Banking & Payments Federation Ireland

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Industry Feedback to the Central Bank of Ireland

CP158 Consultation Paper on the Consumer Protection Code

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Contents

1. Introduction

1.1 Summary Observations

BPFI and members welcome the publication of CP158 and the associated documentation relating to a revised Consumer Protection Code (CPC). The body of work that has been required to formulate the revised CPC and associated documentation has no doubt been significant and we commend the team in the Central Bank of Ireland (CBI) on this. We welcome the opportunity to now comment on the proposals and to provide feedback to the consultation.

We welcome the review of the CPC, at a time when the landscape and consumers' expectations of financial services providers are changing rapidly. We believe that BPFI and members are well positioned to provide feedback to the proposals set out in the consultation paper documentation, and to compare the proposals against the current operation of the CPC, informed by the experience of members who note the impact of its implementation first-hand. We also have close insight into market developments and emerging technology; an understanding of what customers expect from financial services providers; and have a considered view therefore of how a revised CPC will fit into a changing environment.

We also welcome the review of the CPC from a practical implementation perspective, with the CPC, as it is currently, having many addenda and the expectations set out in Dear CEO letters attaching to it. Consolidating the entirety of the regulatory requirements regarding consumer protection is welcome and will assist greatly with members' ongoing application of the requirements.

We have set out below our feedback to the questions raised in CP158. We have also included more specific feedback, where relevant, following a line-by-line review of the two Guidance documents and the two draft Regulations attached to the consultation. The task of reviewing the entire documentation has been significant and we are keen to continue to engage with the CBI over the course of the coming months, as the CBI reviews and finalises the proposals for an updated CPC.

At a summary level, some of the key themes emerging in discussions on the proposed changes to the CPC and which we are keen to continue to engage with the CBI on include:

1. Implementation Timeframe

While the proposals for a revised CPC are welcomed in terms of enhancing consumer protection and reflecting the transformation of financial services, there are several significant changes proposed which will have material operational and technological impacts. In order to ensure an effective transition to the new requirements and in a way that minimises the risk of unintended customer detriment or confusion, it is essential that sufficient time is provided for regulated firms to undertake IT planning and development; to review physical and digital collateral; to implement changes to, while maintaining the effectiveness of, processes, procedures, controls, customer engagement journeys and effective customer communication; and to undertake staff training and upskilling.

The proposed 12-month implementation timeframe for both Regulations affords too short a timeline to fully implement the changes in a manner that accommodates other significant regulatory change programmes which are currently ongoing. We therefore request an extension of the 12-month implementation timeline.

We are keen to remain engaged with the CBI during the process of reviewing feedback to ensure that the concerns raised in this submission are addressed and that members will have full

clarification and understanding of the requirements, as soon as possible, and to make the most efficient use of the lead-in time available for planning and implementation.

2. Central Bank Reform Act 2010 (Section 17A) (Standards for Business) (S.17A Regulations)

BPFI sought a legal opinion from Simmons & Simmons to address the requirements of the S.17A Regulations and. The legal opinion is attached to this paper at Appendix A.

Some high-level observations taken from the legal opinion include:

- It is crucial that the S.17A Regulations are identical to the conduct standards now imposed on persons holding Controlled Functions (CFs) under the Individual Accountability Framework (IAF) established under the CBI (IAF) Act 2023 (para 2.5). Breach of the S.17A Regulations will constitute a "*prescribed contravention*" (para 2.2), with the CBI being entitled to bring enforcement proceedings against the regulated firm and/or CFs, posing potentially serious consequences for a firm, its management and for individuals (CFs) (para 2.3).
- The requirements of the S.17A Regulations are identical to the conduct standards of the IAF, which apply to the extent that the person takes reasonable steps to fulfil their duty of responsibility (para 3.1). However, the reasonable steps concept is absent from the S.17A Regulations (para 3.2). It is noteworthy that the concept of *reasonable steps* or *reasonableness* are embedded in the regulatory framework in the UK and Australia (para 3.3 and para 3.4). Simmons & Simmons legal opinion proposes that the concept be reflected in the S.17A Regulations to reflect a more holistic view of the circumstances involved and what might have been reasonably expected of a firm and its management in exercising its duty (para 3.5).
- The S.17A Regulations introduce a requirement to "*at all times … secure its customers' interests*" (para 4.1). The legal opinion notes that this is out of step with other comparable financial services conduct frameworks and that a "*best interests*" concept is in keeping with the requirements of the G20/OECD High-level Principles on Financial Consumer Protection 2022 (para 4.3). The gold-plating of requirements in Ireland may risk putting the consumer protection framework in Ireland out-of-step with other jurisdictions (para 4.4).
- A distinction is noted between the scope of the S.17A Regulations and the S.48 Regulations in relation to regulated versus unregulated activities, highlighting a lack of clarification regarding the applicability of the S.17A Regulations to the unregulated activities or regulated firms (para 5.1), with CP158 going so far as to indicate that "*In many circumstances, to avoid this confusion, it will not be possible for a regulated firm to offer unregulated products or services*." (para 5.2). The opinion suggests that clarity is required as a priority (para 5.3).
- Significant legal concerns arise for regulated firms in relation to the disclosure and co-operation requirements of S.13 (a), with the legal opinion proposing additional wording to be included to address some of the concerns (section 6).
- The legal opinion also highlights the importance of clarity in the guidance that will accompany the Regulations and for the need for consideration by the CBI of other guidance issued by it with which regulated firms must comply (section 7).

3. Proposed change to the definition of "*consumer*"

We believe the definition of "*consumer*" should follow the definition in the *Financial Services and Pensions Ombudsman Act 2017* (FSPO Act 2017).

In addition, we believe that the €3m/€5m turnover test should apply to sole traders, partnerships,

charities and trusts. For example, a partnership with an annual turnover in excess of €5m appears to be included in the present draft definition as consumer. By way of practical example, partnership is the means in which, for example firms of solicitors carry on business, including legal firms which are likely to have substantially larger turnovers. The same point arises, but possibly to a lesser extent, for unincorporated clubs, charities or trusts.

As above, we believe that the corresponding and otherwise similar definition in the FSPO Act 2017 addresses the anomaly successfully and we ask that the CBI considers incorporating this definition into the CPC, rather than what is currently proposed.

The proposed definition in the draft Regulations defines a consumer as follows:

> *"consumer" means, subject to paragraph (3), a customer that is -*
>
> *(a) a natural person,*
>
> *(b) a group of natural persons, including a partnership, club, charity, trust or other unincorporated body, or*
>
> *(c) an incorporated body, that is not –*
>
> > *(i) an incorporated body that had an annual turnover in excess of €5 million in the previous financial year, or*
> >
> > *(ii) an incorporated body that is a member of a group of companies having a combined turnover greater than €5 million,*
>
> *and includes, where appropriate, a potential "consumer" within the above meaning;*

As currently drafted, it does not seem to exclude a sole trader or practitioner in any circumstance, including regardless of turnover, while a group of natural persons including a partnership, club or charity is not delimited by a turnover figure of €5m, whereas in the current CPC they are delimited by a turnover figure of €3m.

In contrast, below is an extract of the definition of "*consumer*" from the FSPO Act 2017 [emphasis added]:

> *"consumer", in relation to a financial service, means—*
>
> *(a)*
>
> *(i) a natural person, not acting in the course of business,*
>
> *(ii) a sole trader, partnership, trust club or charity (not being a body corporate), with an annual turnover in its previous financial year (within the meaning of section 288 of the Act of 2014) of €3 million or less, or*
>
> *(iii) an incorporated body that—*
>
> > *(I) had an annual turnover in its previous financial year (within the meaning of section 288 of the Act of 2014) of €3 million or less, and*
> >
> > *(II) is not a body corporate that is a member of a group of companies (within the meaning of section 8 of the Act of 2014) with a combined annual turnover (in the previous financial year (within the meaning of section 288 of the Act of 2014) of the group of companies), of greater than €3 million…*

Furthermore, if the definition of "*consumer*" in the final CPC Regulations diverges from the definition of "*consumer*" in the FSPO Act 2017 (i.e., either on the turnover limit of €3m/€5m or in relation to the inclusion of sole traders, partnerships and trusts, regardless of turnover), it seems that it will

necessitate carve outs in some of the Regulations which mention a customer's recourse to the FSPO. For example, S. 104 (4) (g) of the S.48 Regulations mentions "*the fact that the consumer [as defined in the S.48 Regulations] may refer the matter to the relevant Ombudsman*".

CP158 refers to the change in figures, but it is silent on the other measures that are incorporated in the current CPC "*consumer*" definition e.g., regarding a wider group of companies. Many customers comprise relationships made up of multiple companies, which are placed outside of CPC by way of forming part of a larger group. Does the lack of any reference in CP158 to "*group of companies"* mean it will be unchanged from the existing CPC?

4. Proposals regarding the Trusted Contact Person

The proposal to introduce a nominated contact is welcome; however, the proposals regarding its implementation require additional clarity.

As we indicated in the 2023 submission, the suggestion regarding provision of a facility to allow a customer to provide the name and contact information for a trusted contact person is useful. We also stated that safeguards to avoid manipulation of the customer would be required, with the rights of such a trusted contact person to be brought in line with the Assisted Decision-Making (Capacity) Act 2015 (the 2015 Act). In addition, we believe that, in cases where the appointment of a Decision-Making Assistant (DMA), a Co-Decision Maker (CDM) or a Decision-Making Representative (DMR) is made under the 2015 Act, the appointment of the Trusted Contact Person should be terminated, and the S.48 Regulations should provide for such a scenario. In addition, we highlighted that as a safeguard against the risk of coercion, it should be a requirement for the Trusted Contact Person to provide identification documentation to the firm, to allow for the verification of identity, and that these processes and procedures should be addressed by the CBI in consultation with the Decision Support Service (DSS). Depending on the clarity of roles and responsibilities that may emerge in relation to the Trusted Contact Person in the final CPC, there may be a need for other verifications or additional checks that members may implement as part of due diligence processes.

Generally, clarity regarding the role of the Trusted Contact Person and what both firms and customers can expect from a Trusted Contact Person need to be more clearly defined in the revised and final Regulations. This will ensure clarity regarding engagement with Trusted Contact Persons and help firms to understand what policies and procedures would need to be implemented.

Further feedback is set out in Section 2.7 below.

5. Error and Complaint Management

The removal of the 40-day CBI error reporting requirement is welcome; however, its replacement with a requirement to urgently escalate significant errors to the Board requires definitions of "*urgent*" or "*significant*" in the context of error resolution, as well as clarity regarding the mechanism for reporting of same. Very clear guidance is required noting the increased involvement of the Board in the proposed requirements. In addition, guidance on threshold criteria is required to be proportionate to each firm.

There will be a need to review and significantly update error management policies and procedures which must include time for embedding and training.

The new requirement to immediately acknowledge complaints submitted electronically will present an operational challenge in respect of emailed complaints and will also provide a different level of service to customers, depending on the channel through which they submit their complaint.

6. Accessibility of the Regulations

As outlined in our response to the Discussion Paper in March 2023, we believe that the consolidation of the CPC and all associated addenda should be a priority, along with a move to the online hosting of the CPC Regulations in an easily accessible, easily readable and dynamic format, similar to that of the UK Financial Conduct Authority (FCA) Handbook of rules and guidance. Such an approach would facilitate the inclusion of links and/or references to requirements that are anchored in Directives or Statutory Instruments, facilitating a regulation that is much more user-friendly.

In addition, we would welcome the facilitation of easy access to Dear CEO letters and if any policy changes emerge from those that guidance would be provided, and that they would be incorporated into any online, dynamic CPC Regulations to ensure the consolidated requirements are known and accessible in one location.

Furthermore, the use of a dynamic format, in the context of increasing digitalisation in the sector, is a key consideration in keeping regulation in line with the pace of technical change and innovation.

Whatever the format, the use of a static document is not feasible considering the nature and frequency of updates to the CPC, and the practice of issuing of industry letters.

2. Feedback to Principal Policy Proposals

2.1 Securing Customers' Interests

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

In our response to the questions raised in the CPC Discussion Paper in March 2023, BPFI sought guidance on what it means for a firm to act in the best interests of its customers, suggesting that this be aligned with the customer and product lifecycle, with the added benefit of informing the design and distribution of products.

We also suggested avoiding any guidance becoming a prescriptive requirement, noting the importance of retaining the power of autonomy of a firm and the potential flexibility to enhance or expand on initiatives aimed at securing consumers' best interests, and the need to ensure any guidance balances the interests of all stakeholders including consumers, shareholders, regulators and the staff of regulated firms.

As outlined above, the legal opinion provided by Simmons & Simmons notes that the introduction of a requirement to "*at all times … secure its customers' interests*" in the S.17A Regulations (para 4.1) is out of step with other comparable financial services conduct frameworks and that a "*best interests*" concept is in keeping with the requirements of the G20/OECD High-level Principles on Financial Consumer Protection 2022 (para 4.3). The gold-plating of requirements in Ireland may risk putting the consumer protection framework in Ireland out-of-step with other jurisdictions (para 4.4). These points are expanded on in detail in Appendix A to this submission.

Draft Guidance on Securing Customers' Interests

In the context of the above points, we welcome the CBI's inclusion of proposed *Guidance on Securing Customers' Interests* as part of the consultation process on a revised CPC.

As in the submission on the CPC Discussion Paper last year (the 2023 submission) and in an earlier submission to the CBI, BPFI suggested that a revised version of the CPC should include guidance regarding high-level customer outcomes for the fair treatment of customers and/or acting in customers' best interests. At the time, we indicated that guidance could be aligned with the customer and product lifecycle, with the added benefit of informing the design and distribution of products. We note that this approach is taken in the proposals outlined in the draft Guidance.

The draft *Guidance for Securing Customers' Interests*, while outlining expectations, does not prescribe actions for dealing with different scenarios or sets of individual circumstances. It is therefore for regulated firms themselves to determine, supported by the Guidance, what actions should be taken to secure customers interests. The absence of detail carries a potential risk around consistency of application, which may impact consistency of consumer outcomes. In this regard, we suggest it would be helpful for the CBI to clarify its intended approach in assessing the delivery of "*positive*" or "*good*" customer outcomes. Securing customers' interests should remain an area for ongoing engagement between the CBI and BPFI, to promote the development of a broadly consistent approach across the sector, whilst recognising that each organisation will need to deploy, embed and evaluate its own approach in a manner which is effective for their own organisation.

In addition, the use of terms such as "*too long*", "*reasonable*", "*responding appropriately", "significant",* along with customer outcome descriptions of "*fair*", "*positive*" and "*good*" is subjective and open to interpretation. The provision of detailed practical guidance on these matters would be beneficial to support compliance.

More specific feedback on the draft Guidance includes:

Understanding potential customers' needs *(Ref. to S. 2.1.1 of the draft Guidance on Securing Customers' Interests)*

Customer focus is already a leading value for members. However, the requirement to know all "*potential customers*" needs exactly, will be challenging, outside of an approach that follows economic and market trends, prompting reaction with for-purpose product options or changes based on direct feedback from existing customers. We would welcome clarity regarding the CBI's expectation that more regular market/economic updates should issue to customers, outside of regular customer communications.

Ownership *(Ref. to S. 2.1.5 of the draft Guidance on Securing Customers' Interests)*

Provision 2.1.15 is worded in a very general and overly subjective way, in relation to its interpretation and understanding the CBI's expectations, if challenged. We believe that this provision should be revisited to ensure its application can be objectively and consistently implemented, and is not subject to abuse, malicious complaints, or litigation.

Culture and Governance *(Ref. to S. 2.1.18 of the draft Guidance on Securing Customers' Interests)*

We would welcome clarification regarding the expectations relating to "*lack of available alternatives"* – is this in relation to reference firm level or at an industry level? What are the expectations where a firm doesn't have other available alternatives for a customer and a customer takes no action after being informed by the firm i.e., to what extent is a firm expected to help find another solution for the customer? Or in another scenario, if a customer is informed that a particular product is no longer suited to their needs, but the customer takes no action to move, what does the firm do next?

Product Development *(Ref. to S. 2.3.5 of the draft Guidance on Securing Customers' Interests)*

Under *Product Development*, there is a requirement for consumer research to be undertaken. Some firms may have research findings available to them from other sources e.g., general customer feedback and interactions, customer complaints etc. The inclusion of the requirement as drafted may put an obligation on it being required for all new products, as well as obliging new entrants to undertake research for products which are already widely available in the market. It would be preferable for the guidance to allow some flexibility for other sources to be available to use.

Sales/transaction process *(Ref. to S. 2.3.5 of the draft Guidance on Securing Customers' Interests)*

What is the CBI's expectation regarding a customer's agreement of their understanding of eligibility – will a form be required to be completed by the customer? How would this agreement need to be evidenced? Will the requirements for the customer's agreement of their understanding of eligibility be the same for all products or is it risk-based?

Customer Behaviours, Habits, Preferences and Biases *(Ref. to S. 2.4.1 of the draft Guidance on Securing Customers' Interests)*

What is the CBI's expectation in relation to "*responding appropriately"* in the context of the requirement that "*Firms should respond appropriately to customers' patterns of behaviour."?* Clarity is required for members to understand the requirement to ensure compliance.

Dealing with Errors or Mistakes and Customer Complaints

(Ref. to S. 2.5.3 of the draft Guidance on Securing Customers' Interests)

The use of the term "Stop the Harm" in this context is not aligned with the same term used in IAF PR7. To avoid conflict the use of the term should be removed from this context, or its definition

cross referenced against its use under IAF.

(Ref. to S. 2.5.6 of the draft Guidance on Securing Customers' Interests)

Does the CBI anticipate publication of an industry standard "*impact assessment*" to ensure consistency of approach?

(Ref. to S. 2.5.7 of the draft Guidance on Securing Customers' Interests)

Provision 2.5.7 requires that remediation be accompanied by "*full disclosure to provide transparency and accountability on the remediation plan and process*". This requirement would be interpreted in many ways, both by firms and by the CBI in relation to its expectations. We would welcome clarity regarding what is expected, above and beyond what is currently done.

Standards for Business & Supporting Standards for Business Regulations

Detailed observations regarding the S.17A Regulations, as provided by way of a legal opinion from Simmons & Simmons, are set out in Appendix A to this submission.

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

As in the 2023 submission, we indicated that consumers should be offered the same levels of protection, regardless of the provider that they engage with or the product that they wish to avail of. The risk that emerges if this is not the case is that the industry has varying standards or levels of regulation applying, resulting in divergent consumer protection requirements. We believe that all providers should be brought within the regulatory perimeter to ensure a level-playing field with the same rules and provisions applying, and to give assurances to consumers that any agreements they enter with regulated providers are subject to the same protections as other market participants.

In the 2023 submission, we pointed to the addendum to the CPC arising from enactment of the *Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2022,* which brought additional products into scope of certain chapters of the CPC. This was a welcome development and is conducive to good customer outcomes. We now note the intention to apply the revised CPC in full to those products and comments in that regard are provided later in this submission.

We believe that MiFID firms and crowdfunding services should be required to apply the Guidance on Securing Customers' Interests. This will ensure a level-playing field and maximum protection for consumers across the spectrum of market players regardless of the products being offered.

2.2 Digitalisation

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

Customer research, feedback and noted behaviours have demonstrated that consumers want to be able to avail of financial services and communicate with their financial services provider at a time and place that is convenient to them. To meet customers' expectations, financial services providers need to be accessible and proactive in their interactions with customers. The implementation of digital strategies underpinned by technological advances is a critical tool to being able to service customers in line with their expectations.

We also note the challenges and risks identified with digitalisation of financial services relating to fraud, the sharing of personal data and in some cases, financial exclusion. We believe that the key mitigants to these risks are the provision of key information in a concise manner and improvements

to the financial literacy of consumers. The key challenge is to balance increased digitalisation with the needs of customers who may be less comfortable with technology and those who have additional support needs.

In relation to the proposals in the S.48 Regulations, we note the requirement to provide guidance on the use of digital platforms and this approach will go some way to improving a customer's experience of accessing financial services digitally. However, there are concerns that guidance to be provided on the use and navigation of digital platforms may be deemed excessive for consumers and may overload and overwhelm customers with documentation when the sector is trying to consolidate the amount of information provided to consumers.

We acknowledge that maintaining a presence across channels is important in ensuring that certain customers do not become marginalised, in particular those who are less digitally enabled or have a preference for face-to-face interaction. We agree that it is important that the legislative/regulatory framework adequately provides for different comfort levels with technology amongst consumers, thereby ensuring that financial services providers can offer products and services that cater to the needs of different customer cohorts. Adopting a forward-looking approach to making multiple channels available, that are effective to meet the specific needs of consumers, will help to address the vast array of different needs which exist across Irish society.

It is important to remember however that there are some market players who provide a digital-only offering to customers. We believe that the requirements regarding multi-channels does not necessitate the introduction of channels that a digital-only provider does not already offer. A useful precedence in this regard is set out in the *European Union (Payment Account) Regulations 2016* under S. 17 (2), which states that:

> *(2) A relevant credit institution shall be obliged to offer a service referred to in paragraph (1) as part of a payment account with basic features only to the extent that it already offers the service to consumers holding payment accounts other than payment accounts with basic features.*

Perhaps the CBI could consider similar text in the revised CPC Regulations to ensure full clarity of the requirements in this regard.

More detailed feedback on relevant specific provisions of the S.48 Regulations is set out in Appendix B.

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

We note the proposals set out in relation to changes or withdrawal of branch services and acknowledge the importance of providing adequate notice to customers in respect of changing or ceasing branch services.

While understanding the requirement for preparing assessment reports, we believe that the publication of such reports in their entirety will not be possible owing to the inclusion of certain commercially sensitive information. The requirements in this regard should be reviewed as a result and allow for flexibility regarding the publication of findings to include only that which is deemed of relevance to the public. We do note from engagement with the CBI that there may be other avenues available for publication and that the focus should be on the consumer impact. We would welcome this clarification in any guidance published as part of the final CPC documentation.

We believe that greater clarity is required in relation to the proposals or that flexibility is permitted in certain circumstances. For example, it may be that a branch locates from one building to another

within the geographic area or that a branch may close for several reasons e.g., temporarily to refurbish or renovate. Clarity regarding the expectations in those scenarios is required or allowing flexibility in relation to the meaning of "… *significantly amending branch services* …" would be helpful in providing an appropriate and proportionate response to customers, based on the circumstances at play.

2.3 Informing Effectively

As set out in the 2023 submission, several factors contribute to achieving effective communications with consumers including the use of plain English; consolidation of the level of information to be provided to consumers, as well as consolidation/alignment of the legal and regulatory requirements set out in the consumer protection framework; more effective use of Key Information Documents, to avoid the repetition of information; and a post-sales review of consumer understanding.

Consumers who are well-informed are better placed to make good financial decisions. While regulated entities have obligations to provide clear and easy to understand information to consumers, the level of financial literacy amongst consumers continues to vary, especially when it comes to complex products and an understanding of the composition of interest rates e.g., Annual Percentage Rate (APR), Annual Equivalent Rate (AER). We believe that all stakeholders have a responsibility to facilitate an improvement in the level of financial literacy in the community - from government departments and state agencies to regulatory authorities and financial services providers. We look forward to sight of the National Financial Literacy Strategy once published by the Department of Finance. In the meantime, the report of the National Adult Literacy Agency (NALA), titled "*Financial literacy in Ireland*",[1] outlines recommendations for financial services providers and policy makers including:

- For financial services providers - to implement measures that support customers as they transition from offline to online financial services and provide training for staff on how to respond appropriately to individuals with unmet literacy, numeracy and digital literacy needs.
- For policy makers - to provide more education and training on financial literacy and to make current training and instruction materials for using online banking services available in plain language, through literacy-friendly guides, for the identified vulnerable groups.

The level of financial literacy required by consumers will depend on multiple factors, including their life-stage, and we believe that the relevant authorities should conduct a proactive financial awareness and education campaign, not only through school curriculums, but also through television, radio, internet and social media channels, to support consumers as they consider the key financial implications and key products relevant for each life-stage.

Consumers need to be made aware of where they can access information to improve their financial knowledge and skills, and these sources need to be easily accessible and trustworthy. The CBI Consumer Hub should be enhanced and better publicised as an independent source in this regard. In particular:

- The existence and purpose of the CBI Consumer Hub may not be widely known, and it should be publicised more as a key source of financial information and education support.
- The use of the CBI Consumer Hub could ensure there is one central source for consistency regarding the level and quality of educational material and information provided.
- We believe that, given a revised CPC in the form of Regulations, the Consumer Hub should be

[1] https://www.nala.ie/research/financial-literacy-in-ireland/

expanded on to include explainers and easily understood interpretations of the protections for consumers.

- The CBI Consumer Hub should also provide consumers with information on how to obtain independent advice regarding financial products and services.
- The CBI Consumer Hub could also be a key source of information to support the life-stage financial awareness and education campaign outlined above.

As we informed previously in the 2023 submission, BPFI and members believe that the sector has a key role to play in developing valuable and viable partnerships with responsible authorities/stakeholders on what is a critical topic for consumers, and we are committed to inputting to and supporting any initiatives in this area.

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

Generally, it is noted that the Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (the European Accessibility Act), which comes into effect in 2025, sets out extensive requirements for accessibility including in relation to banking services, not just on digital platforms but in relation to any interaction where a service is provided. Members are currently working to ensure they will meet the obligations of the European Accessibility Act once effective and ask that the CBI satisfies itself that the requirements of the proposed Regulations are aligned to those of the European Accessibility Act.

There have been several significant additional disclosures and warnings set out in the draft S.48 Regulations, along with an increased amount of information required for inclusion in advertisements in relation to various warning messages, footnotes, explanatory information etc. We do not believe this additional information will support consumers in their engagement with financial services providers. Increasing the disclosures to consumers may not result in more informed consumers; rather, it can have the opposite effect - by sending an increasing amount of information to consumers, it can serve to disengage rather than inform/engage them in their financial decisions and planning.

There are also various new requirements for communicating with customers, which could potentially present significant operational challenges e.g., the requirement to acknowledge all customer instructions within 3 working days under S. 123. This is operationally unrealistic and would require significant costs to implement the required internal reporting and controls, with little foreseeable benefit to consumers, who, in some scenarios, would have specific instructions acknowledged verbally.

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

We do not have any specific feedback regarding the proposals on the implementation of the new *Informing Effectively Standard for Business*.

2.4 Mortgage Credit and Switching

In relation to mortgage switching, in September 2023, in collaboration with mortgage-lending members and supported by Brokers Ireland and the Association of Irish Mortgage Advisors, BPFI issued an information leaflet for consumers to inform about switching a mortgage from a credit

servicing firm to a retail bank or a non-bank lender. The information leaflet outlined the standard criteria that a customer seeking to switch their mortgage from a Credit Servicing Firm (CSF) to a bank, non-bank or retail credit firm would have to meet before the new provider could begin to assess the application. The information provided in the leaflet is intended to allow customers who have a mortgage with a CSF to understand the actions they may need to take in advance of applying to switch.

Further work will be undertaken at industry level in relation to switching mortgages, with a campaign scheduled for June 2024. This campaign will involve the launch of a new switching website that will inform customers on what actions they need to take in advance of meeting a new lender to apply to switch their mortgage. The site will contain helpful links to various bodies to help them understand all the elements of switching and to know what documentation they will need in advance. There will also be radio and social media campaigns to complement the website. It is intended that the website and associated media will inform customers regarding the application process, to ensure a more efficient and straightforward journey.

In addition, members have been engaged through BPFI's Mortgage Market Council on proposals for an approach like that in Scotland, where there is a requirement on the seller or a customer wishing to switch to have all documentation to hand prior to putting the property on the market or applying to switch their mortgage. We would welcome the CBI's consideration of how this proposal might be progressed and are available to engage on this point if the CBI deem engagement to be of value.

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

We agree with the principle of the proposals as outlined in CP158 and in the draft Regulations, which aim to enhance customer disclosures and to increase transparency for customers in relation to mortgage incentives. We believe these disclosure requirements will provide mortgage customers with additional understanding of their mortgage loan.

However, see below our feedback in respect of what is proposed:

- The definition of an "*incentive*" states anything that meets the conditions of S. 168 (a) and (b) to be an incentive, which includes *"cashback"* in the list of examples. However, cashback offers may not meet both conditions. While members do treat the cashback offering as an incentive, the draft regulation is contradictory and must be amended to accurately reflect the practice of offering and availing of a cashback offer.

  We believe that as currently drafted it may give rise to confusion of customers by implying that there are hidden costs involved.

- Consolidation of warnings could reduce the number of individual warnings to consumers which as noted above can disengage customers or dilute the warnings. For example, one overall warning could be provided for S. 170 (2), (3) and (4), which would ensure compliance with the S. 48 Regulations, whether there is an incentive or not, and would also be simpler to operationalise.

- Under S. 135 of the Consumer Credit Act 1995, the Director of Consumer of Affairs at the time was empowered to make directions on advertising and information documents for mortgage loans, a power that has since been vested in the CBI. Two directions were made, which apply in addition to the further specific requirements for advertising mortgages as set out in the EU Mortgage Credit Regulations 2016 and CPC. We suggest that the CBI should withdraw these notices and/or codify the requirements in the draft CPC Regulations, whatever parts of these directives the CBI wishes to preserve in effect. Doing so would enhance the transparency of the

Regulations in relation to advertising of mortgages and reduce the number of legal sources that are necessary to refer to.

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

At a general level, we believe that the consolidation of the Code of Conduct on Mortgage Arrears (CCMA) into the CPC Regulations affords an opportunity to consider a specific process in relation to agreeing Alternative Repayment Arrangements (ARAs) for separated borrowers. BPFI has attempted to engage with relevant stakeholders, including the CBI and the Law Society of Ireland in particular, on the matter of separated borrowers for some time now, but with little success or progress. We would welcome the CBI's consideration of such a process and are available to engage with the CBI on this matter, if it is something that the CBI would be willing to progress.

In addition, we support the requirement to provide additional information on the implications of a personal insolvency arrangement for a borrower and his/her mortgage loan account in several borrower communications, which will serve to enhance customer disclosure and to improve customer understanding of the personal insolvency process.

We welcome that further guidance will issue on the revised CCMA, particularly in the context of understanding of what is expected in relation to an "*appropriate and sustainable*" range of ARAs. In this regard, consideration must be given to the nature and scale of an individual firm's activities, and its capital and market position, to ensure that the requirements are equitable, while at the same time ensuring that customers are protected and provided with a range of options which are broad enough and suitable to their needs. Existing European legislation, under the Mortgage Credit Directive and the European Banking Authority guidelines on non-performing exposures and forbearance, also set out requirements in relation to ARAs. These should also be considered in the context of the revised CCMA, and the need to avoid any duplication of regulatory obligations.

2.5 Unregulated Activities

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

In the 2023 submission, we requested that a revised Code should be clear regarding the information to be provided to the consumer regarding regulated versus unregulated activities; that consumer research and testing are critical to fully understand what approach best resonates with consumers; that an understanding by consumers of regulated versus unregulated activity should form part of the wider financial literacy and education agenda; and that a more consistent approach regarding notification of unregulated activities is required across all relevant providers.

When a firm engages in both regulated and unregulated activities, Provision 4.8 and 4.9. of the existing CPC, place certain obligations on firms in relation to the use of the regulatory disclosure statement and website content.

The disclosure requirements proposed under the revised CPC, intended to ensure that customers are fully aware of the regulatory status of the product or service, appear reasonable and proportionate to achieve this goal. However, the following phrase in CP158 does not appear to be proportionate: "*In many circumstances, to avoid this confusion, it will not be possible for a regulated firm to offer unregulated products or services."* We would welcome clarity from the CBI as to the rationale for preventing regulated firms from offering unregulated products or services.

As per Section 1.41 "*Proportionality*" of the "*Guidance on Securing Customers' Interests*", we strongly agree with the stated regulatory principle that consumer protection requirements *are proportionate* in terms of achieving the outcome sought *without being unduly burdensome and costly*, and therefore it should be clarified that regulated firms who do follow the four proposed requirements will be able to offer unregulated products alongside regulated products in the same service or app, as long as the distinctions between the regulatory status of products are made clear to the customer. Any requirements that make it impossible for regulated firms to offer unregulated products alongside regulated products in the same app or service would not be proportionate, and not be aligned with the stated regulatory principle of "Proportionality".

Consumers who *do* wish to interact with unregulated products may stand to benefit when those unregulated products are offered by a regulated firm (where the regulated firm makes it clear which products are regulated and which are not). Such firms will necessarily have mature business processes in place, robust governance, and will be subject to regulatory oversight. Forcing a consumer to do business with an unregulated firm because a regulated firm has been prevented from offering an unregulated product would not be in the interests of consumers.

We welcome the clarity provided in the S.48 Regulations under Chapter 7 and 8 of Part 2. However, we ask that the CBI considers the relationship between regulatory status and the Conduct of Business Rules in the context of products, such as invoice discounting, that can be provided on an unregulated basis. We note when a product is provided by a regulated firm, Conduct of Business Rules apply, with invoice discounting included in the definition of credit under the SME Regulations. However, it is not expressly called out as a product in scope under CPC. Therefore, we require clarity of scope or otherwise, in relation to invoice discounting, within the definition of "*Unregulated Activities*".

In addition, the legal opinion attached at Appendix A sets out a view in relation to regulated versus unregulated activities, and the requirements proposed in that regard in the S.17A Regulations and the S.48 Regulations.

2.6 Frauds and Scams

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

We believe that the protection of consumers from financial abuse, including frauds and scams, involves a cross-sectoral, multi-stakeholder approach.

BPFI, in collaboration with members, has developed an active programme of awareness campaigns under the FraudSMART initiative. This initiative raises awareness of financial scams and provides important information to consumers about ways in which they can protect themselves. FraudSMART aims to raise consumer and business awareness of the latest financial fraud activity and trends and provides simple and impartial advice on how best consumers can protect themselves and their resources.

To complement the activity of FraudSMART, other potential initiatives could include:

- A cross-sectoral approach that must include legislators, regulators, telecommunications and utility companies, social media companies, financial services providers, and others as relevant.
- Customer awareness and education at industry level with government, law enforcement and other agencies.
- Progress on the sector-proposed shared fraud database to inform the wider sector of potential

threats. A system like CIFAS in the UK would help with fraud monitoring and reporting of individuals to ensure other entities are made aware.

Members need to be able to adopt heightened practices and controls, with appropriate and timely escalation as a main objective, to prevent financial abuse impacting customers, including vulnerable customers.

The reference to a "whole-of-system" approach is welcome; however, limitations with sharing fraud data has restricted the ability of market players to work collaboratively and to progress such an approach. It is noted that the sharing of fraud data is proposed by way of the transposition of revised EU payments legislation, but we believe that a cross-sectoral, collaborative approach to protect customers should be pursued as a matter of priority.

- There needs to be greater oversight of social media companies and their reporting process, and the speed with which they react to removing fraudulent sites/advertisements reported to them. There has been a notable increase in the number of false articles appearing online designed to defraud customers through fake financial products, investments or cryptocurrency schemes, and the lack of accountability and appropriate swift action by social media firms to remove these is a concern.
- The addition of a credit score to the information available on the Central Credit Register (CCR) would be useful, where a poor credit score is an indicator of the customer's potential vulnerability to fraud.

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

There are several aspects of the "*financial abuse"* definition and proposed requirements that we believe should be given further consideration including:

Definitions *(Ref. to S. 3 of the Standards for Business Regulation)*

The proposed definition of "*financial abuse"* is very broad. We believe that further clarity is required in this context.

The definition covers "*wrongful or unauthorised taking*", and the use of the word "*wrongful"* would seem to be broader than unlawful or illegal. Is this the expectation of the CBI in using the word "*wrongful*"? We ask that clarity is provided in this regard.

The amount of authorised fraud, where a customer has given instructions to a firm, been manipulated, or coerced into giving consent, is increasing exponentially. What is the CBI expectation in such scenarios, in the context of the proposed definition?

The definition also references "*... through the use of a power of attorney ... or any other authorities*". What is the expectation of firms in relation to monitoring what authorised legal representatives do with the customer's funds?

Is it the intention that the definition of "*financial abuse*" will be linked to criminality, and what are the expectations on firms to report externally if this is the case, noting that the definition may be within the remit of the schedule of offences that are reported to An Garda Síochána under Section 19 of the Criminal Justice Act 2011?

When a firm suspects that a consumer is at risk of financial abuse, measures are taken to safeguard that person and to provide him/her with the appropriate supports. However, where a consumer is unwilling or unable to report financial abuse, the ability of a regulated firm to report a suspicion to the authorities (e.g., An Garda Síochána/the HSE) is limited. Guidance is required, in collaboration

with relevant external third parties, regarding when a firm may make an external report and to where these cases can/should be reported, considering such factors as data protection obligations and appropriate safeguards for firms and their staff.

We believe that the concept of "*financial abuse*" should be confined to a "*personal consumer*", using the definition from the S.48 Regulations, perhaps extended to natural persons in business e.g., sole trader. Otherwise, the question may arise in the case of complex fraud, breach of trust or breach of authorisation which affects a corporate customer for example.

Financial Abuse

(Ref. to S. 12 (a) of the Standards for Business Regulation)

What is the CBI's expectation in relation to "*reasonable*" systems and controls to monitor and identify financial abuse?

The systems and controls currently in place within member firms recognise and identify financial abuse on a best-efforts basis, noting that an element of subjectivity applies as to what may be determined as financial abuse. In particular, the expectations in relation to SME customers must be clarified, noting that "*customer*" is used in the S17A Regulations; however, the consultation paper refers only to "*consumer*" in section 2.6 of CP158.

(Ref. to S. 12 (d) of the Standards for Business Regulation)

Further clarity is required in relation to the appropriate channels for "*clear and timely communication"* regarding digital fraud. To what extent is a firm expected to engage i.e., is the expectation that the firm will communicate directly with all customers or can existing channels e.g., firms' websites, social media channels etc., be used to make customers aware more broadly, in particular if a firm is aware of a fraud or scam in the industry generally?

2.7 Protecting Consumers in Vulnerable Circumstances

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

BPFI and members acknowledge the proposed amendments in relation to protecting consumers in vulnerable circumstances. We agree that certain requirements as outlined are necessary to protect consumers who are experiencing vulnerability. For example, appropriate training of staff, senior management support and responsibility, and emphasis on the end-to-end customer journey will go some way to protecting this cohort of consumers.

In responding to the questions raised in the consultation paper, several specific aspects of the proposed regulatory requirements and the associated guidance require further consideration and clarification. These include:

Definition of "*consumer in vulnerable circumstances*" *(Ref. to S.48 Regulations Provision 2. (1), and Guidance on Protecting Consumers in Vulnerable Circumstances)*

We welcome a revised definition of "*consumer in vulnerable circumstances*" in the Regulations, which we consider to be more closely aligned with the approach taken by members currently in relation to vulnerability.

In the 2023 submission, we specifically referenced the definitions in use by the FCA in the UK and by the Australian Securities & Investments Commission. Both of those definitions are considered to describe more accurately what is meant by vulnerability and both go further than what is outlined in

the proposed definition in CPC, referring to the characteristics of vulnerability and capturing the fact that vulnerability can be temporary or permanent, and that consumers may move in and out of it. Furthermore, both of those definitions allow for an easier translation for the purpose of training staff in understanding vulnerability. This is an important point, as it is typically front-line staff that become aware of or recognise a customer in vulnerable circumstances.

In addition, it is important to note that consumers may be vulnerable because of the actions of a family member or a third party, and not solely if "… *a regulated entity is not acting with the appropriate levels of care*". This is an important consideration in working with customers in vulnerable circumstances and is something that is referred to below in relation to proposals relating to the Trusted Contact Person. Despite the measures that a firm may take and the supports that it provides, a customer may still be vulnerable and susceptible to harm. The revised CPC needs to reflect this obligation in a more balanced way, noting the responsibilities of the regulated firm and the circumstances of the vulnerable customer.

We agree that the vulnerability risk factors/scenarios most relevant to each firm should be understood and managed, with specific reference to S. 2.2.5 and S. 2.2.6 of the Guidance. In the last number of years, as part of the work at industry level in response to market exits, BPFI members further refined the approach to dealing with customers in need of additional support. Three cohorts of customers were identified as potentially vulnerable, with support prioritised for those customers, including:

- **Accessibility** – for example, a person's disability prevents them going to a branch.
- **Life events** – for example, a customer is impacted by a recent bereavement, long-term illness.
- **Capacity** – for example, a person with dementia needs support to make a decision at a particular point in time, such as opening a new bank account, or a person lacks capacity to make such a decision and there is no Enduring Power of Attorney (EPOA) in place.

This work continues to input to the approach by members to provide additional support to those customers who need it. Focusing on the provision of reasonable supports removes the requirement to label customers as vulnerable or potentially vulnerable. However, it is important to note also that a customer can have multiple vulnerabilities at once or through the lifecycle of their customer journey. It is often the experience of members also that if a person has a particular vulnerability, it tends to contribute to other vulnerabilities significantly impacting a customer's capacity to make decisions e.g., the loss of a job could bring on ill health.

All consumers in vulnerable circumstances must be treated sensitively. In that regard, GDPR provisions apply in full, so if the vulnerable circumstance is recorded, explicit consent would be required and obtained. However, we note the obligations for firms to comply with the data protection principles under GDPR, including purpose limitation, accuracy, and storage limitation, and we would be interested to understand how those obligations will interact with the proposed requirements to record and retain personal data of consumers in vulnerable circumstances e.g., how long personal data should be retained having in mind the dynamic and transient nature of vulnerability, etc. There are additional difficulties for those consumers who interact via a broker, which presents additional difficulties in dealing with sensitive issues. Requiring explicit consent may lead to a consumer feeling stigmatised or singled out.

Each vulnerable circumstance differs, and this means that training and the implementation of policies and procedures are the most appropriate way of ensuring a positive consumer outcome. We understand that the CBI intends that consumers would not have to explain the circumstance every time they interact with financial service providers; however, there may be downstream consequences of this that need to be considered, particularly from an operational perspective.

Guidance on the approach to reporting suspected financial abuse *(Ref. to Guidance on Protecting Consumers in Vulnerable Circumstances, S. 2.3.9 - 2.3.12 – Reporting of Concerns by Staff)*

When a firm suspects that a consumer is at risk of financial abuse, measures are taken to safeguard that person and to provide him/her with the appropriate supports. However, where a consumer is unwilling or unable to report financial abuse, the ability of a regulated firm to report a suspicion to the authorities (e.g., An Garda Síochána/the HSE) is limited.

Guidance is required, in collaboration with relevant external third parties, regarding when a firm may make an external report and to where these cases can/should be reported.

The requirement to seek consent under S. 37 (1) conflicts with the requirement for employees to report concerns that a customer is the victim or at risk of being the victim of a fraud or scam, or other financial abuse.

Disclosure by consumers of sensitive information

The obligation to record information detailing circumstances of vulnerability, "*if, and only if, the consumer consents to the recording of the information*" goes beyond obligations set out under GDPR. Requiring consent will negatively impact members' ability to record such information and to use it to support the customer. For example, it may not be possible to get consent in situations where a customer lacks capacity to provide consent, or if a concern is raised by a third party (e.g. HSE, Advocacy group) or the concern was observed by staff.

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

The proposal to introduce a nominated contact is welcome; however, the proposals regarding its implementation require additional clarity.

As we indicated in the 2023 submission, the suggestion regarding provision of a facility to allow a customer to provide the name and contact information for a trusted contact person is useful. We also stated that safeguards to avoid manipulation of the customer would be required, with the rights of such a Trusted Contact Person to be brought in line with the 2015 Act, where a customer/relevant person may appoint a Decision-Making Assistant (DMA), a Co-Decision Maker (CDM) or a Decision-Making Representative (DMR).

In addition, we highlighted that as a safeguard against the risk of coercion, it should be a requirement for the trusted contact person to provide identification documentation aligned with existing Anti-Money Laundering processes to the firm, for them to be considered as the customer's contact, and that these processes and procedures should be addressed by the CBI in consultation with the Decision Support Service (DSS).

Several concerns have been identified that must be addressed prior to finalising the regulatory obligations regarding a "*Trusted Contact Person*", including:

The role of the Trusted Contact Person

S. 35 (1) to (5) inclusive of the S.48 Regulations sets out the circumstances in which a regulated financial services provider may contact a Trusted Contact Person. The circumstances set out are deemed limited and overly prescriptive, and clarity is required regarding the specific purpose and role of the Trusted Contact Person. We would welcome provisions that clearly specify the role of the "*Trusted Contact Person*" in the Regulations to ensure full clarity of the intended role of this person.

Reference to "*contact information*" is very broad, with the potential to introduce further risk regarding the disclosure of information by the Trusted Contact Person, and this should be more specific regarding the information that should be provided. It would seem that the extent of

information that can be shared with the Trusted Contact Person, as set out under S. 35 (1), will be left to the discretion of the regulated firm.

While it is set out that the regulated financial services provider can contact the Trusted Contact Person, there are no provisions for the Trusted Contact Person contacting the provider and guidance regarding whether the provider can engage with the Trusted Contact Person in such scenarios. This again speaks to the need for full clarity of the roles and responsibilities in relation to the Trusted Contact Person.

The role of regulated firms regarding a Trusted Contact Person

As above, there appears to be no definition of the role of the Trusted Contact Person, other than to receive/discuss information that the financial institution shares. Clarification is required regarding the expectations of the Trusted Contact Person i.e., would they be under any obligation to act on the information shared by the regulated firm? It would be useful to set out the expectations of the role of a Trusted Contact Person when engaged by a regulated firm e.g., the role should be clearly outlined so that the Trusted Contact Person is clear on what there are permitted to do, what they may be contacted with regard to, and what rights they have to engage with the firm on behalf of the customer.

In addition, the approach to removing or refusing the nomination of a Trusted Contact Person should be set out in the Regulations for regulated firms and by the Trusted Contact Person. If a consumer is in a vulnerable circumstance, they may not be able to nominate a third party or to trust the contact, when perhaps the vulnerable circumstances could be related to the person they're appointing as a trusted contact e.g., in situations of coercive control. Members are also concerned about having assurances or how to validate that the Trusted Contact Person is acting in the best interest of the customer.

Further guidance is also necessary regarding how complaints from a Trusted Contact Person should be handled by providers e.g., can the Trusted Contact Person submit a complaint on behalf of themselves in relation to the process?

Data Protection Considerations

The ability of the Trusted Contact Person to confirm the customer's health status, raises concerns from a data protection perspective. There is also a consideration for assessing a customer's capacity - capacity is always assumed under the 2015 Act; however, what does a firm do with a customer's health status, and could it lead to a capacity assessment?

Noting that Regulation exists in relation to financial services providers' obligations to record and process customer instructions and to support customers identified as vulnerable, it is important to highlight the interplay between these obligations and those of the GDPR. Data protection obligations must be considered when recording and processing information, particularly when it includes Special Category Data e.g., relating to a customer's health. Relying on the customer consent as a GDPR Article 9 basis for processing special category data can be challenging, as the information may have come from a third-party or the customer may not have capacity to provide consent. This challenge will remain given the proposed requirements, as set out in relation to the Trusted Contact Person.

Clarity on the interplay between the obligations highlighted above is key to protecting customers in vulnerable circumstances and ensuring their personal data is processed lawfully and transparently, including in relation to the recording of consent and the retention periods for this information. Engagement between the CBI and the Data Protection Commission on this matter would ensure a robust revised CPC that can be effective for all stakeholders.

Clarifications regarding consent

How should a regulated firm manage the process if the Trusted Contact Person withdraws his/her consent?

Consideration and clarity are also required in cases where customers might be facing domestic violence and financial abuse/coercion, as the abuser might act in these cases as the Trusted Contact Person. What safeguards can/should be put in place in such circumstances?

Alignment with the 2015 Act

Fundamentally, there does not appear to be full alignment between the proposals regarding a Trusted Contact Person and the requirements of 2015 Act.

For example, we believe that, in cases where the appointment of a Decision-Making Assistant (DMA), a Co-Decision Maker (CDM) or a Decision-Making Representative (DMR) is made under the 2015 Act or when an Enduring Power of Attorney (EPOA) becomes effective the appointment of the Trusted Contact Person should be terminated, and the S.48 Regulations should provide for such a scenario.

Considerations regarding protections for the consumer

We believe that regulated firms should be allowed to request a face-to-face or online meeting with the Trusted Contact Person. When a consumer notifies the firm of a Trusted Contact Person through a branch visit, a phone call or online, the firm should be permitted to directly contact the Trusted Contact Person and obtain the required permission.

As alluded to earlier, and as a safeguard against the risk of coercion, it should be a requirement for the Trusted Contact Person to provide identification documentation to the firm, to allow for the verification of identity. Depending on the clarity of roles and responsibilities that may emerge in relation to the Trusted Contact Person in the final CPC, there may be a need for other verifications or additional checks that members may implement as part of due diligence processes.

Furthermore, to minimise the risk of coercive behaviour, there must be a process and/or guidance on engagement with the Trusted Contact Person and the consumer, to give assurances regarding the risk of financial abuse. It may be possible that the Trusted Contact Person may be a potential perpetrator of financial abuse - therefore, appropriate procedures and guidance should be outlined to ensure the necessary caution is implemented when engaging with a Trusted Contact Person about a consumer's financial affairs. We would welcome therefore that, as above in the cases of the appointment of arrangements under the 2015 Act, the S.48 Regulations includes a provision for the termination of a Trusted Contact Person arrangement where it becomes apparent that the Trusted Contact Person is subjecting the consumer to coercive control.

Additionally, we would ask that the CBI considers the possible role of dedicated support organisations (e.g., SAGE Advocacy, Safeguarding Ireland) to be appointed as trusted contacts.

2.8 Climate Risk

BPFI members are committed to working with customers, colleagues, supervisory authorities and communities to support the transition to a resilient, net zero economy by 2050. This will require enormous investment (Sustainable Finance), customer support and innovation, but these efforts will make regulated firms and their customers more resilient to the climate and environmental crisis and better equipped for the green transition.

BPFI members are already playing a significant role in supporting the transition to a climate neutral

economy. The sector recognises it has a critical role to play in financing the transition towards a low-carbon economy through its allocation of resources, including corporate and retail lending, financial markets intermediation and asset management. This is done through providing appropriate and attractive products and services to direct the flow of finance to sustainable activities, as per the key objective of the Paris Climate Agreement 2015.

Fulfilment of this objective has prompted the impactful legislative actions arising under the EU's Sustainable Finance Action Plan and the ESAs' Sustainable Finance mandate, and global initiatives such as the International Sustainability Standards Board, the Taskforce on Climate-Related Financial Disclosures (TCFD) and the UNEP Financial Institutions Environment Programme, known as UNEP FI.

We welcome that the Central Bank has identified addressing climate change as a strategic priority and has established the cross-industry Climate Forum, which can potentially provide an opportunity for *cross*-sectoral collaboration and education on the critical topic of climate and environmental risk management in financial services.

Banks' path to net zero involves:

1. Investing and underwriting "green" assets and businesses to support those households and companies whose lifestyles and business activities support the government's plan to decarbonise the economy.
2. Playing their part in this economic transition by financing those "browner", more carbon intensive assets and companies so they can become "greener".

Members are also engaged in significant adaptations to their businesses by:

- Undertaking significant internal changes to repurpose their business model to support sustainability, facilitated in part by their commitments under the TCFD, United Nations Principles for Responsible Banking, the Science-Based Targets Initiative (SBTI) and other initiatives.
- Working extensively to mobilise customers by providing products and services that support sustainability, by rewarding customers engaging in "green" activities, such as retrofitting a house or business or reducing emissions of a factory, for example.
- Appointments of senior positions, such as Chief Sustainability Officers, charged with driving sustainability in their financial institutions and leading out on engagement with customers and stakeholders.

Member banks' integration of sustainability and commitment to supporting customers to transition to a more sustainable economy occurs in a challenging context, for example:

- Interest among consumers and market participants of products and services that reward sustainability behaviours is undetermined.
- There is a lack of standardised definitions of what constitutes "green", including differing reporting criteria for the many different reporting agencies. International standardisation of reporting standards is essential to ensure a level playing field.
- Implementation of the EU's complex and interrelated legislation such as Green Taxonomy and Disclosure and from the EBA, Pillar 3 climate-related risk.
- Recent severe, unexpected shocks - the Covid-19 pandemic, supply-chain disruptions affecting global prices for goods and services, and war in Ukraine - cannot distract from the PCA commitments and the new Climate Action Plan 2023.

Members are grappling with the extensive, complex, and inter-related new legislative and regulatory rules, requiring significant expertise and dedicated resourcing to implement fully. A regulatory

regime with standardised requirements will facilitate members to support the transition. For domestic credit institutions, the emerging government policy on carbon (Climate Action Plan 2023, National Retrofitting Office, carbon budget and transition pathways) will hopefully prompt customer demand for their growing suite of green financial services and products.

Members are putting in place measures such as skills training of staff to help them inform their clients, particularly households and SMEs, of the benefits of choosing "green" financial products and services. Many lenders already offer discounts on products that support energy efficiency - for example, loans to retrofit a property to a certain energy performance standard are offered at a discount, and lenders offer sustainability-linked loans to SMEs looking to improve the energy performance of their business.

While it is evident from above that financial services providers are playing a significant part in supporting the transition to a climate neutral economy, the sector represents one player in a much broader framework. One important aspect to help achieve Ireland's climate ambitions would involve the education and empowerment of consumers to enable them to make financial decisions that support the decarbonising of economic activities and prompt energy efficiency. This is particularly relevant for sole traders and SMEs.

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

Proposals for legislation/regulation continues to come from the EU and members are currently working to implement those with impending deadlines, to engage on proposed regulations and to understand the implications at a national Member State level. It is important that any requirements considered for inclusion in a revised Code give due consideration to the legislative framework coming down the track from the EU and to ensure consistency of obligations in this regard.

Regarding the proposed protections relating to climate, clarity is required on the CBI's intention to leverage the EU-level Taxonomy Regulation and Sustainable Finance Disclosures Regulation (SFDR) as referenced in the CPC Consultation Paper – these EU frameworks have not been addressed in the Draft Regulations. If it is the CBI's intention to leverage off the Taxonomy Regulation and SFDR, this needs to be explicitly referenced in the Draft Regulations.

It is important that the revised CPC is aligned with the EU legal and regulatory framework and that Regulations in Ireland do not contradict or work to a different approach than what is set out at EU level.

The recent EBA Progress Report on Greenwashing[2] acknowledges that the existing framework already provides key foundations to address greenwashing in the banking sector, and notes that supporting a robust implementation of the full new sustainable finance regulatory regime should be the priority in the short term. BPFI welcomes EBA's assertion that "*Efforts to address challenges related to data, usability, consistency, and international interoperability should be further pursued*." We expect that the revised CPC will reflect the EBA approach, that the need for a new legislative initiative on greenwashing should only be contemplated, if needed, when "*…sufficient experience on the application of new requirements has been acquired*," … and "*an identification of potential gaps could be performed*".

[2] https://www.eba.europa.eu/sites/default/files/2024-05/a12e5087-8fd2-451f-8005-6d45dc838ffd/Report%20on%20greenwashing%20monitoring%20and%20supervision.pdf

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

Specific feedback in relation to "*sustainability preferences*" is set out in Appendix B.

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

To be able to give an appropriate response to this question, clarity on the CBI's definition of "*sustainability preferences*" is necessary.

At this time, BPFI understands that customers often need information on how their financial decisions can play a role in decarbonising economic activities and on how choosing sustainable financial products can be beneficial for them over time.

The banking sector has embarked on significant staff training programmes, including for relationship managers, so they can inform customers about the benefits of sustainable financial actions. Banks provide information and supports e.g., online "green hubs" to support those customers seeking green financial products and services. Delivery of the government's ambition as outlined in the Climate Action Plan, including actions to prompt climate awareness and a "*just transition*" for all citizens, will hopefully provide the incentivisation needed for the scaling up of customer demand for such products.

It is difficult to understand how this requirement will be applied in practice and how a provider will be able to determine a customer's sustainability preferences. Significant consideration should be given to how best regulated firms can translate the sustainability preference of a customer into the suitability criteria.

3. Additional Policy Proposals

3.1 Consumer Credit

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

Noting the proposal to expand the requirements to Buy Now Pay Later (BNPL), Personal Contract Plans (PCPs), hire purchase and consumer hire agreements, it is important to acknowledge the extent of IT and systems development that will be required to meet the obligations as in the proposed revised CPC. These products came within scope of the CPC for the first time in 2022 and to a limited extent only, with chapters 2, 5 and 9 applying. Expanding the obligations of the full S.48 Regulations to these products will necessitate the development of specific systems. The proposed 12-month implementation timeframe will be challenging to meet in the context of these products.

A further complexity is the relationship that exists between financial services providers and authorised intermediaries in the provision of these credit products to consumers. Authorised intermediaries have the initial engagement and a key relationship with the customer in the case of these products. Those firms are regulated by the Competition and Consumer Protection Commission (CCPC) and ensuring that they comply with the requirements of the revised CPC should be a role for the CCPC - regulated firms that are subject to the CPC should not be expected to oversee the compliance of intermediaries with the requirements. The revised CPC needs to provide full clarity to regulated firms regarding their roles and responsibilities, to ensure there is a full understanding by all parties of the expectations and obligations of all players in the distribution channel for these products.

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

There are no other specific elements of the revised Code that we believe should be applied to High-Cost Credit Providers.

However, we believe there needs to be assurances that consumers are afforded the same protections regardless of the provider advancing credit, to ensure a consistent framework that affords all consumers with the same level of protection when engaging with a regulated financial services provider.

3.2 SME Protections

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

There are no other elements of the revised Code that we think should be applied to SMEs – we believe that SMEs are afforded significant protections under the SME Regulations.

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

The expanded definition of "*consumer*", namely the increase from €3m to €5m annual turnover, increases those in scope of CPC. Clarification regarding the rationale for capping the annual turnover limit at €5m, noting a large proportion of SME customers would have a turnover in excess of this amount, would be helpful to understand the basis of this proposed change. In the 2023 submission,

we suggested that the CBI might consider restricting application of the CPC to personal consumers only and that any customer acting for the purpose of a trade, business or profession be covered by the SME Regulations.

The review of the CPC offers an opportunity to align the definition of "*consumer*" with other definitions across the legal and regulatory framework, so that it is clear and consistent to the customer when they are considered a "*consumer*" and when they're not, and to the regulated firm in relation to the various obligations that apply.

It may be worthwhile also to consider the interaction of the SME Regulations and the draft CPC Regulations, and how they will respectively apply to some customers.

The SME Regulations introduced definitions[3] of "*micro and small enterprises*" and "*medium sized enterprises*". Currently, it is possible for some customers e.g., who are partnerships, trusts, clubs, or charities with a turnover of less than the €3million (or the proposed €5 million in the draft Regulations), to be classified as a "*consumer*" and as a "*micro and small enterprise*".

The definition of "*micro and small enterprise*" was envisaged in the EC Recommendation of 6 May 2003 and allows for further factors to be considered when determining how a customer should be treated and requires consideration of whether the customer is involved in an "*economic activity*". The EC Recommendation confirms that a wide variety of customers could be engaged in economic activities and supports the view that this economic activity should be the determining factor in the treatment of a customer.

The engagement in "*economic activity*" has become the determining factor of how the customer should be treated where there is an overlap, and this approach has been followed by the Irish Courts in several cases, which confirm that a customer cannot be both a "*consumer*" and an "*economic operator*". Therefore, once the customer is an "*economic operator*" as referred to in certain case law, the customer should be treated under the SME Regulations.

We believe that it may be worthwhile to take the opportunity of the introduction of the draft CPC Regulations to clarify the application of either the draft CPC Regulations or the SME Regulations to certain customer scenarios.

3.3 Insurance

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

Clarification regarding the scope would be welcome, as noted in Appendix B.

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

We understand and support the purpose of the proposed additional renewal notification to provide consumers additional time to consider their options, make enquiries and to possibly find a product/provider that better meets their needs. However, in practice, many customers can only commence shopping around 30 calendar days in advance of the renewal date or from the date of inception of a new policy, as insurers typically do not offer quotes with validity periods longer than

[3] "medium-sized enterprise" means a micro, small and medium-sized enterprise that is not a micro and small enterprise; "micro and small enterprise" means a micro and small enterprise within the meaning of the Commission Recommendation 2003/361/EC; "micro, small and medium-sized enterprise" means a micro, small or medium-sized enterprise within the meaning of the Commission Recommendation 2003/361/EC;

this. If a customer obtains a quote more than 30 days in advance, the quote may not be valid when they wish to accept the policy. The customer will need to either redo the quote process or if the provider's system allows them to update the expired quote, they may be provided with a different price. There may also have been changes to the policy terms and conditions in the intervening period. These are practical considerations that need to be noted from the perspective of the customer journey.

Furthermore, it is assumed that the additional notification will not require any information to be provided to the customer about the policy, the cover and the premium, as all this information will be contained in the renewal notice. Rather, the additional notification is intended only to relate solely to confirmation of the date on which the policy is due to expire or fall due for renewal.

In addition, renewals are predominantly issued by post, so this additional notification will add more administration and postal costs, noting also the environmental impact of adding more paper to the process.

3.4 Investments and Pensions

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

The proposed enhanced disclosures for long-term investment products and pensions are welcomed, as they will provide greater clarity for all parties, in particular consumers. Initiatives that provide customers with more information and greater transparency are likely to raise awareness and understanding and increase customer engagement. This will lead to better outcomes in the long run.

3.5 Miscellaneous Enhancements

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

The removal of the 40-day CBI error reporting requirement is welcome; however, its replacement with a requirement to urgently escalate significant errors to the Board requires definitions of "*urgent*" or "*significant*" in the context of error resolution, as well as clarity regarding the mechanism for reporting of same. Very clear guidance is required noting the increased involvement of the Board. In addition, guidance on threshold criteria is required to be proportionate to each firm.

There will be a need to review and significant update error management policies and procedures which must include time for embedding and training.

The new requirement to immediately acknowledge complaints submitted electronically will present an operational challenge in respect of emailed complaints and will also provide a different level of service to customers, depending on which channel they submit their complaint.

Further points are outlined in Appendix B.

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

Comments on the proposed changes to record keeping requirements are set out in Appendix B to this submission.

3.6 Final Provisions and Revocations

With reference to Part 6 of the Regulations, *Final Provisions and Revocations*, feedback is captured in Appendix B.

4. Benefits and Costs

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

We welcome the proposals set out in CP158 and the CPC Regulations, and the benefits associated with the proposals are evident. Importantly, clarity is required on several areas to ensure the successful implementation of the revised CPC. The clarity sought is set out in Appendix A and Appendix B as attached to this submission.

We strongly agree with the stated regulatory principle that regulation should be aligned with a well-functioning financial system where there is *competition and innovation.* It is therefore important that any requirements do not:

- Inadvertently put regulated firms at a competitive disadvantage to unregulated firms when wishing to offer an unregulated product.
- Inhibit innovation by making it difficult or impossible for a regulated firm to offer unregulated products alongside regulated products in the same app or service.

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

We acknowledge the costs required for successful implementation of the revised CPC, including operational and technical costs associated with the new requirements on digitalisation, vulnerability and informing effectively.

5. Responding to the Consultation and Next Steps

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

As earlier in this submission, while the proposals for a revised CPC are welcomed in terms of enhancing consumer protection and reflecting the transformation of financial services, there are several significant changes proposed which will have material operational and technological impacts. In order to ensure an effective transition to the new requirements and in a way that minimises the risk of unintended customer detriment or confusion, it is essential that sufficient time is provided for regulated firms to undertake IT planning and development; to review physical and digital collateral; to implement changes to, while maintaining the effectiveness of, processes, procedures, controls, customer engagement journeys and effective customer communication; and to undertake staff training and upskilling.

The proposed 12-month implementation timeframe for both Regulations affords too short a timeline to fully implement the changes in a manner that accommodates other significant regulatory change programmes which are currently ongoing. We therefore request an extension of the 12-month implementation timeline.

It is also worth pointing to the approach adopted at EU level in relation to legislative change and the implementation of new requirements, whereby between 18 and 24 months are afforded to regulated firms to apply changes. We believe such a timeframe would be more reflective of the extent of work required to fully implement the requirements of the proposed CPC Regulations, particularly where proposals will have a significant impact, such as in relation to the expanded definition of "*consumer*" and to the expansion of the scope of CPC to additional credit products. As

above also, there are several regulatory change programmes underway currently or due to come on stream in 2025 into 2026. We ask that the CBI remains mindful of the overall regulatory change landscape in the near- to medium-term in considering the final implementation timeframe afforded for implementation of the revised CPC.

Finally, we are keen to remain engaged with the CBI during the process of reviewing feedback to ensure that the concerns raised in this submission are addressed and that members will have full clarification and understanding of the requirements, as soon as possible, and to make the most efficient use of the lead-in time available for planning and implementation.

Appendix A: Feedback on Standards for Business - Central Bank Reform Act 2010 (Section 17A) Regulations

Appendix B: Feedback on Specific Regulations of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Conduct of Business) Regulations (S.48 Regulations)

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Appendix B: Feedback on Specific Regulations of the Central Bank (supervision and Enforcement) Act 2013 (Section 48) (Conduct of Business) Regulations (S.48 Regulations)

Section	*Text*	*Industry Feedback*
	General Feedback	
N/A	*"days"* and "*calendar days*""	We ask that the CBI considers use of consistent language in relation to "*days*" versus "*calendar days*", and that just one of the terms is used in the Regulations.
	Part 1: Preliminary and General	
S. 2 (1)	***Interpretation***	We welcome the enhancements to the definition of "*lifetime mortgage"* as proposed. We believe that this definition more effectively reflects the lifetime mortgage product, as available in the market today, which is designed to provide personal consumers with additional protections and choice, such as, the ability to make optional repayments to manage their loan balances. However, where consumers make repayments, these are offset against both the interest and capital elements of the loan. In addition, to facilitate product innovation and to ensure that personal consumers are offered lifetime mortgage products that are as flexible, accessible, and inclusive as possible, we believe that consumers should be able to avail of a lifetime mortgage on a property other than their primary home (i.e., a second home or buy-to-let property). For these reasons we suggest the following changes to the proposed definition of "*lifetime mortgage*": *"lifetime mortgage" means a loan secured on a borrower's* ~~***home***~~ *property where –* *(a) interest payments are rolled up on top of the capital throughout the term of the loan,* *(b) the* ~~***capital***~~ *loan is repaid on a specified event or events, or by repayments as detailed in the terms of the loan, and* *(c) the borrower retains ownership of the*~~*ir*~~ *mortgaged property.* ~~***home whilst living in it***~~
S. 2 (1)	***Interpretation***	In relation to the definition of "*customer*", we welcome the inclusion of point (c), which provides greater clarity than currently in relation to credit servicing.
S. 4 (1)	***Restricted application where European Communities (Consumer Credit Agreements) Regulations 2010 apply***	S. 4 (1) will need to be updated to refer to the Irish regulations that implement the 2nd Consumer Credit Directive (Directive (EU) 2023/2225) before the regulations are finalised. It is anticipated that the Irish regulations implementing the 2nd Consumer Credit Directive will come into operation over the same time frame as the CPC regulations; and the present

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		Consumer Credit Regulations (SI 281 of 2010) will presumably be repealed in the process.
Part 2: General Conduct of Business Requirements		
Chapter 1: Knowing the Consumer and Suitability		
S. 15 (3)	***Knowing the consumer – information to be gathered and recorded***	The inclusion of the requirement to establish the customer's "*sustainability preferences*" regarding a financial service requires clarification, noting this could be interpreted very broadly and inconsistently across providers. Specifically, there is a need for a standard list of questions to be provided to firms that can be posed to customers to understand their sustainability preferences. The range of products which it applies to also requires clarification. For example, is it intended to apply to investments only or to a broader range of products such as lending? It is also noted that the Sustainable Finance Disclosures Regulation (SFDR) and the Taxonomy Regulation are referenced in the Consultation Paper but are not specifically referred to in the Regulations. It is therefore not entirely clear how these need to be considered in the context of a consumer's sustainability preferences.
S. 16 (2)	***Assessing and ensuring suitability***	Relating to part (i) and (ii) specifically, clarity is required in relation to the expectations of firms i.e., is it expected that this will go further than existing suitability and affordability assessments performed? If so, guidance is critically important to ensure firms are consistent in their approaches e.g., is it required that firms document the purpose of the product, and confirm alternatives available, enabling the consumer to then confirm (a) (b) and (c) of S. 16 (2)? In addition, this regulation seems to be in contradiction of regulation 15 (3) (e), given reference to "*excluding information on sustainability preferences* ..." - the Regulations appear to state that information on a consumer's "*sustainability preferences*" should be gathered by the financial institution under Regulation 15 (3) (e); however, such information should then be excluded when assessing the suitability of a financial service for the consumer.
S. 17 (3) & S. 17 (5)	***Statement of suitability to be provided***	There appears to be somewhat of a contradiction between S. 17 (3) and S. 17 (5) – S. 17 (3) states that "*The reasons set out in the statement of suitability shall apply the information gathered under Regulation 15(1) to (10), where applicable, excluding information on any sustainability preferences...*" However, S. 17 (5) states "*The statement of suitability shall identify where a financial service set out in the statement of suitability meets any sustainability preferences gathered from the consumer in accordance with Regulation 16*." We would welcome clarity on the requirements.

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Chapter 2: Conflicts of Interest and information about renumerations		
S. 29	***Disclosure of fees, commissions etc – mortgage intermediaries and regulated financial service providers authorised under the Investment Intermediaries Act 1995***	The general requirements and information provisions of Chapter 3 & 4 of the current CPC do not apply to consumer hire and hire-purchase agreements. Instead, commission payments/disclosure requirements for these products are governed by the provisions of Part XI of the Consumer Credit Act 1995 (CCA 1995). The understanding is that S. 29 does not apply to credit intermediaries under the scope of Part XI of CCA.
Chapter 3: Consumers in vulnerable circumstances		
S. 34	***Consumers in vulnerable circumstances – training requirements***	In relation to S. 34 (2), will the Minimum Competency and/or the Fitness & Probity Regimes be updated in line with these proposed requirements? In relation to S. 34 (3) (a), is the expectation that firms will record that the person has been identified for training and that this list will be monitored on a regular basis? If so, how regularly i.e., would it be like the Minimum Competency Code register?
S. 36	***Reporting of concerns by employees***	It is noted that firms must have clear procedures for employees to report concerns that a personal customer is the victim, or is at risk of being the victim, of a fraud or scam or other financial abuse. Further clarification on the definition of "*concern*" is required.
Chapter 4: Digitalisation		
S. 38	***Certain standards to be ensured***	With reference to S. 38 (a), the Regulations require that digital platforms are designed for use for consumers without requiring "*specialist knowledge*" in technology used in digital platforms. We believe that clarity and simplicity are important to ensure consumer navigation and understanding. However, different cohorts of customers will have different levels of digital literacy, and we would welcome clarity regarding the meaning of "*specialist knowledge*" in the context of varying levels of digital literacy amongst consumers. It is also the case that some members offer digital services only and this needs to be borne in mind when setting expectations. Currently, it is standard practice across members that usability testing is performed ahead of the release of any new functionality on digital platforms, to ensure they remain easy to use, to understand and to navigate. Noting the current practice, we would welcome clarification from the CBI to understand if there is an expectation beyond the current standard of testing to meet the requirements of S. 38. In addition, what is the CBI's expectation in relation to testing on a regular basis? (*Ref. to S.38 (c) (iii)*) Members would also benefit from a definition of "*financial service*", in the context of this regulation and across the S.48 Regulations. It would appear to mean more than separate services e.g. credit card, mortgage loan, insurance, and it also appears to mean separate financial products within a service e.g., fixed or variable rates on a mortgage loan or different credit cards such as Classic or AER.

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		In addition, the proposed CPC seems to be setting a higher standard than what is set out in the EU Artificial Intelligence (AI) Act. We believe that the AI Act should set the higher standard and that the CBI should consider this in the context of finalising the CPC Regulations.
S. 40	***Guidance to be provided on use and navigation of digital platform***	To understand the requirements of S. 40 (1) and (2), members would welcome greater detail regarding the definition of a digital platform and what the provision of "*displayed prominently*" on that digital platform means in practice. For example, does this include product application journeys only or does it also include websites where information is provided? We would caution against having such guidance "*displayed prominently … at all times*" as it could result in less streamlined provision of services where the platforms are not a webpage or large screen format leading to a more cumbersome customer experiences, potential overload of notifications, and likely lead to information fatigue where more important, relevant information to the customer could be lost amongst superfluous information. Instead, we believe a simplified approach, with such guidance available on a website, would enable the customer to easily access without overwhelming. This would also apply in the context of a mobile app, where space is at a premium and where we believe a better approach may be to display the information outside of the app itself. It is the case that such guidance may be most necessary during the customer's initial interactions with a digital platform. Once the customer has become familiar with navigating the system, there should be less reliance and need for support. However, the guidance referred to would remain available for future reference. In addition, currently when navigating more complex journeys e.g., the mortgage application journey, the customer would be supported in progressing via a digital platform. In assessing the requirements, members have discussed the approach to making such guidance available in a way that does not impact or interrupt the customer journey when using the digital platform. In addition, accessibility of the document is a consideration, with factors such as the guidance being indexed by search engines influencing the best approach to meeting this requirement. We also require clarity on what level of detail is envisioned for this guidance to be deemed "*clear and effective*", particularly for platforms where the defining feature is ease of use and navigation.
S. 42	***Consumer filtering to be facilitated***	The requirement to filter information for the consumer when providing financial services requires greater clarification in relation to: ▪ When making information available through the digital platform in connection with offering a range of more than 3 financial services of the

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		same type, does this require the website (and not a mobile app) to allow for filtering of the financial services shown in accordance with pre-set criteria, which may be selected by the consumer? The current proposal lacks clarity as to how firms will achieve compliance. ▪ How is "*financial service of the same type*" to be defined? Does the requirement apply to products of the same type e.g., current accounts; categories of products e.g., forms of credit - overdraft versus a personal loan versus a credit card; or variations of the same product e.g., mortgages with fixed rates versus mortgages with variable rates? ▪ At what stage in the customer journey is this requirement to be met e.g., is the requirement applicable only to pre-sales, where a potential customer can view financial services being offered by a provider on that provider's website and prior to clicking "apply", or is it intended to apply during the progress of an application?
S. 43	***Pause statement to be provided prior to providing financial service***	Where a firm demonstrates that all criteria are met i.e. that the customer has been effectively informed and there are no adverse customer outcomes in executing the decision, looking at speed in isolation seems a regressive step towards digitalisation. While we recognise the concern where "haste" in decision-making can lead to misunderstandings and potentially poor outcomes, we believe the focus should be on simplifying the process so customers can better comprehend key information to inform their decision making. Noting the requirements of S.47 of the General Requirements Regulations, regarding the prominence of warning statements, clarification is required regarding the obligations in the context of the proposed pause statement. In addition, where service provision is instant or where a customer is completing a once-off transaction, or a service/product not subject to a fee, we believe that no such pause statement should be required. We would welcome clarity from the CBI in relation to the requirements in this context.
S. 44 (1)	***Notification to be provided of withdrawal of access to systems***	There is an apparent inconsistency between this requirement to provide at least 15 working days in advance of any withdrawal of access and the requirement under S. 48 to provide at least one month notice of changes to the range of services to be provided. We would welcome clarity on this to understand the requirement and to ensure alignment of obligations on firms. In addition, further clarity is required in relation to the following points: ▪ Does the scope of the requirement include when a product/service is no longer provided to that

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		customer (e.g., when an account is closed) or only when a provider removes the product or service from its system when an account/product is still "live"? ▪ How are firms expected to provide notification? This may impact customers where a contract is terminated immediately for breach of sanctions and a warning is not provided. We believe it is appropriate that the provider has the right to immediately terminate a contract in such cases if this is set out in the framework contract. It is assumed that the requirements of S. 44 are applicable only where access to the system is being permanently withdrawn across the entire customer base and is not applicable where access is removed from an individual customer, due to security concerns.
S. 45	***Notice of upcoming expiry of cooling off period to be given***	The requirement to provide another notification may distract from other important notifications concerning credit agreements. We believe there is already sufficient information provided in relation to cooling-off periods and that these requirements remain as currently set out, meaning consumers are availing of these important reminders.
Chapter 5: Informing effectively		
S. 46	***Names of financial services not to be misleading with regard to nature or benefits***	As in reference to S.38 above, a definition of "*financial service*" is required to ensure clarity and certainty regarding implementation of the requirement.
S. 53 (4)	***Terms of business to be drawn up and provided***	What is the CBI expectation regarding "*shall clearly identify on the website where those terms may be read*"?
S. 63 (1)	***Information on relevant Ombudsman and alternative dispute resolution service to be provided***	This information is already captured in the Terms of Business (ToB), which must be provided to the customer, and is generally also included in Terms and Conditions, which are provided to consumers prior to entering into a contract. Is the requirement of S. 63 (1) intended to impose an additional obligation in addition to providing the information in the documents mentioned?
S. 66	***Information to be drafted and presented for understanding by an average consumer***	What is the definition of "*average consumer*"? If no definition is forthcoming, members propose looking to existing requirements, with reference to recital 18 of the Unfair Commercial Practices Directive, which describes an average consumer as a person *"… who is reasonably well-informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors …".*
S. 67	***Product producers to ensure that information enables consumer understanding***	Can guidance be provided as to the CBI's expectations for the process of reviewing, monitoring, and testing the effectiveness of the information and documentation provided? In relation to testing, how is testing expected to be carried out i.e., with consumers, with focus groups, internally or by using an individual customer perspective?

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Chapter 8: Unregulated activities		
S. 74 (1)	***Website information on regulated activities to be kept separate***	Noting that the requirements are largely unchanged from the existing CPC, in the context of a definition of "*unregulated activities*" we are keen to ensure clarity regarding the requirements in that regard, including in relation to: ▪ What is a "*separate webpage*" in this instance - is it a webpage which sits within the wider website or domain and individual products are separated either through a hyperlink or an individual tab? There is the potential for confusion to arise in meeting this requirement, as products would be separated into regulated or unregulated activities, and the ease and use of a financial services providers website may be impacted. It is presumed that "*webpage*" and "*website"* do not refer to a mobile application. ▪ Can further clarity be provided on the level of detail expected where distinguishing the difference between regulated and unregulated activities to consumers - considering definitions such as ""*unregulated activities" means the provision of services of a financial nature, which are not otherwise regulated activities, to consumers in the State''* may not provide complete clarity to all customers?
S. 75 (1)	***Certain outcomes to be ensured***	In relation to the expectation of the CBI regarding the list of protections as referred to in S. 75 (1) (c), we would welcome clarity would regarding the extent to which the regulatory protections that apply in respect of regulated and unregulated activities should be clarified to customers as the requirement is quite broad.
Chapter 9: Advertising		
S. 77	***Information to be reviewed and updated***	In relation to S. 77 (1), does the review period outlined in this section relate to advertising is in use at the time of the review? In relation to the definition of "*advertisements*" and the requirement to review, does this include all advertisements, both new and existing, and in paper and or online? If all advertisements must be reviewed, this would involve a significant amount of material to be reviewed and would set a significant challenge for members. We would welcome clarity from the CBI regarding its expectations. In relation to S. 77 (2), what form should the record referred to take and for what period should it be retained?
S. 78 (1)	***Hyperlinks linking to information permitted under certain conditions***	An important consideration in relation to this requirement is that hyperlinks are often used as part of frauds or scams to target customers. For this reason, members endeavour not to include hyperlinks in emails and text messages, due to the fraud risk associated and the messaging from the sector to consumers is to never click a link. It is the intention to

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		retain this policy in the interests of protecting consumers from potential frauds and scams. The proposed use of hyperlinks under S. 78 would need to be accompanied with a communications/education strategy for customers to ensure the intention is not misused. In addition, members adopt a "*one-click rule*", whereby if a hyperlink is included in an advertisement, the customer will access the information with just one click. As a result, the requirement is taken to mean that all information pertaining to the advertisement should be included on the landing page, once the hyperlink is accessed.
S. 79	***Information provided to meet certain standards***	With reference to S. 79 (1) (c), is it appropriate that the research, statistics or grounds for the claims be held where it is currently available on the website, but not be included in the body of the advertisement? We would welcome clarification of the CBI's expectations in this regard. With reference to S. 79 (2), we would welcome clarity regarding the information that would need to be provided to satisfy the requirements of (i) and (j), in relation to all products. Is there a rationale why CPC would not directly follow the guidelines of the Advertising Standards Authority of Ireland (ASAI), which members currently adhere to?
S. 81	***Advertisement to identify that it is an advertisement***	How can the requirement to identify that an advertisement is an advertisement be met, if the advertisement is online? Is there an expectation that it is called out in the advertisement? Guidance would be welcome in relation to this requirement.
S. 82 and S. 83	***Requirements relating to key information, advertising benefits, and use of small print and footnotes*** and ***Information on qualifying criteria relating to fixed prices or greatest amount of savings to be clear***	We acknowledge that the requirements are not significantly changing from the existing CPC, but we wish to take the opportunity to highlight how this impacts currently and will continue to pose a challenge. A significant amount of information is now required in advertisements, including in relation to various warning messages, footnotes, explanatory info etc. We believe that this poses a challenge from two perspectives – one, in relation to the amount of information being put to consumers, risking the impact being lost and not being read by consumers; and two, in relation to the ability of firms to incorporate all the necessary requirements into a limited space, in print media, or a restrictive time limit, in broadcast media , specifically the impact on the use of radio advertisements. We would welcome the CBI's consideration of the extent of information that must be provided in advertisements.
Chapter 11: Errors Resolution		
S. 98	***Robust governance arrangements required for errors handling***	We believe that a definition of "*error*" is necessary to ensure clarity regarding implementation requirements, particularly given use of the term "*issue*" in addition to "*error*".

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		Ref. to S. 98 (2) (a) (iii) - The section appears to replace the requirement to report errors not resolved within 40 days. Is this the intention of the CBI and if so, we believe that additional guidance is required to ensure clarity for members regarding the approach to implementation and compliance? For example, is it intended that there will no longer be a requirement to report errors to the CBI, even if deemed significant? Will there be a continued requirement to submit a courtesy notification to the CBI once a certain threshold is met? A definition of "*significant errors*" is required as part of any amendment. In defining more significant errors, the CBI should be mindful that when an error is first uncovered, and until investigations are undertaken, the full extent of the issue, its impacts and the population impacted may not be readily identifiable and, in some cases, it may take time for the full extent to be clear. The section also requires "*… urgent escalation to the board of directors …*", but this will prove challenging depending on the extent of engagement expected by the Board. For example, is it the expectation that immediate ad-hoc board meetings would be required, noting that Boards sit periodically and that they are scheduled well in advance to ensure availability of Board members? Is it the expectation that errors with a potential, or is it only a confirmed, "*significant*" impact would be urgently escalated to the Board? We also require further clarity on the definition of "*significant*" to ensure an understanding of the expectations and consistency of approach across members.
S. 99	***Errors to be resolved***	*Ref. to S. 99 (1)* - Regarding the reporting of aggregated information, should an error not be fully resolved within the 6-month timeframe, what is the expected course of action by a firm in that scenario? Will there a requirement to seek an extension from the CBI and in what format would this be, noting that the error may not have been reported to the CBI prior to that? Such expectations should be included in a revised Regulation to ensure clarity ahead of the implementation phase. *Ref. to S. 99 (1) (c)* - We believe that the wording of this requirement should be amended to read as below, with additional text set out in bold italics. It should be noted that it is not always the case that an error causes a financial loss to a customer and would not therefore require a refund to resolve/remediate it. *(c) effecting a refund with appropriate interest to all consumers who have been affected by the error, **if the error causes the consumer to make an overpayment or suffer a loss**, in accordance with Regulation 100 and taking any other appropriate remediation steps".*
S. 100	***Refunds to be made***	We would welcome further clarity in relation to the term "*appropriate interest*" in the context of this

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		requirement, noting that where an interest refund is due it is provided, or is the intention to apply the time value of money? In addition, where a refund cannot be allocated to a consumer (e.g. they cannot be located) and they claim the refund at a later date, is it the expectation that the interest would be calculated up to the point the customer makes the claim or is it just to when the firm rectifies the error?
Chapter 12: Complaints resolution		
S.107	***Procedures for managing and resolving complaints***	With reference to S. 107 (4) (a) (iii), not all consumers as defined in the draft Regulations will be able to make a complaint to the Financial Services and Pensions Ombudsman (FSPO) e.g., a company with a turnover in the last financial year of between €3m and €5m. We ask that consideration is given to adding in the following wording "*and in a case where the consumer has such a right by law*" after the word "*arise*". With reference to S. 107 (4) (a) (iii), we do not believe it is appropriate to provide the customer with details of the ombudsman at the acknowledgement stage of a complaint. The FSPO will not deal with complaints until there is a Final Response Letter (FRL) issued to the customer, and a customer cannot engage with the FSPO until the complaint has been fully investigated by the provider through its own internal complaints process. Providing details of the ombudsman at the outset of the process with the provider may cause confusion for customers. With reference to S. 107 (4) (b), we would welcome clarity regarding the requirement for immediate or automatic acknowledgement under this section. What is meant by "*immediate"* and "*electronically*"? Does this refer to the formal complaints process as advertised on a website only or could complaints submitted by email be included in the requirement? Regardless of the channel that the complaint is submitted, all customers should be treated the same and therefore received an acknowledgment within the same timeframe i.e., within 5 days. We would also welcome clarification if such acknowledgement is to include the information outlined in S. 107 (4) (a) (i), (ii) and (iii). With reference to S. 107 (4) (g) (iii), we ask that the CBI considers the inclusion of text similar to S. 107 (4) (a) (ii), clarifying the requirement applies "if the consumer has such a right by law". With reference to S. 107 (4) (g) (iv), we ask that the CBI considers the inclusion of "*if paragraph (iii) applies*" to give greater clarity on the requirement.
S. 109	***Governance arrangements for complaints handling***	We suggest that clarity is provided by way of reference to the expectation in relation to the frequency of this reporting. As in subsection (b), we believe a 6-month timeframe would be appropriate for reporting of complaints handling.

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	Chapter 14: Records and Compliance	
S. 117	***Required records***	With reference to S. 117 (1) (g), what is meant by "*instructions*"? As in relation to Chapter 15: Miscellaneous Business Requirements and specifically S. 123 (1), the expectation regarding "*instructions*" could have significant consequences for members in relation to implementation requirements and meeting the obligations in practice. We would welcome clarity regarding the meaning of "*instructions*" therefore. With reference to S. 117 (1) (j), we ask that the CBI includes the word "***electronic copies***", as in subsection (k), as otherwise the requirement will be very challenging to implement from an operational perspective.
S. 119	***Period of retention of records***	With reference to S. 119 (2), again we ask that the CBI includes the word "copies", to ensure the requirement can be met, as a difficulty can arise in distinguishing between successful and non-successful applications. In relation to the obligations of S. 119 (2), clarification is regarding the scenarios where a consumer is considered to have not been provided with the financial service concerned and, as per the CP158, when a consumer is considered to have become "a formal client of the firm". For example, certainty is required as to whether the consumer is considered to be a formal client and subject to the 6-year retention requirement of S. 119 (1) in the following scenarios: ▪ If a consumer is approved for a product but does not progress to avail of the product (e.g., does not draw down a loan or does not activate an account for which they are approved). ▪ If a consumer is provided with financial advice but does not proceed to take a product a financial product with that provider. ▪ If a consumer is declined credit following an application, and therefore no credit is provided. We also anticipate that the 12-month timeframe would be a challenge when managing errors and complaints if these documents are not held, as there could be a reliance on these records. The requirement to retain information for only 12 months under the scenario outlined and for a shorter period as in S. 119 (3) would be a concern for providers in relation to other obligations that could arise after the 12-month period. For example, a consumer has a right to make a complaint to the firm or the FSPO after the 12-month period, at which time the information held by the firm in relation to the subject of the complaint may have been deleted. Similarly, the information submitted to the Central Credit Register (CCR) as part of a credit application may need to be referred to after the 12-month period, but under the draft regulations such information may have been deleted. We ask that the CBI considers amending the wording to require records to be held for "***a minimum** of 12 months*". Holding for

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		longer may give rise to data protection issues, but if there were just a minimum prescribed period then each firm can would be able to set their own retention policies.
Chapter 15: Miscellaneous Business Requirements		
S. 123	***Instructions to be acknowledged and processed***	The requirement to "*acknowledge all instructions from a consumer … no later than three working days … on paper or another durable medium*" raises a lot of questions, including: ▪ What is the definition of "*instruction*"? Is this all requests from consumers across all interactions? For example, does a request to transfer funds require acknowledgement, or the reporting of a debit card? Rather than simply responding to the request, such as transferring funds or issuing a new debit card as in the above examples, does a firm now also have to issue an acknowledgement? This will pose significant implementation challenges for members if it is to be interpreted as broadly as this, necessitating an acknowledgment tailored to potentially each interaction with every consumer. ▪ What is the definition of "*acknowledgement*"? Is it a letter, a phone call, or a text message? ▪ Is this something that consumers want? What is the value to be gained by consumers of this acknowledgement? ▪ An acknowledgement, on paper in particular, will add more steps and cost to the process than we believe is necessary. ▪ How is it envisaged to work in a digital environment, when an instruction is issued through an online banking platform or by some other electronic means? We do not believe that the requirement will add any value to the consumer. We believe that acting on the instruction, in a timely manner, is of much more importance to ensure the consumer benefits from the service expected, rather than adding additional steps and cost to the process.
S. 127 & S. 128	***Procedure to be complied with on ceasing to operate, merging business or transferring regulated activities*** *and* ***Proposed transferee or merging entity to conduct due diligence and verify continuity of service***	Regarding the two sections referred to above, we would welcome clarification that in a scenario where there are two regulated entities under the same financial Group and the Group intends to merge them into one entity, that they would not come into scope of these particular requirements. The assumption is that the requirements are only applicable in a scenario similar to recent exits in the Irish banking sector, where accounts transferred to unrelated entities. In addition, in relation to S. 127 (1) (b), the requirement to provide 6 months' notice to consumers of the intention to cease a particular service further complicates the customer engagement journey. In the context of loan sales transactions, noting above assumption, it is also unclear regarding the interplay

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		between S. 127 (1) (b) and S. 127 (1) (e). A 6-month notice period will have an impact on the customer's interaction with the provider, and the purchasing provider, perhaps leading to confusion and concern on the part of the consumer. Additionally, the requirements of S. 127 (1) (b) would potentially lead to significant complications for customers and extended timelines in a scenario where it is necessary for a sold loan to return to the selling entity. We would welcome further engagement with the Central Bank on S. 127 and 128 to fully understand the requirements.
Part 3: Consumer Banking, Credit, Arrears and Certain Other Financial Arrangements		
Chapter 2: Additional information requirements		
S. 136 (3)	***Personal consumers to receive explanation of consequences of missing scheduled repayment***	The current CPC requires a warning that reads: "*Warning: If you do not meet the repayments on your loan, your account will go into arrears. This may affect your credit rating, which may limit your ability to access credit, a hire- purchase agreement, a consumer-hire agreement or a BNPL agreement in the future*." We believe that the proposed warning is not as comprehensive as the current warning, which goes beyond what is proposed under S. 136 (3). We would welcome clarification if two separate warnings be required, with one specific to hire purchase, consumer hire purchase and BNPL, or is the consolidated warning proposed, which refers only to "credit", sufficient?
S. 137	***Reasons to be provided for not approving personal consumer credit application***	The timebound element of S. 137 is a new requirement. We would welcome understanding the rationale of the CBI in adding the 10 working days requirements. It is not currently in the corresponding provision 4.24 and we would question the need for a timebound requirement now.
S. 140	***Indicative comparison of total cost to be provided to personal consumers when consolidating loans***	The current wording of provision 4.27 is clearer, outlining that the consumer is informed of "… *an indicative comparison of the total interest they will pay if they continue with the existing facilities and the total interest payable over the term of the consolidated facility on offer*."
S. 141	***Information to be provided to personal consumers on lifetime mortgages***	The provision of information to consumers in relation to legal consequences should be provided by suitably qualified legal professionals. The requirement for financial service providers to inform personal customers of the legal consequences of entering a lifetime mortgage is queried. We are of the view that this requirement is appropriately captured in S. 144, which requires financial service providers to "*inform consumers of the importance of obtaining independent legal advice regarding the proposed transaction*." We request that the reference to informing customers of the "legal" consequences of entering into a lifetime mortgage is removed from S. 141. In relation to the requirement to inform personal consumers of ''*the monetary amount required to repay the loan at maturity, based on the interest rate*

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		applicable to the loan at drawdown applying for the duration of the term of the loan'', as in S. 141 (d). It is noted that the *"duration of the term"* of a lifetime mortgage is unknown at the time of drawdown and will depend on the occurrence of a specified maturity event such as the date of death or the permanent move to care of the consumer. Consumers may also choose to make optional repayments, which may impact the overall term of their lifetime mortgage. We suggest that this requirement is changed as follows: (d) *the estimated monetary amount required to repay the loan at maturity, based on the interest rate applicable to the loan at drawdown on each of the following dates:* *(i) 5 years from the date of the provision of the loan;* *(ii) 10 years from the date of the provision of the loan;* *(iii) 15 years from the date of the provision of the loan;* *(iv) 20 years from the date of the provision of the loan;* *(v) 25 years from the date of the provision of the loan;*
S. 145 (1)	***Warning statements to be included with information on lifetime mortgages and home reversion agreements***	We agree that it is important to provide clear and easy to understand information to consumers and to include appropriate details of product-related risks and warnings. However, we would welcome clarification from the CBI in relation to what is meant by "*any other document provided to the personal customer*". Is it intended that the warnings outlined are only included in the documents provided to customers at the time of entering into a lifetime mortgage? Or is it intended that the warnings should be included in all future communications to customers over the term of the lifetime mortgage (e.g., annual account statements, lifetime mortgage servicing letters etc.)? Given the age profile of lifetime mortgage customers, there is a concern that including such warnings in post-sale documents could result in distress for older customers. Accordingly, we ask that the requirement be changed to: *145. (1) When giving information to a personal consumer regarding a lifetime mortgage or a home reversion agreement, a regulated financial service provider shall include warning statements on the following:* *(a) an application form or any other document provided to the personal consumer prior to offering, recommending, arranging or providing a lifetime mortgage or a home reversion agreement;* *(b) the regulated financial service provider's website.* With ref. to S. 145 (2), the proposed warning statements for lifetime mortgages do not currently account for the following product features which are designed to provide added protections for consumers: ▪ Penalty free optional repayments, which help

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		consumers to manage their lifetime mortgage balance, and ▪ The "no negative equity guarantee", which means that consumers will never owe more than the value of their home. We suggest that the following changes are made to the proposed warning statements of S. 145 (2) (b) & (c): *(b) "Warning: If you do not make repayments on your lifetime mortgage the interest on your mortgage is added to your mortgage balance on a continual basis and you are effectively charged interest on that interest. This is called 'compound interest'."* *(c) "Warning: The longer a lifetime mortgage remains unpaid, the more money you will owe and the amount you owe could eventually come close to, equal, or where the lifetime mortgage does not have a no negative equity guarantee, exceed the value of your home.";* We suggest that the following changes are made to the proposed warning statement of S. 145 (3): *"Warning: If interest rates rise, the interest payable on your lifetime mortgage loan will further increase. This means that the amount you owe will further increase and at a faster rate, leaving less (or no) proceeds from the sale of your home and a potential shortfall where the lifetime mortgage does not have a no negative equity guarantee."* The same amendments are suggested for the lifetime mortgage warning statements contained in **Warning statement for certain advertisements** (Ref. to S. 195 (6) of the S.48 Regulations).
S. 147 (2)	***Credit institutions to provide information on fixed term deposits***	The current notice period is 21 days. This was previously 30 days but was amended to 21 days, noting customer feedback suggested this was not useful in terms of prompting action. We would welcome the CBI considering a 21-day notice period under S. 147 (2).
S. 149 (4)	***Providers of loans to notify personal consumers of interest rate changes***	What does "*as soon as is practicable*" mean? We are assuming that, in the event of a decrease notification may be provided after implementation, in line with current CBI guidance.
Chapter 4: Advertising – credit, savings and home reversion agreements		
S. 151	***Scope and application***	How do the requirements of Part 3, Chapter 4 apply in relation to Part 2, Chapter 9 of the proposed Regulations? Have consumer banking, credit and certain other financial arrangements been defined? We believe clarity could be achieved by keeping all requirements regarding advertisements in one chapter, similar to the current CPC which has clearly defined sections for different products, rather than having two separate chapters on the one topic with a lack of clarity regarding the scope of application of the

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		two chapters.
Chapter 5: Additional miscellaneous business requirements		
S.161 (2) & (5) and S.162 (3) & (4)	***Credit institution to give information and protect consumer interests when closing, merging or moving branches*** and ***Credit institution to give information and protect consumer interests when significantly amending branch services***	While understanding the requirement for preparing assessment reports, we believe that the publication of such reports in their entirety will not be possible owing to certain commercially sensitive information being included. The requirements in this regard should be more specific as a result, noting the commercially sensitive nature of certain information and allowing for flexibility regarding the publication of findings to include only that which is deemed of relevance to the public. We do note from engagement with the CBI that there may be other avenues available for publication and that the focus should be on the consumer impact. We would welcome this clarification in any guidance published as part of the final CPC documentation.
S. 162 (1)	***Credit institution to give information and protect consumer interests when significantly amending branch services***	We believe that greater clarity is required in relation to the proposals or that flexibility is permitted in certain circumstances – for example, it may be that a branch locates from one building to another within the geographic area or that a branch may close for several reasons e.g., temporarily to refurbish or renovate. Clarity regarding the expectations in those scenarios is required or allowing flexibility in relation to the meaning of "… *significantly amending branch services* …" would be helpful in providing an appropriate and proportionate response to customers, based on the particular circumstances at play.
Chapter 6: Additional requirements specific to mortgage business		
S. 168 & S. 170	***Interpretation (Chapter 6)*** *and* ***Personal consumers to be provided certain information with mortgage calculators and approval in principle documents***	The definition of an incentive states anything that meets the conditions of S. 168 (a) and (b) to be an incentive, which includes *"cashback"* in the list of examples. However, cashback offers meet condition may not meet both conditions. While members do treat the cashback offering as an incentive, the draft regulation is contradictory and must be amended to accurately reflect the practice of offering and availing of a cashback offer. We would welcome clarity regarding the "*potential additional cost of an incentive*". If the intention is to refer to cashback on mortgages, we believe this may confuse customers by implying that there are hidden costs involved. How is it expected to measure the additional cost of a mortgage with a cashback incentive as opposed to a mortgage without a cashback? We have several observations regarding S. 170 (1) and (3): ▪ Members will provide the figure for total cost of credit (defined in CPC). S. 170 (1) talks to the total cost of a mortgage loan, which is not defined in the regulation but is understood to have the same meaning as total cost of credit. ▪ We interpret references to calculators to be those

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		into which a customer's information may be input (by the customer or a staff member) and from which the customer receives an output (on paper, on screen or via email). ▪ Could consideration be given to the inclusion of one warning only to cover all scenarios, where an incentive may be offered or not - for example the warning under S. 170 (3)? ▪ Members consider an "approval in principle" to be the document that the customer is provided with that confirms, based on the information provided by the customer at that point in their application, that they have been approved for x amount in principle, based on several conditions being met, including evidencing the information provided. This is distinct from a Letter of Offer contract.
S. 171 (1) (i)	***Information on mortgage switching to be given to personal consumers***	As previously, if updates are being made to the CCPC website, members will need sufficient notice to ensure any changes to brochureware are made in time to reflect a new website address. We ask that the CBI engages with the CCPC on this aspect of the Regulations.
S. 175 (f)	***Required information to be included with offer document on mortgage***	We suggest that the wording of S. 175 (f) be amended to read as below, with new text suggested in bold italics: *(f) notification of any* ~~***known upcoming***~~ ***published*** *change to the interest rate following drawdown;* The rationale for suggesting this change is in relation to the sensitivities that attach to changes in interest rates.
S. 177	***Warning statement for interest-only mortgages***	Although interest only is defined in CPC and encompasses all interest only terms (including mortgages that have a short term interest only period), the interpretation is that this requirement does not relate to scenarios where a customer chooses a short term (e.g., 3 or 6 months) interest only period at the start, but where the loan reverts to capital and interest for the remaining term with full capital and interest being repaid in full by the end of the term.
S. 179	***Supporting documentation to be obtained prior to providing mortgage***	The present draft of S. 179 (1) requires a mortgage lender (who does not deal through a mortgage intermediary) to "*obtain all original supporting documentation including electronic originals evidencing the personal consumer's identity and ability to repay the mortgage*". We have the following concerns: ▪ *Ability to repay mortgage loan* - We appreciate that the section as drafted accommodates the increasing number of mortgage applicants who will have an electronic original payslip or other evidence of their ability to repay a mortgage loan. However, if a mortgage loan applicant has a paper original payslip, set of audited accounts or other

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		evidence of ability to repay the mortgage, the provision as drafted would appear to preclude them from completing an application and providing supporting documents on-line. We submit that the provision should be amended to allow such a customer to scan and upload copies of such documentation, and to provide that the mortgage lender may only rely on such scanned copies if they have authenticated "*the accuracy, authenticity and veracity*" of the scanned documents as required by S. 181. ▪ *Evidence of identify* - The present draft regulation, insofar as it requires a mortgage lender to obtain original documentation evidencing the personal consumer's identity, would seem to potentially conflict with approved practices that allow for enhanced due diligence (EDD) for customers who are not physically present when a designated person is carrying out ID &V checks for AML/ATF purposes. For example, see **Department of Justice** *Anti-Money Laundering & Countering the Financing of Terrorism; Guidelines for Designated Persons supervised by the Anti-Money Laundering Compliance Unit (AMCLU)* Published 28th March 2024, paragraph 6.4. In addition, S. 179 (2) and (3) refers to an "*authenticated*" declaration from a personal consumer and intermediary, respectively. We believe that this requires clarification i.e., we presume it is not intended that a declaration would be authenticated by a notary public or made before a solicitor or Commissioner for Oaths. If the intention is to refer to a declaration that is assessed by a mortgage lender for "*accuracy, authenticity and veracity"* under S. 181 (a), we believe the same should be expressed in S. 179 (2) and (3), and in place of the word "*authenticated*" which could then be removed.
S. 187	***Statements of account on mortgages to provide for additional matters in certain circumstances***	Clarification is required whether the requirement is to provide the repayment amount for each other mortgage or the amount that is the difference between the current repayment amount and the other repayment amount. For example: ▪ The current repayment amount is €100. ▪ Alternative option repayment amount is 90 ▪ Is the amount to be quoted on the letter (a) €90 the alternative repayment amount or (b) €10 the difference between the two repayment amounts? All correspondence that issues to customers considers their chosen repayment frequency, so the figure provided will not be a monthly figure for all customers. If a customer has chosen to pay at another frequency (e.g., weekly / fortnightly), the figures provided will relate to that frequency. There will be customers who are on interest only and who may be due to revert to capital & interest

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		repayments. An industry approach may need to be agreed to ensure customers are clear what figures they are being provided with (i.e., customers need to be clear whether the figures provided are based on an interest only repayment or capital and interest). To note, as today, if rates change between notification and rate selection, the figures quoted may not reflect the changes in rate. Customers are advised of that in existing letters e.g., in a Fixed rate roll over letter. Clarity is required as to whether a copy of the information originally sent is expected to be included again with the reminder. Note that there is a possibility this information may no longer be accurate if there has been a rate change.
S. 188 (2)	***Notification of interest rate changes to provide for additional matters in certain circumstances***	With ref. to S. 187 (1), the yearly mortgage repayments will not be achieved by multiplying the figure in point 187.1 (i) by 12 when the repayment frequency is not monthly. We suggest that the line "*being the euro amount specified in point (i) multiplied by 12*" is removed. We ask that the S. 187 (2) and S. 188 (4) are not specific that figures should be written in a different colour font, but that financial services providers are afforded the flexibility so long as the estimate is clearly identifiable.
Chapter 9: Arrears - Mortgage debt secured by a mortgage borrower's primary residence		
S. 220	***Interpretation (Chapter 9)***	With reference to the definition of "*arrears*", as arrears arising on a mortgage loan, *as set out in the original mortgage loan contract*, we suggest that the word original be removed, without any loss of meaning to the definition, as arrears can also arise on a mortgage loan contract as amended. The mortgage loan contract can consist of an initial letter of offer (credit agreement) and amendments to that document. The word "*original*" could be taken to refer to the original, signed document. We would also welcome clarity from the CBI in relation to the interpretation of arrears with respect to lifetime mortgages. Some members provide such products, which do not have contractual ongoing repayment obligations or fixed duration terms, and clarification of "*arrears*" in that context would be welcome. With reference to the definition of "*standard financial statement*" (SFS), in January 2022, a revised SFS was published which simplified the expenditure section to group together similar household costs, including insurance, into a single figure. In April 2022, the Insolvency Service of Ireland (ISI) updated its Reasonable Living Expenditure (RLE) Guidelines, removing car and home insurance from the overall costs to a new set costs category. As the SFS no longer itemises these figures, an additional step is currently required to confirm these numbers with the customer. We suggest that car and home insurance costs are itemised in the SFS. We believe it is also necessary to include a field in the SFS to capture the Personal Public

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		Service Number (PPSN), which is required to undertake enquiries on the Central Credit Register (CCR).
S. 222 (2) (a)	***Meaning of not co-operating***	We note a small change from the current CCMA which reads "*a significant impact on his/her financial situation*" and the proposed S.48 Regulations which reads a "*significant impact on the regulated financial service provider's assessment of the mortgage borrower's financial situation*". It is our view that this is not intended to have any impact from how the requirement is currently implemented. If our understanding is incorrect, we would welcome clarification.
S. 234	***Unsolicited personal visits to comply with certain conditions***	The restriction set out in relation to a 6-month limit is considered restrictive and would not allow the opportunity to attempt to engage after the customer has been deemed not-cooperating. For example, if a customer is not available when the visit is undertaken, then the requirement to wait a further 6 months may impact on the ability to make contact and to put an appropriate repayment arrangement in place on the arrears, which may continue to accrue in the meantime. There may be situations where there is a need to engage more frequently with the borrower and we believe this should be reflected, or in some way allowed for, in the Regulations.
S. 252	***Requirements for obtaining financial information from a mortgage borrower***	We welcome an approach that reduces the extent of form filling required by the customer, albeit there will be some operational considerations for members. With specific reference to S. 252 (5), we note the 12-month timeframe that is permitted to assume no change in the financial circumstances of the borrower. We understand the rationale for the introduction of a 12-month validity period for an SFS, including to mitigate the potential risk of excessive engagement seeking information of customers in a vulnerable situation. However, we welcome that the draft Regulations balance this obligation and do not prevent a regulated financial service provider from requiring a borrower to provide supporting documentation to corroborate information which may have changed during this time. Members need to be able to have a clear picture of the borrower's financial situation to be able to assess a case appropriately.
S. 254	***Requirements when considering alternative repayment arrangement options***	We would welcome the inclusion of clarification on the meaning of "*appropriate and sustainable and broad enough, to meet the needs of the regulated financial service provider's customers that are mortgage borrowers*" in the guidance document referred to in CP158. We would also welcome confirmation of the timing for such guidance being available. Existing European legislation under the Mortgage Credit Directive and European Banking Authority guidelines on NPEs and forbearance also set out requirements in relation to alternative repayment arrangements. These should also be considered in the

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		context of the revised CCMA, and the need to avoid any duplication of regulatory obligations. With reference to S. 254 (3), we suggest the inclusion of the word "reasonably" in subsection (b) – "*addressing those mortgage borrowers' financial difficulties as effectively as circumstances* ***reasonably*** *allow".* With reference to S. 254 (4), the wording currently in the CCMA refers to *"... reducing the principal sum*". We believe the text proposed which requires "*writing down the capital sum*" could be interpreted in many ways e.g., a lender writing down the value of a loan on its balance sheet. For this reason, we ask that the CBI considers reverting to the current wording of *"... reducing the principal sum*". With reference to S. 254 (7), the requirement to provide reasons why certain ARAs were not approved was previously communicated as an additional expectation of the CBI in letter format, but it is not currently part of the CCMA. In addition, providing a copy of the credit assessment would be to provide a copy of the credit report, which is highly detailed with technical information on NPE and IFRS9, as well as credit risk policies. We do not believe this to be to the benefit of the consumer and may only lead to confusion. Such information may also be commercially sensitive and providing it to a customer means it would essentially be in the public domain. We believe a firm should be required to provide a summary or overview of the assessment, as opposed to a "*copy"* of the information documented. The additional requirements referred to and as set out in the CBI Letter of 2019 are in place and operational. The revised CPC Regulations should take account of the approach to these requirements, as agreed with industry and the CBI at the time of issuance of the letter in 2019.
S. 256 (2)	***Requirements for obtaining financial information from a mortgage borrower***	With reference to S. 256 (2), the requirement to provide options available to consumers other than alternative repayment arrangements should include all alternative current financial products, which may support customers in refinancing their existing mortgage debt. We suggest that this is reworded as follows, with reference to the text in bold: *(a) options available to the mortgage borrower, other than alternative repayment arrangements, such as, where available, voluntary surrender, trading down, mortgage to rent,* ***lifetime mortgage, home reversion****, voluntary sale, or otherwise, and the implications of each option for the mortgage borrower and his or her mortgage loan account including*
S. 258	***Alternative repayment arrangements with mortgage borrowers to be reviewed***	We note the use of the wording in the draft Regulations that a regulated financial service provider "*may deem*" the SFS last received, where less than 12 months have elapsed, "*together with any information*

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		which has changed in that standard financial statement according to the mortgage borrower's confirmation, to be the completed standard financial statement". In a situation where it is deemed that a fresh SFS document (not just updated corroborating information) is necessary within a 12-month period, we believe that the draft Regulations do allow for this.
S. 262 (1)	***Requirements prior to commencement of legal proceedings for repossession***	We believe that the current wording of provision 58 of the CCMA should be reinstated, which allows a financial services provider's legal adviser to notify the borrower of the application to court to initiate repossession proceedings.
S. 263	***Contact to be maintained with mortgage borrower where legal proceedings for repossession commenced***	We would welcome clarification of the expectation where legal proceedings have commenced. Is a firm expected to call the customer?
Chapter 10: Arrears - debts of personal consumers, other than mortgage debt secured by a mortgage borrower's primary residence		
S. 279	***Conditions for unsolicited personal visits to personal consumers in relation to arrears***	With reference to S. 279 (1), we believe that applying this requirement to Asset Finance arrangements would not be appropriate. For example, if a customer does not meet their repayments and refuses to engage, they will have continued use of a vehicle which is depreciating in value and limiting a lender's ability to visit and attempt to repossess the vehicle to once every 6 months. A broader requirement to ensure communication is proportionate, taking account of the circumstances of the arrangement with the customer, would be more appropriate. We suggest that the language used is closer to that of the SME Regulations which states that "*the level of contact and communications made by the regulated entity, and any third party acting on the regulated entity's behalf, with the borrower is proportionate and not excessive, taking into account the particular circumstances of the borrower*." With reference to S. 279 (2), if the customer is not co-operating, allowing 5 days' notice of the intention to visit for the purpose of discussing the arrears, may disadvantage the provider from being able to repossess the asset, all the while the customer retains use of the asset. This is a concern again in relation to asset finance. With reference to S. 279 (3) (d), we do not believe that engagement with branch staff is the most appropriate, given that all branch staff may not be trained to the level of specialism required, or branches would not be appropriately staffed, to support Asset Finance arrears discussions. Rather, it may be more appropriate to direct engagement with a relationship manager or at a centralised level in such instances.
S. 280	***Further conditions for unsolicited contact with personal consumers in respect of arrears***	In relation to finance and leasing products, we believe that the wording of this requirement should mirror the requirements regarding unsolicited contact within Part 3: Chapter 9. As above, if a customer is not engaging or meeting their repayments, and has continued to have

Section	Text	Industry Feedback
		use of an asset, a limit of 3 calls will impact the ability of the lender to manage customers in arrears and impact the economics of the finance arrangement. A broader requirement to ensure communication is proportionate, taking account of the circumstances of the arrangement, would be a more appropriate approach. Again, we suggest that the language used in the SME Regulations would be more suitable i.e., that "*the level of contact and communications made by the regulated entity, and any third party acting on the regulated entity's behalf, with the borrower is proportionate and not excessive, taking into account the particular circumstances of the borrower*."
Part 4: Insurance		
Chapter 1: Knowing the Consumer and Suitability		
S. 328	***Automatic renewal of pet insurance, travel insurance, gadget insurance or dental insurance***	We would welcome clarification regarding the scope of this requirement – is it intended to apply to group policies or to individual consumer policies only?
S. 333 (1)	***Information to be provided about disclosure obligations***	We require clarity in relation to impact of the requirement on the proportionate remedies available to insurers under the Consumer Insurance Contract Act 2019 (CICA). In particular, we would welcome clarity on whether the proportionate remedies for misrepresentation available to insurers, depending on type of behaviour involved i.e., innocent/negligent/fraudulent, under the CICA are impacted or not by this requirement.
S. 347	***Advance notification of expiry date of a policy of non-life insurance***	We understand that and support the purpose of the proposed additional renewal notification to provide consumers additional time to consider their options, make enquiries and to possibly find a product/provider that better meets their needs. However, in practice, many customers can only commence shopping around 30 calendar days in advance of the renewal date or the inception of a new policy, as insurers typically do not offer quotes with validity periods longer than this. If a customer obtains a quote more than 30 days in advance, the quote may not be valid when they wish to accept the policy. The customer will need to either redo the quote process or if the provider's system allows them to update the expired quote, they may be provided with a different price. There may also have been changes to the policy terms and conditions in the intervening period. These are practical considerations that need to be noted from the perspective of the customer journey. Furthermore, it is assumed that the additional notification will not require any information to be provided to the customer about the policy, the cover and the premium, as all this information will be contained in the renewal notice. Rather, the additional notification is intended only to relate solely to confirmation of the date on which the policy is due to expire or fall due for renewal. In addition, renewals are predominantly issued by post, so this additional notification will add more

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		administration and postal costs, noting also the environmental impact of adding more paper to the process.
Part 5: Investments		
Chapter 3: Information about investment products		
S. 374	***Warning statement and information on periodic suitability assessments to be provided in respect of certain investment products***	With ref. to S. 374 (4), not all investment products are long-term, but it seems that the requirement to include the quoted warning statement is in respect of "*investment products*" more generally. Can the CBI provide clarity on this aspect of the requirement?
S. 379	***Product producers to provide statement on investment products***	The requirements of S.379 are a duplication of the requirements of the *Life Assurance (Provision of Information) Regulations 2001* but go beyond the requirements set out therein. We believe that the requirements of S.379 should align with those of the *Life Assurance (Provision of Information) Regulations 2001*, as they are drafted in that legislation.
Chapter 4: Specific requirements for advertising relating to investment products		
S. 385	***Provision of information on past performance to meet certain conditions***	Does this requirement relate only to a "*service*", or should it refer to "*product or service"?*
Part 6: Final Provisions and Revocations		
S. 419	***Amendments***	We would welcome further guidance and examples regarding the expectations to ensure compliance with this requirement, specifically whether the requirement is met by way of the requirements of Part 1, Chapters 7 & 8 of the Regulations. Or is the inclusion of this under *Amendments* intended to update the *Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2023 (S.I. No. 10 of 2023)*, as referenced in this section?