Age Action Submission to Central Bank's Consumer Protection Code Review.

Age Action is Ireland's leading advocacy organisation promoting equality for all of us as we age

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Introduction

Age Action is the leading advocacy organisation on ageing and older people in Ireland. We advocate for a society that enables all older people to participate and to live full, independent lives, based on the realisation of their rights and equality, recognising the diversity of their experience and situation. We draw our expertise from research and on-going engagement with older persons, many of whom have serious concerns about banking today. We welcome the opportunity to make a submission on the Central Bank's Review of the Consumer Protection Code.

There are over one million people in Ireland aged 60 or older, most of whom are customers of the mainstream banks and financial institutions. There is huge diversity in the characteristics and lived experience of older persons. Some are very proficient with digital technology and are highly financially literate, but others are not. Some older persons are affected by disadvantage that they have experienced in their lives, and they may require additional support from financial institutions. While most older persons are in good health, some are affected by illness, frailty or disability, including cognitive decline. Some older persons are on high incomes whereas others are struggling, with 30% of older persons getting 90% or more of their income from social protection payments.

In this submission, we will provide feedback on a number of key elements of the reviewed code, namely: guidance and implementation; vulnerability; serving consumer interests; financial abuse; unregulated products; and digitalisation.

Guidance and Implementation

The focus in the review on providing guidance to the industry is welcome. Often the thorniest part of policy and regulation is implementation and it is important that there is a clear path to realizing the vision in the consumer protection code. This will in part hinge on bank staff. Throughout its engagement with the Central Bank, Age Action has emphasized the importance of staffing and the impact of positive or negative interactions with staff on a consumer's overall experience with and attitude toward a bank. Some of what the proposed Consumer Protection Code includes requires widespread cultural transformation, which the guidance documents on vulnerability and serving interests acknowledge, and which is also implied by the requirements around informing effectively. Such transformation involves problematizing deeply embedded ageist attitudes and practices (where studies have shown people demonstrate ageism from the age of four years old) and instead instilling values and practices of human rights and equality. Older persons report experiences of this ageism manifesting in their engagement with banks, such as cases where they attend an appointment alongside a younger person and the bank addresses their companion rather than the customer; when the bank does not make allowances for hearing difficulties; where banking staff either assume an older person can use digital technology or assumes they can't without simply asking their preferences. These experiences wouldn't happen in a person-centred model of banking, but such a shift is not realistic in the absence of adequate staffing, decent standard of work and pay, and meaningful, continuous training. The connection between consumer protection and decent work should be made clear.

Vulnerability

Age Action welcomes the change in definition of vulnerability to locating it within circumstances rather than individuals. However, even in the consultation paper it is sometimes shortened to "customers facing vulnerability" or "vulnerable customers". This language is still harmful to people even if it has been given a more progressive definition. The word itself cannot be divested of its social connotations. Studies have shown that older persons exposed to ageist stereotypes perform less well on cognitive tests than those exposed to a positive portrayal of ageing, a phenomenon known as 'stereotype threat'. Being referred to as vulnerable might in fact render a customer more so.

While the definition now references to circumstances as vulnerable rather than individuals, the elaboration in the guidance document is still concerning. For example, it says: "Under the definition of vulnerable circumstances in the Code, this extends beyond customers that are considered innately vulnerable." Age Action and others have not sought a broader definition of vulnerability, but rather an entirely different definition of vulnerability. Nobody is innately vulnerable (beyond the vulnerability inherent in all humanity). Everybody is capable of leading a safe and empowered life, should their circumstances permit it. The benefit of the phrase "customers in vulnerable circumstances" is not that it captures a greater number of people, but that the people previously considered "innately vulnerable" would no longer be.

The sentiment that "[customers in vulnerable circumstances] may make poor financial decisions" should never be expressed without also explaining that they may equally be denied the opportunity to make any decision themselves, or may not be adequately supported to make informed decisions.

In elaborating on vulnerability, it is important to flag how certain kinds of circumstances can conspire to heighten vulnerability, that is, the combination of two factors like living in an isolated setting and having limited familial support can be what makes someone's circumstances vulnerable, rather than either factor alone.

This will be discussed in greater detail in the section on financial abuse, but certain risks cannot be thought of as only applying to those customers in vulnerable circumstances. It is welcome that the guidance explains how vulnerability may emerge at different points throughout the banking process, and that certain supports and information should be available to all customers who can benefit, not just those who have been previously identified as being in vulnerable circumstances.

Serving Consumer Interests

The shift from ‘best interests’ to ‘serving consumer interests’ is welcome, but should be explicitly addressed in the guidance document to limit the risk of banks conflating the two. The autonomy section of the guidance, which is very strong, demonstrates that serving interests means something other than assuming one knows best, but it should be named as a move away from earlier ‘best interest’ approaches.

The document claims that “the obligation to secure customers’ interests does not conflict with a firm’s pursuit of commercial objectives.” Yet this will not always be the case – for example, in the upcoming legislation on access to cash, obligations are placed on banks that benefit the public but may not benefit the bank’s commercial interests. The reality of such conflicts should not be shied away from and the section on proportionality should be expanded upon to give guidance on what happens where there is direct conflict and on where the obligation of the banks to securing consumer interests ends.

Stronger guidance should be provided on the processes banks ought to undertake to determine what is the interests of their consumers, including through regular surveys and consultations. This evaluation should give appropriate attention to the situation of potentially small but particularly disadvantaged cohorts of their customer base, including low income or financially insecure persons, older persons, migrant persons, single-parent families, etc. As will be made clear in the following section on digitalisation, what is in the interest of some consumers may not be in the interest of others.

Digitalisation

Age Action is concerned that many older persons are not using the internet and there is a growing problem of ‘responsibilisation’ among financial institutions, meaning that customers are expected to follow the business practice of the provider – including where that is ‘online only’ – rather than the provider having any responsibility to meet customers’ needs or preferences for modes of communication.

6 in 10 persons aged 60 or older either do not use the internet or lack the basic digital skills to do so safely or to engage in complex online processes. Two-factor authentication, text confirmation, voice recognition phonelines and other technology can be difficult or impossible for some older persons. This can lead to persons who have been autonomously managing their affairs for decades being forced to hand over sensitive information and decision making power to others who have the skillset to engage in online processes. In worst case scenarios this leads to abuse and exploitation, but even where the person they hand this information over to is trustworthy, it still creates undue relationships of dependency and affronts dignity.

Yet the section on digitalisation in the consultation paper focuses primarily on ensuring the online services are accessible and appropriate. While this is undoubtedly important, what is actually required for many bank users is for the incursion of digitalisation to be limited. This means requiring a certain level of offline traditional services, including people at desks for enough hours per week, real humans operating phone lines, and hard copy forms and information. The Code requires a "customer focus in the design and implementation of digital services and delivery channels", but there is also a need for customer focus in deciding whether or not digital services are appropriate.

Financial Abuse

The Consultation Paper flags financial abuse, particularly of older persons, as a serious issue, and provides a broad definition of it. This is welcome. However there is a need to explicitly conceptually distinguish between financial abuse and the separate categories of fraud and scams. While obviously relevant to each other, the key difference is that fraud and scams are generally perpetrated by strangers, whereas financial abuse is most often perpetrated by trusted individuals like family members, partners, or others with caring responsibilities. This is an important distinction that will change how it manifests and what the signs that staff should be on the lookout for are, including potentially with the proposed 'trusted contact person'. It is equally important for staff to be trained in detecting financial abuse, which is widespread in Ireland. 850 cases of financial abuse were reported to the HSE in 2022, which does not represent the full scale of the problem. In more than half these cases the victim was aged 80+, and family members were most likely to be accused.

In its section on fraud and scams, the consultation paper speaks of proposing "new requirements to ensure firms are vigilant to the evolving risks to the system and their customers, and that they take appropriate actions to protect customers, particularly in a digital context." This vigilance is needed also in guarding against financial abuse, including appropriate policies for responding to actual or suspected financial abuse that are distinct from the policies related to fraud and scams.

Another area of potential conceptual confusion in the consultation paper is that the sub-section "Reporting of Concerns by Staff", with the concerns in question being named as financial abuse, frauds and scams, is included in the section on customers in vulnerable circumstances. There is a risk of a circular definition of vulnerable circumstances in which someone is in vulnerable circumstances by virtue of being taken advantage of. In practice, the risk with conflating the topic of financial abuse with procedures relating to customers in vulnerable circumstances is that those customers who have not previously been identified as in such circumstances, or who simply are not in such circumstances, will fall outside the supports when they are victims of financial abuse (or fraud or scams). While there is clear reason that part of the approach to supporting customers in vulnerable circumstances must be having effective policies in place for when they suffer financial abuse, this cannot be the only context in which such policies arise.

Unregulated Products

Age Action has long been concerned about the lack of available financial products for older persons and thus the manufactured reliance on higher risk fringe products. Government policy is to support people to age in place, which may mean renovating their homes to make them accessible or it may mean buying a smaller property in the same community that is better insulated and/or more manageable. Older persons have told us that they cannot access mortgage finance due to age limits, and they find it difficult (or impossible) to access affordable bridging loans to facilitate them to sell a wholly owned property to purchase a cheaper one. There is a significant gap in the market for affordable loans to support 'rightsizing' for those older persons who want it. There is also a lack of loans for major home renovation. In both cases, lenders only look at older persons' incomes and age, not their savings or the value of their home (often owned outright).

An area of particular concern is when equity release loan products are targeted at older persons. Our analysis is that these products offer very poor value for money due to the application of compound interest on the loan. The Competition and Consumer Protection Commission gives quite blunt assessment of equity release schemes, home reversion schemes and lifetime mortgages, noting that they are not something to be entered into lightly, are not suitable for everyone, and essentially mean a person ought not be concerned about passing on the value of their home as part of their estate.[1]

According to the CCPC, lenders and advisers about home reversion schemes and lifetime mortgages must meet the requirements of the Central Bank's Consumer Protection Code. However, this does not appear to be the case for equity release schemes. The Central Bank should require lenders and advisers of equity release schemes to meet the requirements of the Central Bank's Consumer Protection Code. This would mean their ensuring that older persons have received robust legal and financial advice about these products before committing to them (i.e. service providers should be compelled to provide comprehensive and accessible information designed for the target consumer), and the Central Bank should play a greater role in raising awareness about their pros and cons. For example, people need to be aware that they may have contractual obligations under these loans to maintain their homes to a certain standard, which may become onerous in older age if they become ill or frail. The Central Bank should oblige lenders to clearly warn older persons that these products may preclude them from accessing the HSE's Nursing Home Support ('Fair Deal') scheme and loan.

[1] https://www.ccpc.ie/consumers/money/mortgages/equity-release/