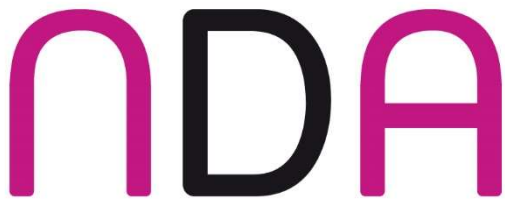


**National Disability Authority**  
**Submission to the**  
**Consultation Paper on the Central Bank's**  
**Consumer Protection Code**

**May 2024**



Údarás Náisiúnta Míchumais  
National Disability Authority

## Introduction

The National Disability Authority (NDA) is the independent statutory body, providing evidence-based advice and research to Government on disability policy and practice and promoting Universal Design. We thank the Central Bank for the opportunity to make a submission.

We previously made a submission to the Discussion Paper in April 2023. We are happy to see that some of the points raised in that submission are now reflected on pp 58-59 of the Consultation Paper and the draft Guidance on Protecting Consumers in Vulnerable Circumstances.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 Do you have any comments on the draft Guidance on Protecting Consumers in Vulnerable Circumstances?**

### **Assisted Decision Making and safeguarding**

We welcome the development of the Guidance on Protecting Consumers in Vulnerable Circumstances and the specific references within this document to the Assisted Decision-Making (Capacity) Act 2015 (ADMA) and the European Accessibility Act.

In its recent report on a Regulatory Framework for Adult Safeguarding the Law Reform Commission (LRC) has made a number of recommendations that are designed to strengthen protections for vulnerable customers set out in the Code and the Guidance. They recommend that the Central Bank's proposed Central Bank Reform Act 2010 (Section 17A) (Standards for Business) Regulations and the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Conduct of Business) Regulations should be consistent with the Assisted Decision-Making (Capacity) Act 2015. They also recommend that existing codes of practice are consistent with the ADMA for example, the [Code of Practice for Financial Service Providers](#).

This reflects the recommendation in the NDA's submission on the previous Discussion Paper that the Consumer Protection Code should be fully aligned with the ADMA, and that the Consumer Protection Code and the statutory Codes from the Decision Support Service are fully aligned.

The LRC also recommends that regulated financial service providers, credit unions and post offices should be under a statutory obligation to ensure that relevant personnel receive regular adult safeguarding awareness training. We would support this recommendation and further recommend that disability equality training that encourages disability competency be included. The NDA is currently developing a new eLearning module on this topic, updating a previous version from 2011. While the module will be aimed at the public sector some parts will be relevant to the private sector.

The Law Reform Commission ([LRC](#))<sup>1</sup>, also made a number of recommendations regarding definitions in the Code and the Guidance particularly around a ‘consumer in vulnerable circumstances’ (Section 2.7, p. 58 of the Code) The NDA supports the use of this term in preference to ‘vulnerable customers’ in recognition that people are not necessarily inherently vulnerable but may be rendered vulnerable by their circumstances.

## **Will and preference**

The draft Code has almost two dozen references to a consumer’s “best interests”. While the draft Guidance on Protecting Consumers in Vulnerable Circumstances has no reference to “best interests” neither does it have any reference to “will and preference”.

The core element of the ADMA is to support all persons to make their own decisions as far as is possible. A key reform is the change to a will and preference approach rather than a best interest approach.

Giving effect to the will and preference of an individual is one of the guiding principles of this draft [Code of Practice for Financial Service Providers](#). While financial service providers and financial professionals are not classed as interveners under the Code, they may find themselves in circumstances where they are taking actions involving relevant persons. In these cases, they are asked to follow the guiding principle. A relevant person is presumed to have capacity to make a decision unless the contrary is shown in accordance with the Act. It is important that people working in finance familiarise themselves with these new arrangements and procedures and seek further training and guidance as relevant and appropriate.

It is also important to remember that the provisions of this Code do not alter the obligations of financial professionals and financial service providers under

---

<sup>1</sup> Law Reform Commission Report: A REGULATORY FRAMEWORK FOR ADULT SAFEGUARDING VOLUME 1, page 45 of 59

consumer protection codes. In providing advice or a financial service or selling a financial product, a financial professional or financial service provider must consider whether a specific financial product or service is suitable for their customer.

## **Online banking and offline banking**

With the advent – and increased promotion – of online banking by financial institutions, it is more important than ever that these services are fully accessible to all who have the capacity to use them. There are references in the Guidance on Protecting Consumers in Vulnerable Circumstances (p. 7) to process and product design choices to consider the potential differences in consumers' understanding and capability.

As a public body the Central Bank is covered by the [EU Web Accessibility Directive](#) (WAD). Under the WAD public bodies in Ireland must ensure their websites and mobile apps are accessible to all people, including persons with disabilities. The Central Bank was subject to a Simplified Review in [2021](#) (p. 87) and [2023](#) (p. 116) receiving scores of 7.8% and 0.75% respectively. The NDA encourages the Central Bank to focus on significantly improving these scores and to become an exemplar for the sector. We are available to provide relevant advice. We also encourage the Central Bank to disseminate the best practice highlighted by the NDA in relation to WAD across the digital services of the financial institutions and finance professionals that it regulates.

The forthcoming implementation of the [European Accessibility Act \(EAA\)](#) will have a significant impact on the lives of persons with disabilities. This directive is rooted in market surveillance rather than in disability rights and will affect both public and private sector organisations. Measures contained in the EAA have the potential to widen access for persons with disabilities to a broad range of products and services in the areas of consumer banking under the Central Bank's remit. Of particular note are the measures which deal with the accessibility of websites, mobile applications, payment terminals, and other aspects of consumer banking.

While technology use in banking is increasingly dominant, more traditional, methods are used by a lot of customers, particularly those who are older or people with disabilities who may not be digitally literate. It is important that these remain available to people for whom using online banking isn't an option, or they are reluctant to move on from methods of communication and interaction that they are used to, for example, counter staff, cash services, etc.

Financial education can be improved by following a Universal Design approach to customer communications. Universal Design involves the design of the built

environment, products, services and information and communications technology so that they can be accessed, understood and used by all, regardless of age, size, ability or disability. In partnership with the Department of Public Expenditure, NDP Delivery and Reform the NDA has published an updated version of its [Customer Communications Toolkit for Services to the Public — A Universal Design Approach](#). The Toolkit explains the importance of simple, clear language for effective communications. It contains guidance on written, spoken and signed communications, plus specific guidance on designing forms, documents and signage. It also highlights the importance of offering communications in more than one format. In addition, it provides guidance on developing and maintaining high-quality online services, which are user-centred, regularly updated and easy to navigate.

The NDA advises that the Central Bank should consider recommending this Toolkit to the financial institutions and financial professionals it regulates as a means of making financial information accessible to all.

In addition to the above the advent of Artificial Intelligence has begun to change how financial institutions communicate and interact with customers e.g., chatbots. As the technology develops and becomes more widely used the Central Bank needs to consider how it correlates to the rollout of the EAA and what barriers may arise for disabled people. We would be happy to advise as required.

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

The draft Code states that significant support for this proposal was highlighted in the feedback to last year's Discussion Paper. There is only a short description of this proposed role in the draft Code.

We echo what the LRC has said about ensuring alignment between the ADMA and the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Conduct of Business) Regulations, especially the draft Regulation 35 which covers the Trusted Contact Person. While the draft regulation references the various decision-making roles set out in the ADMA it doesn't clearly state where the Trusted Contact Person role sits in relation to the ADMA's decision-making roles. The Trusted Contact Person role could become largely redundant as more people enter the assisted decision-making process.