



Consultation Paper on the Consumer Protection Code

Submission to Central Bank of Ireland

7 June 2024



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

Introduction

The Competition and Consumer Protection Commission (the CCPC) welcomes the opportunity to respond to the Central Bank of Ireland (CBI) consultation on the Consumer Protection Code (the Code).

The CCPC has a statutory function under Section 10(3)(a) of the Competition and Consumer Protection Act 2014 to provide advice to policymakers on matters likely to impact on consumer protection and welfare, or competition. The CCPC also has specific functions under Section 10(3)(j) of the Act to provide information on financial services, including the associated risks and benefits, and to promote the development of financial education and capability. The CCPC's submission to this consultation reflects this mandate.

The CCPC believes the Code has played a positive role since its introduction, but agrees it needs to be revised and modernised to better address issues facing consumers today. In March 2023, the CCPC submitted a detailed response to the Discussion Paper on the Code¹. The submission set out the key issues that the Code should address, and it made a series of recommendations for measures to be included in the revised Code. The CCPC are encouraged that many of the recommendations have been included among the changes that the CBI are proposing to form part of the revised Code. However, some of the recommendations not taken forward, and that the CCPC believe are still relevant, will be restated in the answers to the relevant questions in the Code consultation document.

There are three key issues that cut across all of the principal policy proposals included in the consultation, and that will be the focus of the CCPC response. These issues are, 1) promoting competition, 2) equipping consumers with the ability to easily switch, and 3) improving financial literacy². The CCPC considers these issues to be core elements of the financial sector consumer protection landscape. If these issues can be appropriately

¹ The CCPC response to the Discussion Paper is available at: [CCPC submission to the Central Bank of Ireland's Consumer Protection Code Review Discussion Paper - CCPC Business](#)

² The CCPC has responded to the relevant questions based on the order that the questions appeared in the consultation document. To avoid repetition, we have not responded to every question under each policy proposal section.

addressed through the Code, it will greatly strengthen the protections available to consumers when they interact with their financial service providers (FSPs).

Our responses to the relevant consultation questions are set out below. We have structured our response to ensure it aligns with the order that the questions appeared in the consultation document.

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?

Poor conduct by certain FSPs in recent years demonstrates the need for the CBI to clearly articulate how they expect FSPs to behave in their dealings with their customers³. The CCPC are supportive of implementing regulations designed to secure customers' interests and we believe the draft guidance will provide clarity to FSPs on what securing customers' interests means in practice. These are welcome proposals and, if properly implemented by FSPs, will be conducive to good customer outcomes.

We would like to highlight the following in relation to this section of the consultation⁴:

- In the CCPC submission to the Discussion Paper we sought clarification on how the revised Code would interact with the Central Bank (Individual Accountability Framework) Act 2023. The CCPC welcomes the statement in the draft guidance that the application of individual conduct standards under the Individual Accountability Framework aligns with the application of Code conduct-related Standards for Business, by ensuring that the behaviour and actions of the individuals working in firms contributes to firms' adherence to their obligations under the Code.
- One of the CCPC's main recommendations in the submission to the Discussion Paper was for FSPs to be called upon to consider whether they are applying the same standards and capabilities to delivering positive customer outcomes as they are to

³ As the Code consultation states recent examples of this have been issues arising from the tracker mortgages failure, business interruption insurance during the COVID-19 pandemic, and differential pricing in home and private motor insurance.

⁴ As securing customers' interests is an overarching objective of the revised Code, much of what is included under this section of the consultation is also covered in the policy proposals under other sections of the consultation. We will cover many of those areas directly later in this submission.

generating sales and revenue. We note and welcome that a central objective of the draft regulations and guidance is to clearly demonstrate to FSPs how they can pursue its commercial interests in a manner that is cognisant of the interests of its customers.

- It was also highlighted in the CCPC submission why it is important that a customer's autonomy is maintained and that a customer – provided they have been informed effectively - should always be allowed to take the decision that they believe is in their own best interest. We note and welcome that the CBI would remind FSPs that the obligation to secure customers' interests does not confer a responsibility, or a right, on FSPs to make decisions on behalf of customers and that the idea of informing effectively is central to the objectives of the revised Code.
- The CCPC appreciates that the examples and case studies included in the draft guidance are illustrative only and do not cover the full range of situations that would demonstrate how a FSP is acting in their customer's best interest. However, there are some further examples that we feel should be included in the final guidance as a way to make clear to FSPs exactly how they should act in their customers interest. It is welcome that the Code is focused not just on actions that FSPs should take, but also the potential outcomes. The example used in the guidance document in relation to alternative mortgage options is a useful indication of what the CBI has in mind when it comes to outcomes. There may be benefit in providing more examples of what a positive outcome would look like and linking it to the ability of a customer to switch provider product or service. This will help emphasise the importance of switching and how it can support competition in the sector⁵.

Financial Education

The CCPC notes that the CBI recognises the importance of financial literacy in empowering consumers to make sound financial decisions and that they are providing input into the National Financial Literacy Strategy⁶. The concept of securing customers' interests implies a consideration of financial capability on the behalf of customers. While we do not see the Code as directly engaged with financial education *per se*, we do regard the Code as a mechanism to contribute to improved financial capability among consumers. All

⁵ See the CCPC report on consumer experience with regulated products: '*Compare and Switch: Understanding consumer behaviour in regulated markets*'. Available at: [2023.11.02-Compare-and-Switch-Report.pdf \(ccpc.ie\)](https://www.ccpc.ie/2023.11.02-Compare-and-Switch-Report.pdf)

⁶ The CCPC are also involved in developing this strategy as part of our statutory role in financial education under Section 10 of the Competition and Consumer Protection Act 2014.

stakeholders involved in the provision of financial products and services have a responsibility to improve the level of financial education of consumers, and this responsibility especially applies to FSPs⁷. In our 2022 submission the CCPC suggested that *“The concept of ‘Acting in the Best Interests’ of consumers by definition implies a consideration of financial capability in the target market. In the broadest sense the Code can set its expectation that FSPs should contribute positively in this regard to the financial capability of their customers.”*

We note and welcome Regulation 8(d) of the draft Standards for Business regulations which states that FSPs shall act in the best interests of customers by “assessing the needs and circumstances of customers, including their level of knowledge and experience of financial services, their financial circumstances and the range of options that the regulated financial service provider is able to make available to them”. This provision is welcome as it can be expected to require firms to consider the likely financial literacy of a consumer and therefore to better assess their needs, in line with Principle 4 of the G20 High-Level Principles for Financial Consumer Protection⁸.

Choice Architecture

The CCPC notes and welcomes the CBI references to what it considers unacceptable choice architecture design by FSPs. The CCPC is aware of examples where consumers are presented with a choice architecture that does not take their best interests into account. Research has demonstrated how the design and presentation of choices by FSPs can impact decision-making⁹. Existing rules in the Consumer Protection Act 2007, as amended, and the Consumer Rights Act 2022 can provide a basis for enforcement activity in relation to the design of online interfaces which might be designed to mislead a consumer. The CCPC also notes that Regulation 4(1)(e) of the draft Standards for Business regulations will oblige FSPs to “ensure that all information it provides to customers is presented in a way

⁷ As a recent publication in relation to the National Financial Literacy Strategy stated: “As the trend towards digitalisation of financial services continues, stakeholders will need to ensure that consumers are not left behind and that there is no risk of financial exclusion”. See, ‘Mapping Report on the development of a National Financial Literacy Strategy’, April 2024. Available at: [290810_16ca8875-42db-468e-9c80-efc4c45382e8.pdf](#)

⁸ See the full list of principles at: [Updated G20/OECD High-Level Principles on Financial Consumer Protection - OECD](#)

⁹ An example of the research is the 2018 paper ‘Increasing credit card payments using choice architecture: The case of anchors and prompts’, by the Financial Conduct Authority. Available at: [Occasional Paper 42: Increasing credit card payments using choice architecture: The case of anchors and prompts \(fca.org.uk\)](#)

that seeks to effectively inform the customer”. This provision is welcome and may provide a further basis on which to ensure FSPs design their interfaces in such a way as to secure the best interests of consumers.

Digitalisation

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

The impact of digitalisation on financial services is wide-ranging. While it can bring many benefits - such as increased convenience, accessibility, and choice - it also brings greater risks¹⁰. To mitigate these risks, the CCPC called for additional obligations to be placed on FSPs when designing and implementing new digital products and services. It is welcome that many of these recommendations are included in the proposed revised Code¹¹.

While the CCPC believes all the proposed new obligations should help build consumer confidence in new and existing financial digital technology, we believe the obligations on FSPs in this area could be strengthened further if the CBI were to consider the following for the revised Code:

- While the issue of fraud and scams are considered in the draft Standards for Business and Guidance on Protecting Consumers in Vulnerable Circumstances accompanying the Code, the CCPC believes that the link between digitalisation and potential fraud should be more clearly stated. This could be addressed in the Guidance on Securing Customers’ Interests as it relates to assessing fraud risks in light of business model change and innovation and digital delivery.
- Among the CCPC’s previous recommendations was for a requirement on FSPs in the revised Code to offer consumers a prescribed minimum level of human support for financial products and services provided online, at a minimum where those services are fundamental financial services or related to significant transactions¹². In the draft

¹⁰ In our submission to the Discussion Paper, we identified several of these risks. They included issues such as financial exclusion, fraud, exploitation of behavioural biases, misuse of data and technical issues.

¹¹ It is particularly welcome to see the proposal in Regulation 29 of the Conduct of Business regulations that will require firms to avoid the use of certain pre-ticked boxes.

¹² Our reason for including this recommendation is due to our view that consumers should have guaranteed access to customer support which can enable them to make better informed decisions and deal promptly with any difficulties they have and that two prominent pieces of EU proposed financial services legislation include a right for the consumer to request and obtain human intervention. These are the [Proposal for a Directive](#)

guidance on securing customers' interests the CBI states that: "The absence of human interaction and/or advice to support customer decision-making may not be appropriate for certain products and services". The CCPC agrees with this view and remains concerned that one risk from the digitalisation of the banking sector is the decrease in human interaction and the accompanying decrease in advice and support for certain customers when making financial decisions. Therefore, the CCPCs restates its recommendation that the revised Code should include an obligation on firms to offer consumers a prescribed minimum level of human support, where appropriate.

- The CCPC also recommended that the CBI consider including measures within the revised Code rules to make the practices of personalisation and targeting of advertisements more transparent¹³. We note from the consultation document that taking account of existing Code requirements for 'Know Your Customer' requirements and the provisions of the Digital Services Act (DSA), the CBI are not proposing to introduce additional requirements in the revised Code on targeted advertisements. We acknowledge that the CBI have expressed confidence that the DSA rules will be sufficient to address targeted advertising. However, the CCPC restates its recommendation to require FSPs to monitor their activities to assess whether consumers subject to targeted advertising are, in fact, achieving desired outcomes¹⁴.
- As the consultation paper notes, the financial landscape is continually changing, and the CBI intends to develop further changes based on ongoing legislative developments at a domestic and European Union level. Alongside the anticipated legislative changes referenced in the consultation, the CCPC would also like to draw attention to the introduction of the EU Digital Identity Wallet¹⁵. The Digital Identity Wallet, which aims in part to facilitate easier switching of financial services, is intended to be used when a customer is opening a bank account. Such an approach could be of significant value to consumers that are comfortable with digital financial services. It may also have pro-

[amending Directive 2011/83/EC concerning financial services contracts concluded at a distance and repealing Directive 2002/65/EC \(europa.eu\)](#) and the [Proposal for a Directive of the European Parliament and of the Council on Consumer Credits \(europa.eu\)](#).

¹³ Research published by the European Commission and others has found that these practices can harm consumers, by pushing them towards products with the highest prices and cause detriment to those less digitally savvy or willing to shop around. Available at: ['Behavioural study on the digitalisation of the marketing and distance selling of retail financial services, Final Report' \(europa.eu\)](#)

¹⁴ An example could be for FSPs to monitor click-through rates.

¹⁵ The CCPC notes that the commitment to introduce the digital wallet in the 'Digital Decade Policy Programme' available at: [Digital Decade Policy Programme: Ireland's National Strategic Roadmap \(www.gov.ie\)](#)

competitive effects. In our submission to the Retail Banking Review, we called for the Government to engage at an early stage with the proposal for the Digital Identity Wallet to ensure that it is designed to maximise consumer engagement while ensuring consumer protection, including data privacy. Once the Digital Identity Wallet is in place it will be important that firms know they will be expected to recognise it for authentication purposes, and this expectation should be stated in the revised Code¹⁶.

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

It will be beneficial for consumers if they are informed earlier when a bank intends to close, merge, move or make significant changes to a branch. The proposed new notice periods of from one to four months for change of services and two to six months for closures should provide consumers with adequate time to prepare. However, it should be made clear to banks that they must make consumers aware in an appropriate manner and that they remind consumers of the upcoming changes at multiple stages during the notice period.

Informing Effectively

Do you have any comments on the ‘informing effectively’ proposals?

Equipping consumers with information that is presented in a manner that allows them to make well-informed choices plays a critical role in protecting consumers. The information provided by FSPs to their customers should be in an easily accessible and readable format and made available at appropriate times, such as at the point-of-sale. The CCPC notes that there is a consensus that consumers can be presented with too much information, in overly legalistic language with unclear value to the consumer¹⁷. Therefore, the CCPC welcomes the proposed revisions to the Code that are intended to improve clarity and understanding by customers of the information they receive from their FSPs.

In relation to the informing effectively section of the consultation we would like to highlight the following:

¹⁶ The European Commission expects the wallet will not replace, but instead complement solutions offered by banks. See: [Q&A: European Digital Identity \(europa.eu\)](#)

¹⁷ We note that this was a common theme in responses to the Code Discussion Paper that the CBI made available online.

- In the CCPC submission to the Discussion Paper, we made some product-specific recommendations that would show how improved communication could benefit consumers. It is welcome that the CCPC recommendation in relation to communication for mortgages that firms should set out personalised euro estimates for each alternative mortgage refinancing option when sending out annual notifications will be taken forward.
- The regulations in relation to informing effectively could have a positive impact on switching if FSPs are required to provide their customers with information that will allow them to identify and compare products and services. It was for this reason that we highlighted in our Discussion Paper submission that consumers would greatly benefit from increased awareness of the relevant sections of the CCPC website that are designed to assist them in making informed decisions regarding their financial products and services. This information is contained on two different sections of the CCPC website. Those sections are [Money Hub - CCPC Consumers](#) and [Money Tools - CCPC Consumers](#).
- Assisting consumers to easily compare can allow them to quickly search for the best deals available and to compare multiple options without having to visit individual websites or contact different financial firms separately¹⁸. We note that the revised Code does contain obligations for how a FSP should include comparisons in their advertisements. But a consumer would be better served by visiting an independent comparison website¹⁹. At present, the Code requires a FSP to link to the relevant section of the CCPC's website when in relation to switching mortgage lenders or changing mortgage type and health insurance. We recommend that the existing Code regulatory requirements be extended for FSPs with other relevant products to include a link to the relevant sections of the CCPC website prominently on their website and apps to encourage product comparison.
- In the Discussion Paper the CBI indicated that one way to alleviate the volume of information that consumers receive was through a Key Information Document where a FSP provides a customer a 'executive summary' that concisely sets out all of the key

¹⁸ Research provides support for the promotion of policies that help consumers identify better deals in complex markets and more specifically supports high-quality independent choice engines, including price comparison sites. See, Lunn, P., Bohacek, M., Somerville, J., Ní Choisdealbha, Á., & McGowan, F., (2016) '[Price Lab: An Investigation of Consumers' Capabilities with Complex Products \(esri.ie\)](#)

¹⁹ Online financial services comparison tools are typically governed by various regulations and guidelines to ensure transparency, consumer protection, and fair competition.

information relevant to a transaction²⁰. There would be merit in taking this forward and including new provisions in the revised Code to encourage firms to present to customers the key information upfront, with more detailed and comprehensive information provided separately.

Mortgage Credit and Switching

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

As noted in the CCPC submission to the Discussion Paper, in reality today there is little mortgage 'switching', and this was also the case during the recent period when interest rates were rising rapidly²¹. The consumer journey is complex, confusing, drawn out and frustrating and we called on the CBI to examine each step of the mortgage journey and consider options to remove frictions in the process²². We note that further research will take place in relation to switching, and we look forward to more detailed engagement with the CBI on this important topic in due course.

The use of incentives, such as cashbacks, is one method banks use to attract customers and commit them to longer term agreements. It is vital that borrowers are fully informed about the impact of the incentive on the overall mortgage cost and the CCPC strongly supports measures to make lenders improve how they disclose this information. It is welcome that the CBI have plans to undertake further research and analysis to understand the consumer impact of cashbacks, and that they may implement potential further actions once the research has been completed.

In relation to specific regulations in the proposed Draft Conduct of Business regulations regarding mortgages, we would like to highlight the following:

²⁰ The value of providing this sort of document was supported by various research, including by the OECD, who suggested 'need to know' information should be presented up-front, with 'nice to have' information pared down or provided separately overload in the context of online purchase of products.

²¹ See, ESRI, '*Switching activity in retail financial markets in Ireland*'. April 2023. Available at: [Switching activity in retail financial markets in Ireland | ESRI](#)

²² The involvement of the legal profession and the role it plays in the switching of mortgages is important to note. The CCPC believes that the CBI should consider in its regulatory activities how the full range of conveyancing activities can act as a barrier to switching. The CCPC has advocated for the creation of a new profession of conveyancer to introduce greater competition into the market for conveyancing services.

- The requirement for a firm to link to the relevant webpage on the CCPC website relating to mortgage loans or changing mortgage type that is found in regulation 171 and 187 should be applied consistently whenever a FSP provides information on mortgages, such as in regulation 170.
- It would be helpful if regulation 182 was amended to clarify that a consumer should not be expected to pay for a valuation report.

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

We note the intention of the CBI to consolidate the Code of Conduct on Mortgage Arrears (CCMA) into the revised Code. As both Codes have similar overarching objectives there is merit in consolidating them if it results in enhanced clarity for consumers, and it helps to avoid the duplication or overlap of requirements for FSPs.

In relation to the proposed enhancements to the CCMA, the CCPC are supportive of the intention to ensure firms consider an appropriate and sustainable range of Alternative Repayment Arrangements (ARAs) to meet the needs of impacted borrowers. We note that the CBI will issue guidance on what is meant by appropriate and sustainable at a later date. Any guidance - which could include extended repayments terms, an interest rate reduction or a payment moratorium - must include an expectation that consumers will be clearly informed about the full potential impact on their level of repayments of accepting the ARA.

The CCPC is also supportive of the proposal to introduce limited unsolicited visits outside the Mortgage Arrears Resolution Process (MARP) so that only one unsolicited visit request can be issued every six months. Excessive unsolicited visits can create unnecessary distress for a borrower and may only serve to exacerbate the problem, rather than assist the resolution process.

Unregulated Activities

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

Where financial products and services are not regulated, it is important that consumers are made aware and informed of the implications arising where no protections are in place. It is welcome that there is much focus on unregulated activities in the revised Code as there are considerable risks to consumers if they invest in an unregulated financial product or service.²³ The CCPC would like to highlight the following in relation to proposals under this section of the consultation:

- It is important to require FSPs to clearly distinguish between the firm's regulated activities and its unregulated activities to address issues created by the 'Halo Effect' that may arise where regulated firms are providing unregulated products and services. We consider the new requirements proposed for the revised Code for firms to ensure that there is enhanced clarity on unregulated activities as addressing many of the concerns we raised in the submission to the Discussion Paper.
- The CCPC called in our submission to the Discussion Paper for the CBI to ensure consumers are clearly and consistently warned when they are being promoted an unregulated product or services by setting out the text of a specific warning which regulated FSPs must communicate to consumers when promoting and selling these activities. The CCPC believes that the proposed wording in the draft regulations is clear and follows the CBI aim to use plain English. To emphasise the risk further, capitalizing the word "warning" may help ensure consumers are more likely to notice and read the statement.
- The Code would be strengthened if it was made clear that the obligations on FSPs regarding unregulated activities apply in all dealings with clients, and at every stage of the sales process²⁴. While the range of proposed new obligations on regulated firms for their conduct of unregulated activities are welcome and will improve

²³ The risks have been clearly demonstrated in other jurisdictions in recent years. See the review in the UK conducted into the collapse of the London Capital and Finance and the losses suffered by investors. Rt. Hon. Dame Elizabeth Gloster DBE (2020) ['Report of the Independent Investigation into the Financial Conduct Authority's Regulation of London Capital & Finance plc' \(publishing.service.gov.uk\)](#)

²⁴ This would be in keeping with wording used in the CBI 'Dear CEO' letter from 2020 regarding unregulated activities.

consumer protection²⁵, it would be best if warnings were displayed to a consumer throughout their digital journey. It should be made clear to FSPs that if a consumer moves from viewing a regulated product on their page to an unregulated product, then the warning sign must be displayed.

- It is also welcome that the provisions in relation to unregulated activities will be extended to FSPs providing MiFID services²⁶.
- New technologies have seen the emergence of a range of unregulated financial products and services that are heavily promoted to consumers. Crypto assets are one recent example that is a cause of concern and we welcome measures at the EU level to address this. We note the warnings by the CBI about the risks of investing in cryptocurrencies and that work is progressing by the CBI for the implementation of Markets in Crypto-Assets (MiCAR) Regulation. We expect that firms that sell crypto-assets that fall within the regulatory perimeter will in future be obliged to follow provisions in the Code²⁷.

Measures to improve financial literacy are particularly relevant for this section and if the relevant issues relating to the risks of unregulated activities are to form part of the wider financial literacy objectives it would help ensure an understanding by consumers of regulated versus unregulated products and services.

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 welcome the obligation on FSPs in the draft Standards for Business regulations to notify customers “through clear and timely communication of any digital frauds or deception connected to its affairs, or specifically relevant to the sector in which the regulated financial services provider is operating, and of which it is aware”²⁸. We believe

²⁵ The key proposals, such as the obligation on FSPs to include appropriate risk warnings, avoid confusing terminology and inform consumers about protections lost, should, if implemented, help a customer distinguish between the firm’s regulated activities and its unregulated activities.

²⁶ The Market in Financial Instruments Directive aims to increase trading costs transparency and applies to investment firms, wealth managers, broker dealers, product manufacturers and credit institutions authorised to carry out MiFID activities.

²⁷ CCPC research on ‘influencer’ online market behaviour demonstrated the need to regulate to address risks to consumer protection. Available at: [2022.12.12-172837-CCPC-Influencer-marketing-report.pdf](https://www.ccpc.ie/publications/2022.12.12-172837-CCPC-Influencer-marketing-report.pdf)

²⁸ Regulation 12(d) of the Draft Standards for Business

improvements to the financial literacy of consumers is vital in helping to protect them against fraud. We welcome the measures proposed in relation to fraud and the responsibility of FSPs to improve communication in this area. The CCPC would link this to our call above for a general obligation on firms to strive to improve financial literacy across a range of areas.

While improved financial literacy is an important tool in helping consumers become more fraud-aware, it must be recognised that even financially literate consumers can fall victim to fraud. The increasing sophistication of financial scams places even more responsibility on FSPs to take a proactive approach to identifying potential instances of fraud affecting their customers.

We note that identifying measures to tackle payments fraud are expected to be central to the forthcoming National Payments Strategy. That strategy will likely give much consideration to measures under consideration at the EU level to tackle financial fraud²⁹, and should be aligned with the requirements of the revised Code.

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?

It is important that consumers in vulnerable circumstances are treated fairly by their FSP. While the CCPC welcomes the range of proposed measures in relation to vulnerability we would like to highlight the following:

- In our submission to the Discussion Paper, we identified the need for FSPs to ensure their staff have suitable training for them to recognise and support customers in vulnerable situations. The proposed obligations to be added to the Code in this regard are welcome and should ensure that staff have the appropriate skills and capabilities when dealing with vulnerable customers.
- We welcome the provisions to facilitate a customer to provide a trusted contact person for the FSP to communicate with when there may be, for example, suspicions of financial abuse of the consumer or difficulty in communicating with a customer. The

²⁹ These include the Payment Service Directive 3 and the Payment Services Regulation proposals, which will target authorised push payment fraud, 'spoofing', etc.

safeguards included in the draft Conduct of Business regulations must be strictly adhered to by FSPs in relation to the role of a trusted contact person³⁰.

- We called for the introduction of a clear definition of vulnerability that will not result in a concept that is so broad that it undermines protection for those consumers who are at the greatest risk of suffering detriment. While the definition proposed by the CBI is welcome, we do think that there is room to make the definition clearer by using plainer English.
- As detailed above in respect of ‘Digitalisation’, our recommendation relating to a minimum level of human support is particularly relevant in relation to vulnerability. The opportunity of allowing for human interaction can go a long way to ensuring that vulnerable customers do not become marginalised.

Consumer Credit

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

We note that the Code will apply in full to indirect credit providers such as those providing Buy Now Pay Later (BNPL) agreements, Hire Purchase (HP) agreements, Personal Contract Plans (PCP), and consumer hire agreements. The Central Bank consumer research bulletin on ‘Buy Now Pay Later’ (BNPL) released in November 2023 was highly informative, and the CCPC acknowledges the need for further research in this area as this product appears to be associated with instances of impulsive shopping or unplanned, excessive spending³¹. Evident from the research on BNPL is the lack of understanding that it is a form of credit, rather than a payment arrangement, and that there are risks for consumers using BNPL to pay for goods and services. BNPL providers should provide clarity with respect to these features to avoid misleading consumers.

³⁰ Regulation 35 (4)

³¹ https://www.centralbank.ie/docs/default-source/publications/consumer-protection-research/consumer-research-bulletin-buy-now-pay-later.pdf?sfvrsn=7ed49d1d_6

Insurance

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

We note that the CBI will consider whether research into barriers to health insurance switching is required. In 2023, the CCPC published research on the experience of consumers in shopping around and switching in a select number of regulated markets, as well as those consumers who remain with a provider³². The health insurance market was among the markets considered. The research was informed by a survey that found among the reasons for not switching health insurance provider was included satisfaction with current provider (29%), no significant cost savings (19%) along with a perception that it is too much hassle/paperwork (17%) and too difficult to compare plans (17%). The CCPC would welcome engagement with the CBI on this issue.

Benefits and Costs

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

It is important that the revised Code serves to promote competition in financial services. Focusing on competition is important as in a competitive market, FSPs must work hard to win consumers by offering them, amongst other things, improved customer service.

The CCPC has consistently set out its concerns regarding the lack of competition in the banking sector. We note that a number of the recommendations in the Retail Banking Review sought to strengthen the CBI's focus on competition³³. Among the recommendations were that the CBI be required to carry out assessments that will consider the potential impacts of the proposed regulations on consumers and fair and sustainable competition, amongst other issues.

The cost/benefit analysis (CBA) of the revised Code could serve as a template for how the CBI will assess the impact of their regulations on competition. While we acknowledge that

³² The results of the research are included in the report: *'Compare and Switch: Understanding consumer behaviour in regulated markets'*. Available at: [2023.11.02-Compare-and-Switch-Report.pdf \(ccpc.ie\)](https://www.ccpc.ie/2023.11.02-Compare-and-Switch-Report.pdf)

³³ Department of Finance (2022) *'Retail Banking Review'* ([gov.ie](https://www.gov.ie/en/publications-and-resources/documents/2022/02/rbr-report/))

the analysis does make reference to competition³⁴, and the CBI does believe the revised Code will create a more competitive market by building trust and confidence in the financial system, we believe the analysis would be strengthened if there was more detail on how the Code could potentially make it easier or harder for a new entrant to enter the market³⁵.

New regulations may not effectively meet their objectives if they place significant unnecessary burdens on businesses, and smaller firms in particular. It is important that authorities are conscious of any burden placed on firms while they are proposing to implement new rules and regulations and we note that the CBI does give this consideration in relation to the revised Code proposals. We also note that the CBI does not believe that they can offer precise, or even reliably approximate, figures describing the costs to firms of the implementation of the revised Code. While it is true that the cost may vary depending on factors unique to each firm, we do believe that the CBI should consider a methodology for future CBAs to address this issue and to consider how costs to small firms and potential new entrants can be minimised³⁶.

One metric to determine how the Code could impact on competition is its impact on switching. The power to switch effortlessly is central to the consumers ability to protect themselves, however, there is little information on the overall switching impact of the Code³⁷. If switching remains difficult in years to come a key pillar of consumer protection will be undermined. Barriers to switching can constitute barriers to entry, as new entrants to a market face difficulties growing their customer base. Switching is therefore a clear way to unlock greater competition and choice in the market. The CBA would be strengthened if it provided clear indications on how the Code will facilitate switching.

³⁴ Overall, there are few references to competition made throughout the Consultation and in the cost/benefit analysis. This is an oversight as the OECD highlights “competition” is a key principle of consumer protection³⁴: yet it doesn’t receive a mention at all in the CBI’s own guidance on securing customers interests.

³⁵ It would be welcome if future cost/benefit analysis had a section dedicated to listing all potential barriers to entry that any new proposed regulation could create.

³⁶ The Financial Conduct Authority publishes its approach to conducting CBAs which may be of interest. Available here: <https://www.fca.org.uk/publication/corporate/how-we-analyse-costs-benefits-policies-2024.pdf>

³⁷ We do acknowledge that the CBI are proposing to conduct future work on switching in certain product areas.

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

As the consultation documents states, the existing requirements of the Code are well embedded in the day-to-day operations of most FSPs. That would indicate that many of the new provisions should be relatively easy to adopt. However, if consultation with firms show that certain elements will require additional time to be implemented correctly then the CCPC would have no issues with FSPs taking the full 12 months to implement the revised Code, as ultimately the most important thing for consumers are that the new rules are implemented correctly.

However, we don't see how it should take any longer than 12 months to implement the majority of the proposed changes, and we do feel that some of the policy proposals should be implemented at an earlier date. In particular, it should be possible for firms to implement new requirements for making consumers aware of what products are unregulated. As the consultation document points out, the risks to consumers from investing in unregulated products is great and measures to protect consumers should be in place as soon as time allows.

The Scope of the Code

The CCPC welcomes the CBI's intentions to undertake further engagement with the credit union sector on the extension of the scope of the Code. While we would support the eventual extension of the Code requirements to all credit unions, we acknowledge that due to the differences in sizes and resources of the different credit unions it will require time before all are able to apply the Code's provisions.

We agree with the expectation that firms offering MiFID and crowdfunding services should consider and apply the Guidance on Securing Consumer's Interests. This will enhance consumer protection by providing precise and consistent conduct standards across a broad range of financial services, providers, and intermediaries.

Conclusion

The CCPC acknowledges the engagement by the CBI with stakeholders to date on revisions to the Code. We welcome many of the proposals by the CBI in this consultation and reiterate recommendations made in our Discussion Paper submission that haven't been included among the proposals. We hope that the CBI will give our recommendations consideration and we look forward to engaging with the CBI on further stages of the Code review and on related research that the CBI intends to conduct.

ENDS