How can we encourage firms to provide consumers with good quality accessible information, and ensure they are not exposed to poor quality or manipulative information?

Technology allows firms to test or experiment with better or 'smart' disclosure, such as visual disclosures with less text, or the use of video explainers. The use of technology permits easy and less costly experimentation and verification of the effectiveness of different ways of conveying information.[65] Through testing of consumers' comprehension of the decisions they are about to make, firms can determine if consumers understand the risks they are taking and if they are making informed decisions.

Summary and Questions

We want to consider what proportionate measures can be introduced to ensure firms make disclosures to consumers more effectively, such as reiterating the concept of consumer-focused design and testing. How can key information be made more accessible and understandable? While technology-based solutions can enable information to be conveyed to consumers, it must be on a user-friendly basis to be effective.

The emphasis should move from the provision of information to meet regulatory requirements, to ensuring firms create the conditions that make it easier for consumers to properly understand their financial service transactions.

We want to hear your views on the following questions:

How can regulation improve effectiveness of information disclosure to consumers?

How can firms better support consumers' understanding - can technology play a role?

Does the way in which firms approach disclosure in respect of mortgage products need enhancing? If so, how?
- taking account of the wide variety of features of mortgage products and borrowers' different circumstances and needs.

[65] In 2019, the European Banking Authority (EBA), in an opinion on disclosure to consumers of banking services through digital means, outlined that testing of information should be a core step towards determining if information is understood and used by consumers.
https://www.eba.europa.eu/sites/default/documents/files/document_library//Opinion%20on%20disclosure%20through%20digital%20means.%20FINAL.pdf

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Theme 6: Vulnerability

Acting in the best interests of consumers requires firms to understand vulnerability and to ensure that their culture, policies and processes take account of the needs of vulnerable consumers.

Acting in customers' best interests, which we explored under Broad Theme B: Firms Acting in Consumers' Best Interests, clearly extends to ensuring that vulnerable or potentially vulnerable consumers are treated fairly and are not exploited or compromised. This requires a clear understanding of what can make consumers vulnerable.

Vulnerable Consumers

Vulnerable consumers are more likely to suffer detriment or harm. They can make poor or uninformed decisions, especially when firms are not acting with the appropriate level of care. Vulnerable consumers are more likely to be over-indebted, subject to scams and exposed to mis-selling. They are also more likely to purchase inappropriate products, or are unlikely to be able to manage a product or service, including seeking to resolve issues or complain when problems arise.

Vulnerability indicators can relate to a multitude of issues, ranging from language barriers, cognitive or age-related impairment; elder abuse; family or domestic violence; financial exploitation or abuse; mental illness; serious illness; or any other personal or financial circumstance which can result in vulnerability. Circumstances may include bereavement, the breakdown of a relationship or job loss. Poor financial literacy or learning difficulties are also characteristics that can make consumers potentially vulnerable. All of these issues and characteristics can impact on a person's capacity to negotiate a process and make decisions in their own interests.

It seems more appropriate therefore to describe vulnerability as a spectrum of risk rather than a binary state. Vulnerability is not a static condition. Consumers may move in and out of states of vulnerability and they may be vulnerable in respect of some categories of transactions but not others. This broader approach to vulnerability is recognised by regulators internationally and it is reflected in the proposed revised OECD Principles.[66]

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[66] The revised principle 6 will be renamed "Equitable and Fair Treatment of Consumers including those who may be Vulnerable" and the text will be expanded to include: "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 characteristics, economic situations and market conditions."

How Can Vulnerable Consumers be Better Protected?

We want firms to focus on business processes rather than a compliance exercise involving the labelling and categorisation of individuals.[67] Vulnerability should be considered as an integral part of the process for dealing with all consumers.

As we have set out under Broad Theme B: Firms Acting in Consumers' Best Interests, we expect firms to have a consumer-focused culture. Consideration of the specific needs of vulnerable consumers and a commitment to addressing these needs should be an integral part of this consumer focus. This should be embedded in the firm's culture and be reflected in the design and delivery of products and services, as well as policies and procedures. In particular, firms must not design their business offering to take unfair advantage of consumer behaviours and vulnerabilities. Design of business processes should ensure that vulnerable consumers are not at increased risk of detriment or harm.

Dealing with Individual Cases

The Code obliges firms to provide those identified as vulnerable with such reasonable arrangements and/or assistance that may be necessary to facilitate him or her, in their dealings with the firm.[68] Staff of financial services firms need to be able to recognise and respond to vulnerability. They need to know when it is appropriate to seek additional support within the firm for customers depending on their circumstances. They should be empowered to seek that support and appropriately record information, while respecting the privacy and autonomy of the individual, to ensure future engagement with the customer takes account of their particular circumstances. Firms need to consider the organisational arrangements that need to be put in place to support customers in vulnerable circumstances.

Frauds and Scams

Frauds and scams are a perennial issue for consumers. We all must remain vigilant to attempts to take our money or to sell us something that is not genuine. The nature of this activity is that it targets every one of us, but vulnerable consumers are more at risk.

There has been a significant increase in the number of frauds and scams targeting consumers, driven by the ease with which fraudsters can contact consumers using modern technology, and their ability to make their contacts appear genuine, for example by mimicking the logo, texts and websites of well-known firms.

Raising awareness and seeking to educate consumers of the dangers that are posed, and the steps that they can take to reduce the risk of harm, is one step that can be taken. But

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[67] A UK financial vulnerability task force has noted that: "people by and large do not want to hear that they are vulnerable. They don't want to be referred to the 'vulnerability team' or subject to the 'vulnerable client' process! They do want to know what help they can be given, what choices they have – in other words, 'solutions not labels'." Source: https://www.fvtaskforce.com/the-charter

[68] Provision 3.1 of the Consumer Protection Code 2012.

education and awareness measures can only go so far, and are not guaranteed to reach everyone.

Financial services firms can be in a unique position to identify where such harm is occurring, or is likely to occur. Orders for transactions, or instructions for payment, withdrawal, or sale that are made through firms, can potentially provide indications that a consumer is being manipulated, defrauded or otherwise exploited.[69] Some jurisdictions have taken steps to empower firms to take active steps to stop such harm when it is identified or suspected.[70] We welcome the views of stakeholders on what issues or solutions should be explored to protect those individuals who firms suspect are being defrauded, and whether there is a role for firms to step in to protect them.

Are There Other Ways to Support People Who May Need Assistance?

We see in other jurisdictions[71] a facility allowing consumers to provide the name and contact information for a trusted contact person; someone who a firm may contact where they may have difficulty in dealing with a customer, or where financial exploitation or fraud is suspected. While the main beneficiaries of a trusted contact person might be the elderly, consideration could be given to extending the concept to all customers who might need or want the assistance of another person they trust, in their dealings with firms.

Summary and Questions

Acting in the best interests of consumers requires firms to ensure that they consider that consumers may be vulnerable and how they can ensure that their needs are addressed and they are treated fairly. Can we identify proportionate ways to ensure that financial services providers support customers who are deemed to be in vulnerable circumstances, and to ensure that staff are trained and empowered to act? Are external supports valuable, such as the trusted contact person? Are there others?

We want to hear your views on the following questions:

Given that vulnerability should be considered more as a spectrum of risk than a binary distinction, how should firms' duty to act in their customers' best interests reflect this?

What other specific measures might be adopted to protect consumers in vulnerable circumstances while respecting their privacy and autonomy?

[69] The OECD has highlighted the issue of firms' protection mechanisms relating to scams within their proposed revisions to the High Level Principles. These protection mechanisms should be readily adapted to the way new technology is used and emergence of new types of scams, fraud and misuse.
[70] For example, in Canada, a law has been enacted to require firms who suspect that a customer is or is likely to be the victim of financial exploitation to take steps to stop the harm.
[71] E.g. US and Canada.

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Theme 7: Financial Literacy

Financial literacy can be described as peoples' ability to process finance-related material and make informed decisions about financial planning, wealth accumulation, pensions and debt.

Consumers who are well-informed, experienced, and who understand the financial products and services required to serve their needs, are better placed to make good financial decisions and to look after their own interests. They are less likely to be vulnerable to harm where firms are not acting in their best interests and are less vulnerable to frauds and scams.

Financial literacy impacts on financial wellbeing, i.e. the ability of individuals, households, and small businesses to finance their current and future needs, and their resilience to financial shocks. The OECD sees individual financial well-being as being in control, feeling secure and having freedom about one's own current and future finances.[72]

Research undertaken by the CCPC[73] highlighted the impact of financial education on levels of financial comfort with 60% of respondents in the 'financially secure' category having received some form of financial education at school, while for those in the 'financially struggling' category, the comparable figure was just 10%.[74]

A System-Wide Approach to Improving Financial Literacy

Financial literacy of consumers is becoming more important as an aspect of consumer protection as the skills consumers need to have are changing fast. Traditional ways of doing business are declining, and negotiating today's financial services market requires technical as well as financial knowledge and skills.

Improving levels of financial literacy requires a multi-layered and multi-agency approach, spanning from childhood, through the school curriculum, right into old age. As highlighted above, the need for financial education covers the Lifecycle in full. The OECD's Principles and Good Practices for Financial Education and Awareness[75] recommend that financial

[72] https://www.oecd.org/daf/fin/financial-education/Public-Consultation-Recommendation-High-Level-Principles-Financial-Consumer-Protection-2022.pdf
[73] Financial Capability and Well-Being in Ireland in 2018.
[74] A 2018 survey from the Competition and Consumer Protection Commission (CCPC) found that 25% of respondents described themselves as financially secure, while 52% reported a positive level of financial comfort but had less put aside for their future financial needs (such as retirement). 16% of respondents described themselves as 'just about coping' with 7% describing themselves as 'struggling'.
[75] https://www.oecd.org/daf/fin/financial-education/35108560.pdf

education start as early as possible and be taught in schools. They also recognise the importance of promoting the role of financial institutions in financial education.

The EU Commission and the OECD are working together to develop a joint 'financial competence framework'[76] for adults and for children, which will set out the knowledge, skills and behaviour that someone needs to develop to ensure their financial well-being throughout their lives.

The Government's Ireland for Finance Action Plan 2022[77] identifies the education and upskilling of consumers as a key priority, noting that *"while many people have adapted to using new technology during the pandemic, others have not been so adept, and it is likely that many of those who have taken up the use of apps and online activity will have gaps in their knowledge and skills."* The Ireland for Finance Action Plan identifies the CCPC as a primary agency for responding to the need to educate the public, with the Department of Finance's Fintech Steering Group continuing to be a central stakeholder.[78]

Financial literacy must be supported by digital literacy. A Joint European Supervisory Authority response to the European Commission's Call for Advice on digital finance highlighted the need to prevent financial exclusion and to promote further a higher level of digital and financial literacy which would help consumers to make effective use of digital financial services, and make effective and responsible choices; increase their welfare; efficiently enforce their rights; identify and report suspicious products and service providers; and have confidence and trust in the digital financial system.[79]

The Role of the Central Bank

At the Central Bank, we are strong advocates for these important initiatives and will work with the lead authorities, to help deliver a joined up system-wide approach to education and training efforts as a priority.

Financial literacy and education are very relevant to the Central Bank's consumer protection role. We play an important and active role in educating the public about what regulation of financial services means (e.g. the distinction between firms that are regulated and those which are not), and how consumers can navigate this, know their rights, and act if something goes wrong. For example, by exercising their right to complain, and to take a complaint to the Financial Services and Pensions Ombudsman.

As highlighted in Theme 5: Informing Effectively, clear and concise information disclosure is fundamental to enabling consumers to make informed decisions in their best interests. The Central Bank keeps disclosure requirements under review, and places obligations on

[76] European Union/OECD (2022), Financial competence framework for adults in the European Union
[77] https://www.gov.ie/en/publication/8eac2-ireland-for-finance-action-plan-2022/
[78] The Department of Finance established the Fintech Steering Group in 2021 in recognition of the need to respond to the rapidly changing intersections between the worlds of finance and technology.
[79]https://www.esma.europa.eu/sites/default/files/library/esa_final_report_on_digital_finance.pdf

firms to make information clear and consumer-friendly. However, the benefits of this information will be limited where consumers lack financial literacy. We will continue to develop policies to address these issues, and to fully support and proactively engage with the lead authorities to improve levels of financial literacy.

Central Bank Consumer Hub

One of the measures we have implemented to assist consumers is the operation of our online Consumer Hub, where we have published various tools to inform and educate consumers. The Hub has answers to many common questions addressed to us directly by consumers, and contains video and text 'explainers' on topics such as digital-only banking, cyber-fraud and mortgage switching. We also publish warnings about developments in the financial services markets that pose a threat to consumers. Our goal is to support financial education and literacy to enable consumers to better protect their own interests and to secure better financial outcomes.

Can Technology Help?

We have highlighted throughout this paper how technology is changing the way financial services are delivered to us. Technology can also be a valuable tool in responding to the challenge of effectively educating and informing consumers. We are seeing positive initiatives by firms promoting knowledge and understanding of the services and products they provide through quizzes and tutorials, or using other mechanisms to test the level of familiarity of consumers with a product or service. Technology can also be used to gather real-time information to support effective consumer engagement.

Summary and Questions

In recognition of the important role of financial literacy in ensuring the best interests of consumers are protected, the Central Bank will continue to support work being undertaken to inform and educate. Through the course of our stakeholder interactions on the discussion themes, we plan to engage with other state authorities to build on our constructive collaboration to drive better outcomes for consumers. We want to understand and learn about the opportunities that exist to improve the financial education and awareness of consumers across all aspects of financial services.

We want to hear your views on the following questions:

What can the responsible authorities do to improve financial education?

How can consumers be empowered to better protect their own interests when dealing with financial matters?

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Theme 8: Climate Matters

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 financial services firms and the broader system are resilient to climate risks and that 'greenwashing' is avoided.

The challenges associated with climate change and broader sustainability issues have significant implications for the financial system and for individual households and businesses. Governments globally have made the social policy choices that our society and economy must transition urgently to a climate neutral future.

Addressing climate change is as a strategic priority for the Central Bank. The financial system needs to be resilient to the risks posed by climate change, and the financial system has an important role to serve the needs of consumers and the wider economy in the transition to a climate neutral future. We have established a Climate Risk and Sustainable Finance Forum made up of representative bodies, financial sector participants, climate change experts and chaired by the Central Bank. Its overall purpose is to build a shared approach to the understanding and management of financial risks and opportunities posed by climate change.

Consumer Expectations

Consumers increasingly want to make sustainable or 'green' investments to support climate transition. There has been a substantial increase in the development of financial products described as being 'sustainable'. The challenge for both the Central Bank and industry is to ensure that sustainable financial products are defined in an accurate and transparent manner and that investors can trust the information they receive.

Legal frameworks are advancing at an EU level to support sustainable finance generation while guarding against greenwashing risks and providing better investor protections.[80] The EU Commission has published standards for financial product manufacturers to provide clear information to consumers and investors, so that they are provided with access to suitable and appropriate green-labelled products.

Consumer Trust

Firms rightly see the business model opportunities associated with the 'green' revolution. Many new green-related products are coming on stream such as 'green' investment

[80] https://ec.europa.eu/info/publications/sustainable-finance-renewed-strategy_en

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products, or products that look to promote sustainable behaviours. Crucially, in this area of rapid evolution and technical complexity, there is a pressing need for financial firms to be seen as wholly trustworthy participants. Any sense that they are pursuing shareholders' interests at the expense of those of their customers or the environment will be hugely damaging – to firms themselves, to their customers, and to the generational challenge of transitioning to a climate neutral economy. The financial sector, firms, and regulators will not be forgiven if they fail to live up to expectations.

Greenwashing is unacceptable - whether it be deliberate or due to a lack of diligence and care. Consumers should have assurance that 'green' financial products are accurately and fairly represented. Transparent disclosure in line with legal framework requirements at EU level is critical. Firms need to engage with climate-related activities as committedly responsible agents in the transition to a climate neutral economy.

Consideration also needs to be given to the consumer impacts of climate and sustainability factors in terms of pricing and availability of many products and services, such as traditional mortgage credit and insurance, especially for those who are more exposed to the effects of climate change.

Summary and Questions

There is a risk that firms do not respond to the changes required to address climate change in a manner that places the best interests of consumers at the heart of their commercial decision-making. Firms need to ensure that they are acting in customers' best interests as financial products and services evolve to respond to climate change. They have a role to play in helping their customers to navigate the changing and increasingly complex landscape. This requires consideration of new consumer objectives, product suitability, clear disclosure, and fair and transparent pricing.

Climate change significantly impacts all consumers. Consumers should have assurance that 'green' financial products are accurately and fairly represented, while consideration needs to be given to the consumer impact of climate risk and climate transition on access to, and the pricing of, certain financial services into the future.

We want to hear your views on the following questions:

How should the financial system best fulfil its role in supporting the transition to a climate neutral economy?

How will climate change impact on availability, choice and pricing for financial products and services?

Does the impact of climate change require additional specific consumer protections?

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Full List of Questions Posed in the Discussion Paper

Broad Theme A – Availability and Choice

Q.1 What are your views on availability and choice of financial services and products for consumers?

Q.2 How important are new providers and new delivery channels to serving consumers' financial needs?

Q.3 In implementing its consumer protection mandate, how should the Central Bank reflect the importance of competition in its regulatory approach?

Broad Theme B – Firms Acting in Consumers' Best Interests

Q.4 Do you agree that the Central Bank should develop guidance on what it means for a firm to act in the best interests of its customers?

Q.5 Does the suggested outline of 'customer best interest' guidance capture the essence of the obligation to act in customers' best interests? What other guidance would you suggest?

Theme 1 – Innovation and Disruption

Q.6 Do you agree with our proposed approach to enhancing our Innovation Hub?

Q.7 What more should be done to support innovation while ensuring consumers' best interests are protected?

Q.8 How can regulators ensure that neither firms currently in the market, nor new entrants, have unfair advantages which could be a barrier to fair competition?

Theme 2 – Digitalisation

Q.9 Do you agree with our analysis of the benefits, challenges and risks around digitalisation in the area of financial services? What are the key issues for you?

Q.10 How do you think the personalisation and individual-targeting of ads can be made compatible with the requirement for firms to act in the best interests of customers?

Theme 3 – Unregulated Activities

Q.11 The Code requires regulated firms to provide a statement indicating that they are 'regulated by the Central Bank'. Do you think this is useful for consumers?

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Q.12 How can the difference between regulated and unregulated activities be made clearer for consumers?

Q.13 Should there be additional obligations on regulated firms when they undertake unregulated activities?

Theme 4 – Pricing Matters

Q.14 What can firms do to improve transparency of pricing for consumers?

Q.15 In relation to pricing, are there examples of firms using unfair practices to take advantage of customer vulnerabilities?

Theme 5 – Informing Effectively

Q.16 How can regulation improve effectiveness of information disclosure to consumers?

Q.17 How can firms better support consumers' understanding – can technology play a role?

Q.18 Does the way in which firms approach disclosure in respect of mortgage products need enhancing? If so, how? - taking account of the wide variety of features of mortgage products, and borrowers' different circumstances and needs.

Theme 6 – Vulnerability

Q.19 Given that vulnerability should be considered more as a spectrum of risk than a binary distinction, how should firms' duty to act in their customers' best interests reflect this?

Q.20 What other specific measures might be adopted to protect consumers in vulnerable circumstances while respecting their privacy and autonomy?

Theme 7 – Financial Literacy

Q.21 What can the responsible authorities do to improve financial education?

Q.22 How can consumers be empowered to better protect their own interests when dealing with financial matters?

Theme 8 – Climate Matters

Q.23 How should the financial system best fulfil its role in supporting the transition to a climate neutral economy?

Q.24 How will climate change impact on availability, choice and pricing for financial products and services?

Q.25 Does the impact of climate change require additional specific consumer protections?

Further information on

Our Strategy and Consumer Protection

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