

CP158 - Consultation Paper on the Consumer Protection Code

Dear Sir/Madam,

The Compliance Institute ('the Institute') is the professional body for compliance professionals. With over 3,700 members, it is the premier provider of education and professional development in compliance, providing an authoritative and balanced voice on matters relating to regulatory compliance and business ethics in industry in Ireland.

The Institute welcomes the publication by the Central Bank of Ireland ('Central Bank') of the Consumer Protection Code ('CPC') Consultation Paper, and the opportunity to provide responses on behalf of its members to the questions set out in the paper. The Institute is well placed to provide informed commentary given its diverse membership that includes compliance professionals from a broad range of sectors subject to different levels of regulation and supervision.

The review of the Central Bank's CPC is timely and much needed. A lot has changed in the world since the last Consumer Protection Code was introduced in 2012. The nature of financial services and how they are delivered to consumers has undergone huge change and the Code needs to reflect this. We welcome many aspects of the proposed Code while also suggesting some enhancements in specific areas as outlined in our responses to the individual questions posed.

The responses to the Consultation Paper have been collated by members of the Institute's Consumer Protection Working Group with input from members of the Sustainability and IAF Working Groups. Responses to individual questions raised in the Consultation Paper are contained in the Appendix.

The views expressed in this consultation reflect those of the Institute as a professional body.



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Contents

| | | |
|-----|--|----|
| 2.1 | Securing Customers' Interests | 3 |
| 2.2 | Digitalisation | 3 |
| 2.3 | Informing Effectively | 4 |
| 2.4 | Mortgage Credit and Switching | 4 |
| 2.5 | Unregulated Activities..... | 5 |
| 2.6 | Frauds and Scams..... | 5 |
| 2.7 | Protecting Consumers in Vulnerable Circumstances | 5 |
| 2.8 | Climate Risk..... | 6 |
| 3.1 | Consumer Credit | 8 |
| 3.2 | SME Protections..... | 8 |
| 3.3 | Insurance..... | 10 |
| 4 | Benefits and Cost | 11 |
| 5 | Responding to the Consultation and Next Steps | 12 |

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?

The new obligation to secure customers interests is broadly welcomed by members of the Compliance Institute. The Institute notes this is an incremental enhancement on the existing requirement to act honestly, fairly and professionally in the best interests of customers.

The Institute notes the potential for conflicting requirements to arise whereby a customer who has the capacity to make a decision chooses to make a decision that may seem unwise. In such circumstances Section 3 of the Assisted Decision Making Act 2015 (ADMA) together with the relevant guidance from the Decision Support Services would require such an unwise decision to be honoured. In those circumstances it could be said Financial Services Providers are Securing the Customers' Interests by respecting the individual's autonomy in circumstances where they (among other factors):

- Understand information relevant to the decision, (in the context of existing provision of information obligations);
- Understand likely or possible outcomes; and,
- Weigh up that information in making a decision.

The Central Bank's comments relating to Autonomy in Section 1.5 of the Guidance on Securing Customers' Interests is noted and welcomed. However, it's noted that Section 1.4.3 of the Guidance is focused on "achieving positive outcomes" whereas Section 3 of the ADMA is focused primarily on observations made prior to a decision being made.

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?

No comments noted.

2.2 Digitalisation

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

The changes in relation to digitalisation are welcomed.

The Institute is of the view that the threshold of four products as the starting point of the obligation to facilitate consumer filtering is perhaps a little on the low side. Members did not foresee consumers having difficulty in scrolling through four products. While it's difficult to choose a precise number, a higher threshold of perhaps 10 would be welcomed by the Institute.

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

The Institute appreciates the context of this proposal and its origins in the Retail Banking Review. In recent months Ireland has seen two retail banks exit the market. This has undoubtedly had adverse effects on customers and society. The Institute would welcome a proportionate response that is reflective of sector specific considerations and impacts.

The proposed alteration to CPC 3.10 into Article 127 increases the notice period from 2 to 6 months where a regulated entity wishes to cease, merge or transfer business. While the Institute understands the rationale for this is based on the retail banks, this appears to be excessive and not proportionate on regulated entities that are lower risk (e.g. Intermediaries). Members expressed a belief that a more

tiered approach to Art 127 should be adapted to that in to account the risk posed by the regulated entity or activity and or the risk to the consumer. Additionally, Members suggested that sectoral guidance be provided as to how it is envisage Art 127 and 128 would be applied in practice.

2.3 Informing Effectively

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

The Institute is in agreement with the Central Bank's sentiment regarding the need for firms to inform customers in a way that seeks to ensure understanding, rather than merely providing required information. The draft Regulations (Part 2, Chapter 5) and the Standards for Business put, what appear to be, a reasonable onus on firms to ensure that key information is provided to consumers in a manner that seeks to impart a reasonable level of understanding regarding the financial decisions those consumers makes. The Institute notes that a definition of an 'average consumer' is not provided. We would request that consideration is given to including a definition which highlights the need for firms to make this assessment themselves, based on the complexity of the products they sell whilst taking into account the knowledge imbalance that can exist between financial service providers and consumers.

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

Firms should be given appropriate time to carry out a review of all information provided to consumers to ensure they are meeting the obligations in time for implementation (taking into account the potential need for system and documentation updates). In this regard the Institute would agree with a minimum 12-month implementation period.

We note the Informing Effectively Standard for Business but feel it is worth pointing out that brokers are reliant on the information passed to them from product producers. To this end, intermediaries cannot always ensure information is accurate or up to date. Acknowledgment as to the distinct roles of, and interdependencies between, distribution channels and product manufacturers in the draft Regulation would be welcomed and better reflect the reality of these market sectors.

2.4 Mortgage Credit and Switching

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

The proposed enhanced disclosures surrounding mortgages appear reasonable and if applied will draw the customer's attention to relevant information not addressed in current disclosure requirements.

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

The proposed enhancements appear reasonable. Specifically, the formal inclusion of the 22 March 2019 Central Bank letter to firms is a positive, in the context of ensuring all firms are operating to the same standard.

2.5 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?

The Institute welcomes the new rules relating to the unregulated activities of regulated financial services providers. On balance the Institute believes these new obligations will introduce a new layer of transparency in what can at times be a confusing financial services ecosystem.

The Institute would welcome refinement in relation to the definition and scope of “unregulated activities.” This is particularly prevalent where an unregulated service is used or accessed in conjunction with a regulated product, for example withdrawing cash from a payment account using unregulated means.

The Institute would also welcome clarity in relation to what degree, if any, an App constitutes a website, an advertisement, both, or neither, for the purpose of the requirements.

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?

Whilst the Institute would welcome any initiatives to collectively protect consumers from financial abuse these would need to be undertaken with the regulatory controls that are already in place across the current framework including the Payment Services Regulations and the Criminal Justice Act.

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

The concept of financial abuse, while aimed at the area of fraud and scams, should also take into account vulnerable customers in danger of coercive control. Both concepts should work in tandem to ensure that the consumer is always protected and there should be clear guidance for Regulated Entities on how to deal with these customers to ensure each cohort is adequately dealt with.

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?

Section 37 of the Draft Regulations sets out the requirement to record customers who may be a consumer in vulnerable circumstances (where consent is obtained). The draft guidance on this matter however states (2.1.5) *‘The approach to consumers in vulnerable circumstances should not be to label some customers as vulnerable.’*

Section 3 of the Assisted Decision Making (Capacity) Act 2015 (ADMA) introduces a functional approach to capacity whereby capacity is assessed at a moment in time, relative to the decision at hand and in the context of any supports provided.

It is unclear how information pertaining to customers in vulnerable circumstances is expected to be used, once obtained. It is also possible, if not likely, that such information would be counterproductive in the avoidance of labelling customers and in implementing a functional approach to capacity. It is therefore suggested that the requirement to record information relating to the vulnerable circumstances of a customer be replaced with an option to record such information as deemed appropriate.

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

While the role of the trusted contact person is clear, it may be unclear to a customer how this role is different in any material degree to a Decision Making Assistant as set out under the ADMA. The specificity in relation to the types of matters a trusted contact person may be involved in is welcome; however, this could alternately be extended to a Decision Making Assistant.

It is suggested that the Central Bank allow financial services providers to contact a Decision Making Assistant in relation to any of the matters currently reserved for a Trusted Contact Person. In doing this the same protections are extended to customers without the unnecessary creation of an additional role.

2.8 Climate Risk

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

The Institute has a number of comments/observations in relation the proposals, namely:

Observation 1:

CP158 contains new provisions in relation to 7 specific areas; one being 'Climate Risk' stating:

'Green and sustainable products must be accurately and fairly represented to customers to avoid the risk of greenwashing'.

It further notes that there are several initiatives at EU level to address greenwashing. There is however no definition of 'Greenwashing' in CP158 or the Regulation.

Request / Proposal 1:

It is requested that a definition of greenwashing is adopted in the Regulations to ensure a common understanding of the risk it poses to consumers and the market and users of the Regulations generally.

We suggest that the Central Bank looks to already in-place definitions to avoid complexity and to ensure consistency. ESMA put forward the following definition in its 2023 *Progress Report on Greenwashing*:

'Greenwashing as a practice where sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product, or financial services. This practice may be misleading to consumers, investors, or other market participants.' (ESMA, 2023)

We note that a final report is due at the time of writing which may include a revised definition.

Observation 2:

As noted above CP158 specifically addresses Climate Risk and uses the term 'sustainability' apparently interchangeably.

The references in the Regulations to 'suitability preferences' are defined in Regulation 79(3) as *'environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters'*.

We note that this definition is aligned with the definition in *Regulation (EU) 2019/2088 on Sustainability-related disclosures in the Financial Services Sector* and that sustainability is evolving as a discipline at pace.

The term 'environmental' infers climate and is probably evident, however it could also include other factors, such as biodiversity, water and marine and others, but does not define what should be included as a minimum. This could give rise to the risk of firms adopting their own interpretation of the term 'environmental' which may exclude key factors found elsewhere in other sustainability frameworks or regulation. This could in turn lead to inconsistent interpretation and application of this Regulation

Request 2:

We request that the Central Bank:

- (i) include the definition of sustainability factors in the Interpretations section for ease of reference;
- (ii) clarify what 'environmental' includes at a minimum (as this is evolving continually) or adopt definitions from in-force European Union regulation such as the European Sustainability Reporting Standards; this would
 - ensure alignment and interoperability with current EU regulation;
 - be consistent with definitions that regulated financial services providers may already be familiar with; and
 - potentially future-proof where further EU Regulation or Standards may be introduced.

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

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

Observation 3:

This draft provision requires regulated financial services providers to gather and record information on a consumers' *'sustainability preferences'*. It is unclear however what use a regulated financial services provider is then expected to put this recorded information to and how interactions with the consumer should proceed in relation to recorded sustainability preferences. This could lead to firms either merely recording without further consideration or input to its recommendations and consumer choice, or an inconsistent or adhoc use of this recorded preference.

Request 3:

It is requested that the Central Bank clarifies how a recorded suitability preference should be used by a regulated financial services provider e.g. how it is input into the selection of recommendations to a consumer or how to frame/conduct subsequent sales conversations.

3.1 Consumer Credit

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

The Institute is of the view that the application of the full code to BNPL, PCP, HP and consumer hire providers is a positive development. This will help ensure consumers are treated consistently across retail financial services providers and the relevant products.

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

No other protective measures were noted among members of the Institute.

3.2 SME Protections

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

Given the extension of the SME Lending Regulations to CPC is delayed, the Institute are of the view that this should be separately considered and consulted on to fully understand the potential impact and effects, on reporting, other legislation and customer experiences.

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?

At present it is unclear if the Central Bank has considered the quantum of the impact this threshold change would have on firms and their customers.

Similarly, the consultation paper is silent as to the in-practice impact on the change in thresholds in relation to retrospective and go-forward application to customers that have purchased a relevant product at the time the revised Code is effective, e.g. in relation to the provision of information and arrears management.

Institute members working in the Commercial Insurance market noted that a sizable cohort of customers will fall under the revised definition. In their view, this will potentially lead to an operational burden on insurers which will have a financial impact. The financial impact will likely have to be borne by the end customer. This could potentially lead to a situation where the benefits of more SMEs being protected will likely be offset by an increase in costs.

With regard to the proposed extension of turnover threshold as part of the definition of consumer, we believe the change, while well intentioned, requires a more holistic consideration of scoping and effect across the consumer protection regime more generally, and consulting and amending the rules as required on that basis.

The core rationale for postponing a scoping change at this point in favour of a more holistic consultation and change management approach are two-fold (largely driven by a combination of a clearer customer experience and to avoid unintended consequences):

- the consultation does not, explicitly at least, address or consider the equivalent turnover scope of parallel and collateral requirements outside the CPC that are relevant to the conduct regulated by the CPC. A non-exhaustive selection of practical examples would include:
 - the relevant turnover scope of consumers covered by the Financial Services and Pension Ombudsman is currently consistent with the CPC and the relevant complaint requirements, which would no longer be the case. It would mean some consumers would need to be informed of the fact they can refer their complaint to the Ombudsman, whereas other consumers (within the 'turnover gap') would not factually be able to do this;
 - the relevant turnover scope of consumers covered by the macro-prudential mortgage measures is currently consistent with the CPC, which would no longer be the case;
 - The scope of the differential pricing regulations (covered by Regulation 322 of the revised Code) would now apply to a wider scope of customers, but is unclear if this is intentional and is reasonably justified (as a scoping extension was not applied when these rules were brought in relatively recently), or whether it would be an unintended consequence;
 - regulatory conduct reporting requirements – whether and when this reporting will change, and how this will work for benchmarking purposes within the implementation period;
 - Transitional provisions and expected practical approaches for existing customers in the turnover gap who are currently outside the scope but would be within the new scope are not addressed or discussed in the consultation. For example, if a customer had made a complaint and the complaint had not been resolved prior to the end of the relevant transitional period, what would the effect be in terms of relevant documentation and disclosures to that customer. Or should the new definition only apply (for all purposes) to new business customers after the implementation deadline is passed?
 - the consultation explicitly recognises a desire to incorporate the SME Lending requirements, but has postponed this for a future point in time;
 - The SME Lending Regs already define relevant small business customers in a materially different way to the CPC. Thus one expected point of consultation at the time incorporation is being formally proposed will be review will be scope, and whether the CPC definition of consumer and/or the definition of SME and/or something different should be adopted for the purpose of those rules.

Consequently, a holistic review of relevant consumer protection rules for small businesses and an appropriate approach across the various requirements would be preferable than a standalone change at this point in time to the definition under CPC.

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?

The Institute is in broad agreement with the proposal. While the opt in requirement seems reasonable, the language used in the draft Regulations (Part 4, Chapter 5, Section 328) could cause some confusion (emphasis added):

328. (1) An insurance undertaking or insurance intermediary shall not automatically renew a policy of pet insurance, travel insurance, gadget insurance or dental insurance with a consumer unless the consumer has, prior to the entry into of the insurance policy which is being renewed, provided their consent to such automatic renewal.

The above suggests that the explicit opt in consent to automatic renewal can only be provided by the customer before taking out the policy. However, the opt in consent could be provided at a subsequent renewal or, if setting up a direct debit, at a mid-term stage. The Institute would suggest a revision of the wording in the Regulation to clarify that the consumer can opt in to the automatic renewal at any time.

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

The Institute has concerns regarding the practical impacts of this requirement. While it is acknowledged that the purpose of this proposed requirement is to allow consumers additional time to consider their options, it is important to note that consumers in some instances won't be able to obtain quotations that far out from their renewal dates (many Insurance providers have quotation validity periods of up to 30 days). In addition, this communication may cause some confusion to customers who have already been contacted by their Insurance Provider regarding information required by the provider in order to enable the generation of a renewal quotation for the customer.

Insurers are unlikely to have rates set 8 weeks in advance of an inception date. Quotes are usually valid for 30 days. In that scenario customers looking for a quote 8 weeks in advance of their renewal date from other insurers might not benefit from this as the quotes they receive outside of the 30-day window might be invalid.

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

No observations were noted by the Institute.

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

While the Institute is in agreement with the proposal to change from the 40-day timeline and report significant issues to the Central Bank, it is unclear what a significant issue would entail. Guidance on this would be beneficial.

With reference to 'systems and controls to effectively track and manage the progress and resolution of complaints' under Section 106 of the Draft Regulations, it is unclear if this term is technology neutral

or if it imposes an obligation on RFSPs to develop and implement a bespoke IT solution. If this is the case, there will be a financial burden put on smaller RFSPs which may be disproportionate with the nature, scale and complexity of their operations.

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

No issues were noted by the Institute. However, there was a view that clarity in relation to retrospectivity would be welcomed and in particular whether firms will need to retroactively scrub data from quotes given from before the implementation date.

Some members of the Institute expressed a preference to have retention period of 18 months rather than 12 months as certain customers who are obtaining quotes will not have to give sales agents all their data again.

4 Benefits and Cost

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

On the basis of the Institute's feedback being incorporated when finalising the Code, the Institute agrees with the Bank's overall assessment of the benefits of the revised code outweighing the cost of implementation.

Members were particularly receptive to establishment of Standards for Business ('the Business Standards') in **Annex 3: Standards for Business - Central Bank Reform Act 2010 (Section 17A) Regulations**.

While the benefits of this codification cannot be understated, members did raise some observations which will be raised in response to this question in the absence of a specific question relating to the Standards for Business.

Some Members questioned the intended scope of the Business Standards. For example, some Members noted that in certain respects the Regulations expand on existing requirements, and create new obligations for certain RFSPs, such as in relation to outsourcing. A number of Members also questioned the basis for exclusion of credit unions (other than in relation to insurance) and why this sector and its consumers fall outside these obligations.

Further clarity regarding the expectations of certain types of RFSP would be helpful, including for example entities operating on a cross border branch basis, and businesses with a non-consumer client base.

The interaction contemplated between these regulations and pre-existing similar regulations would also benefit from greater clarity, for example where there is overlap and commonality of instances of breach across regulations.

In addition, members observed that the obligations are set out at a high level within the Regulations leading to some ambiguity as to what is more particularly contemplated. Further guidance and detail to support more consistent interpretation and give greater clarity would be welcomed.

The use of "sustainably" in Regulation 4(1)(f) and Regulation 10 was viewed as a term more generally understood to relate to an environmental context. It was suggested that the deletion thereof be considered, terms already included such as "*responsibly and in a sound and prudent manner*" being sufficient in and of themselves.

Members submitted that the inclusion of an obligation to be able to demonstrate compliance would be beneficial, in addition to the reference to the 'compliance checks' referenced in Regulation 10. In relation to Regulation 13 and a decision by an RFSP to cease providing financial services of a particular description, information on the degree of granularity contemplated here would be helpful and clarity as to whether this is intended to be at a broader product level for example. Regarding Regulation 14, a definition of the following was requested in the context of outsourcing: *'any agent acting on its behalf on the basis of an outsourcing arrangement'*.

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

There are no specific observations in this regard.

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?

There are no specific observations in this regard.