



Safeguarding Ireland Response to Consultation on the Consumer Protection Code (CP158)

June 2024

National Safeguarding Ireland (trading as Safeguarding Ireland) (a company limited by guarantee) CRO #612163. RCN #20204851 Contact: annmarie@safeguardingireland.org

Directors: David Byrne, Carol Grogan, Bernice Evoy, Colm Nolan, Nora Owen, Amanda Phelan, Phelim Quinn, Bibiana Savin, Patricia T Rickard-Clarke (Chair), Mervyn Taylor.

About Safeguarding Ireland

Safeguarding Ireland promotes the safeguarding of adults at risk from all forms of abuse by persons, organisations and institutions. It seeks to enhance inter-sectoral collaboration, develop public and professional awareness and education, and undertake research to inform policy, practice, and legislation around safeguarding in the Republic of Ireland. Safeguarding Ireland has a National Safeguarding Advisory Committee comprised of over 35 civil society and representative groups across the health, social and financial sectors.

In addition, and in response to the challenges facing adults at risk in their use of payment/banking services and the related heightened risk of abuse and harm they can face, Safeguarding Ireland has a dedicated sub-group, **'The State-Payments Group'**, with the objective of: *'Collectively identifying the safeguarding issues, particularly in relation to financial abuse, that arise in the current arrangements for payments to clients from state agencies, including arrangements of financial institutions in dealing with and dispensing said payments (statutory, administrative or informal arrangements) in order to identify and address, in so far as possible, any opportunities of financial abuse'*. This Group includes representatives of the following organisations: BPFI, IBCB, AIB, MABS, Electric Ireland, Irish Rural Link, the HSE, the ILCU, An Post, the Department of Social Protection, the National Shared Services Office and Sage Advocacy. The State Payments Group is the only cross-sectoral group of its kind in the State with a dedicated focus on the overall payments infrastructure as it relates to adults who may be at risk of harm and financial abuse when they make or receive payments.

Safeguarding Ireland's submission is based on its work with a wide range of stakeholders and also its research and informed understanding of relevant areas of policy and law in Ireland and other jurisdictions. The views expressed in this submission are those of Safeguarding Ireland and do not necessarily represent those of any of the stakeholders listed above, many of which may make separate submissions.

Safeguarding Ireland made a comprehensive submission to the Discussion Paper¹ and very much welcomes many aspects of the new approach within the Code/proposed Regulations and Standards for Business which will, it is hoped, empower all adults at risk of abuse and ensure that firms are attuned to and have appropriate systems and policies to address financial abuse of adults at risk.

¹ https://www.centralbank.ie/docs/default-source/publications/discussion-papers/discussion-paper-10/safeguarding-ireland---response-to-dp10.pdf?sfvrsn=d4339f1d_2

Recognition of financial abuse – a landmark in Irish financial services regulation.

Reference by the CBI to **financial abuse** and the inclusion of a definition and **related Standards of Business** are hugely welcome and Safeguarding Ireland commends the CBI for specifically highlighting financial abuse as a distinct form of financial harm.

Safeguarding Ireland research carried out in conjunction with BPFI found that 1 in 5 Irish citizens had experienced financial abuse². Reported statistics on ‘financial abuse’ of vulnerable persons– i.e. the data gathered by the National Safeguarding Office³ reflect an annual incidence that is a tiny fraction of that figure. Fraud data published by FraudSMART⁴ and Garda crime statistics on ‘fraud, theft, and related offences’⁵ undoubtedly include cases of financial abuse. However, it is estimated that only 1 in 6 frauds is ever reported⁶, and for financial abuse underreporting may be significantly worse.

Financial abuse goes undetected, unreported, and unpunished.

Firms seek to protect themselves from fraud and their customers from online scams and anonymous ‘fraudsters’⁷ or ‘tricksters’⁸, with a far lesser focus on financial abuse, its perpetration by known and trusted others, and the very serious nature of the harm caused. That culture and the associated narrative has to change.

‘At-risk adults’ are experiencing serious financial abuse daily, it is often perpetrated by someone they know, and trust and it imposes significant financial and psychological costs to the victim and society.

The fact that the Central Bank has recognised financial abuse is a landmark in the protection of Irish citizens and adults at risk.

The term ‘Financial Abuse’ and the related ‘Standards for Business’, while potentially subject to some refinement as proposed by the Law Reform Commission, must be retained and **not watered down** as the CBI’s proposals are finalised.

² <https://safeguardingireland.org/public-awareness-20-of-irish-adults-have-experience-of-financial-abuse/>

³ <https://www.hse.ie/eng/about/who/socialcare/safeguardingvulnerableadults/national-safeguarding-office-annual-report-20221.pdf>

⁴ <https://www.fraudsmart.ie/>

⁵ <https://www.cso.ie/en/releasesandpublications/ep/p-rc/recordedcrimeq12023/keyfindings/>

⁶ <https://www.fticonsulting.com/insights/articles/solving-uk-fraud-problem>

⁷ <https://www.bankofireland.com/security-zone/fraudster-tactics/>

⁸ <https://www.independent.ie/regional/wicklow/news/trickster-behind-bars-after-swindling-lover-and-banks/27852251.html>

We note in this regard that Ireland is only now waking up to, and catching up on, what has been described elsewhere as a ‘*virtual epidemic*’⁹ of financial abuse and financial exploitation of older people and others who face a heightened risk of harm and how seriously other regulators (the Financial Conduct Authority (FCA)¹⁰ in the UK and FINRA¹¹ and the CFPBI¹²) in the United States)) are now taking financial abuse as a distinct form of harm.

Alignment with Law Reform Commission (LRC) Proposals

Safeguarding Ireland notes the observations made by the Law Reform Commission (LRC) in its recent report on A Regulatory Framework for Adult Safeguarding (Chapter 14) on aspects of the CBI’s proposals and trusts that the CBI will consider those recommendations in finalising the Code.

Language of ‘Vulnerability’

The CBI will know that terminology related to ‘vulnerability’ remains contested and is not aligned with the modernising ambition of the Code. While appreciating that the proposed definition of a ‘*consumer in vulnerable circumstances*’ is a significant advance from the terminology previously used in the Code, we propose that the CBI consider the utility of using the term ‘adult at risk’ of harm in line with the definition used by the LRC, while also noting that in the context of their engagement with regulated financial services providers, adults may be at risk of harm in *other* circumstances i.e. exposed to harms in ways not envisaged by the LRC.

The UK’s FCA has found that as many as 1 in 2 consumers are ‘vulnerable’, suggesting that ‘vulnerability’ ought to be less about the labelling of a person, a group, or a set of circumstances, and more about identifying and addressing those aspects of financial services that can cause a heightened risk of harm for some consumers and addressing them – which in turn should lead to better outcomes for all consumers.

Language of ‘best interests’

Safeguarding Ireland appreciates that the CBI now understands that ‘best interests’ is also a contested term and asks that as materials are finalised they are reviewed once more to ensure that ‘best interests’ is not used. It is, of course, appropriate for firms to work to optimise the interests of all customers.

⁹ <https://www.sec.gov/files/elder-financial-exploitation.pdf>

¹⁰ <https://www.fca.org.uk/news/blogs/hidden-cost-domestic-financial-abuse-working-together-improve-outcomes>

¹¹ [https://www.finra.org/rules-guidance/key-topics/senior-investors/protecting-senior-investors-2015-2020/finra-senior-exploitation-rules#:~:text=20%20FINRA%20Rule%202165\(a,any%20other%20authority%20regarding%20a](https://www.finra.org/rules-guidance/key-topics/senior-investors/protecting-senior-investors-2015-2020/finra-senior-exploitation-rules#:~:text=20%20FINRA%20Rule%202165(a,any%20other%20authority%20regarding%20a)

¹² <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-advisory-and-report-for-financial-institutions-on-preventing-elder-financial-abuse/>

Alignment with other policies

With regard to the definition of financial abuse in the revised Regulations and Standards for Business. **A definition of ‘financial abuse’ must be also used in the National Payments Strategy and the National Financial Literacy Strategy** – a failure to do so will result in a disjointed approach between relevant regulations and policies resulting in more ‘blind spots’ relating to financial abuse as a distinct form of harm.

Further to its recent attendance at the CBI’s roundtable (29/05/2024) it is Safeguarding Ireland’s understanding that the CBI is liaising with the Department of Finance on these strategies, and we trust will ensure that there is full alignment in this regard. A failure to have explicit reference to financial abuse in these strategies would undermine what the CBI is trying to achieve via its emphasis on Financial Abuse in the Code.

Organisational preparedness

CBI

Financial abuse –and securing the interests of consumers in vulnerable circumstances /adults at risk are complex multi-layered issues. The Law Reform Commission’s Report indicates the complexity, as well as the intersection of the financial dimensions with other aspects of a person’s life i.e., their personal and psychological safety, relationships with families and close others, housing security, the relationship between ‘vulnerable circumstances’ (the FCA has highlighted ‘life events’ – (illness, relationship breakdown and bereavement)) as well as embedded and dangerous forms of coercive control and psychological manipulation. There are complex issues related to human rights, personal autonomy, equality and assisted decision-making, data sharing, and the sharing and retention of ‘sensitive’ data and consent¹³ and the right each person has to make ‘unwise decisions’. There are important balances and nuances to be achieved in perfecting and implementing an effective response.

The person who is subjected to financial abuse may be particularly vulnerable to further harm at the point at which it is revealed or reported, including retaliation in the form of aggression, violence, or the withdrawal of needed care or support.

It is respectfully suggested that, in expanding the scope of ‘vulnerable circumstances’, and explicitly referencing ‘financial abuse’ the CBI will need to develop its internal competence and expertise in an expanded range of areas. As Safeguarding Ireland referenced in its submission on the Discussion Paper there is no evidence of how effective the CBI has been in its supervision of the extant provisions relating to ‘vulnerable customers’ in the 2012 Code, accordingly, it is proposed that the CBI will need to develop its internal organisational capability in this regard in advance of the full application of the Code.

The Financial Services and Pensions Ombudsman (FSPO)

A commensurate expansion of the FSPO’s expertise in these areas will be required. Safeguarding Ireland notes that the LRC states that the FSPO *‘plays a role in tackling the actual*

¹³ https://assets.hse.ie/media/documents/ncr/20240524_HSE_Consent_Policy_2022_v1.2.pdf (updated 2024).

or suspected financial abuse of at-risk adults’¹⁴ referencing section 44(1)(a)(i)-(iii) of the Financial Services and Pensions Ombudsman Act 2017 (“2017 Act”). To date in Safeguarding Ireland’s experience, the role of the FSPO has been limited in this regard.

There are known barriers to reporting financial abuse and it may be even more difficult for an adult at risk/’consumer in vulnerable circumstances’ to bring a complaint to the FSPO because of the nature of their circumstances.

The extent of the harm may continue to be underestimated without proactive measures to ensure that adults at risk /consumers in vulnerable circumstances receive appropriate support at this point in their ‘customer journey’. Accordingly, and in demonstrating the efficacy of the new provisions relating to customers in vulnerable circumstances and ‘financial abuse’. Safeguarding would wish to see specific reference to these two dimensions in the future approach by the FSPO as well as support for consumers in vulnerable circumstances/ adults at risk in bringing complaints.

Responses to Questions

- **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?**

Commentary above on ‘best interests’ etc. is relevant to this question.

Potential Customers

*‘When we refer to ‘customers’ in this guidance, this includes **potential customers**. This is because the requirement to secure customers’ interests is an aspect of firms’ overall obligations towards consumers, which is a much wider group than the firms’ current cohort of customers’.*

Safeguarding Ireland is concerned that notwithstanding the provisions of the ADMC Act and Irish equality legislation, some customers may be denied access to current accounts or other products on the basis that they ‘lack capacity’. There are also valid concerns that when a customer lets a firm know that they are in ‘vulnerable circumstances’, they risk encountering barriers in their access to other products or services. This concern presents for ‘**potential customers**’ and we suggest that the CBI closely monitors data relating to ‘declines’ for current accounts or other products where the customer has relayed that they are in vulnerable circumstances, where a decision-making arrangement is in place, or where the firm indicates that they have assessed capacity and subsequently denied a customer a product.

The above relates also to Customer Autonomy (1.5) and the right of a customer to make an ‘unwise decision’, i.e. an individual’s capacity should not be called into question because they intend to make or have made an ‘unwise decision’ and a ‘relevant’ person also has a right to make an ‘unwise decision’. We understand that the CBI is not the

¹⁴ <https://www.lawreform.ie/fileupload/Reports/as/lrc-128-vol-2-160424-final.pdf> p405

regulatory body for the ADMC Act but are of the view that the CBI is positioned to view how well firms are meeting ‘consumers’ interests’ –and not just the needs of their customers in this regard.

We also refer to Section 2.1.17

2.1.17 Securing customers’ interests does not mean that a firm cannot make commercial decisions in the interests of shareholders.While doing so, firms must also meet their obligation to secure their customers’ interests. Consideration of how this obligation can be met needs to be a factor in the commercial decision-making process.

Safeguarding Ireland is concerned that firms will not achieve an appropriate balance here and may find it easier to deny a service to customers in ‘vulnerable circumstances’, ‘adults at risk’, ‘relevant persons’ than invest in developing the internal response or reconsidering the design of their services so that the interests of a greater cohort of consumers’ interests can be secured. This is very relevant in decisions relating to opening and operating a bank or current account and to other products and services¹⁵ and to points about ‘potential customers’ above.

In all cases where a service is refused or denied/declined firms should be **obligated** to sign-post the potential customer to alternatives or other supports. Where refusals/denials are higher than industry norms firms should be required to examine both their processes and product features with a view to broadening access.

Safeguarding Ireland remains concerned that firms will ‘cherry-pick’ customers as a way of limiting their requirement to invest in processes that support consumers in vulnerable circumstances.

- **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

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

‘In addition, where consumers access their financial records through a firm’s online systems, and access to those systems is to be withdrawn, firms will be required to notify consumers that they can download or print this information before access is withdrawn’.

Safeguarding Ireland suggests that ‘**interoperability**’ is a key requirement here, i.e. components that are ‘downloaded’ are capable of being ‘uploaded’ where a customer is required to change firms, or if a customer merely wishes to change firms or switch.

In general, in this section, there is insufficient emphasis on product and service innovation. This section does not seem sufficiently future-focused in the context of the

¹⁵ <https://www.dosh.org/wp-content/uploads/2016/09/Access-to-banking-for-people-with-a-learning-disability-2014-v2.pdf>

disruption of financial services that is ongoing worldwide and Ireland's changing demography.

Safeguarding Ireland had suggested in its response to the Discussion Paper that 'digitalisation' warranted a separate consultation. Safeguarding Ireland notes that the CBI has completed its Consultation on Innovation Engagement'¹⁶. There is not much indication, as of yet, where the necessary innovation in financial services will emerge from. Without innovation, there is a real risk that existing levels of digital exclusion and digital 'self-exclusion' will become embedded, and many consumers will miss out on the opportunities that could be afforded via improvements in product and service design.

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

We note that *'The Central Bank has considered the RBR recommendation on customer charters and service standards... we are not proposing to directly reflect this requirement within the revised Code'*.

This is disappointing as Safeguarding Ireland had hoped that such Charters would provide an opportunity for banks and other regulated financial services to demonstrate their commitment to safeguarding customers. Where else will a consumer find comparative information on service levels, additional supports, safety, or accessibility features? This information is not available on the CCPC website or the CBI's website. (Safeguarding Ireland has its own voluntary Safeguarding Charter¹⁷, while organisations across the health and social care, charity, cultural, sporting, and private sectors have signed up – no financial services firm has yet signed).

'The revised Code will reflect the following changes which have been informed by the recommendations of the RBR:

- *increasing the minimum notice period for banks to six months where they intend to close, merge or move a branch; and to four months where they intend to significantly change services in a branch;*
- *requiring banks to publish board-approved assessments of the impact of the changes on customers; and*
- *requiring banks to conduct an ex-post assessment to include a survey of impacted customers nine months after the change, which must be completed before 15 months has elapsed since the change.*

¹⁶ <https://www.centralbank.ie/news/article/central-bank-of-ireland-announces-plans-to-establish-innovation-sandbox-programme-in-2024>

¹⁷ <https://safeguardingireland.org/organisations-encouraged-to-sign-up-to-new-safeguarding-charter/> there are now almost 100 signatories.

While the bank branch infrastructure provides an important service for some customers and is especially important in cases of financial abuse – where trained staff are positioned to assess whether a person is under duress etc. it is not necessarily the **‘bank’** branch’ that is important for some adults who are at risk.

What is important is their access to a human with the time and skills necessary to provide such support as they may need to facilitate whatever aspect of their business they would usually carry out in a branch. Accordingly, while the procedural changes relating to proposed bank branch changes/closure avoid ‘cliff-edge’ situations, they don’t mitigate the loss of this support for communities and individuals who may need it.

‘Ex-post surveys’ will not serve any purpose unless the methodology purposefully seeks the views of people who may be most affected by closures and who may be most difficult to reach with conventional survey approaches or those who may encounter difficulties in responding to a survey.

Safeguarding Ireland also highlights the importance of the physical security of in-branch ATMs for people who may feel unsafe withdrawing cash on the street or in a shop.

Banking Hubs¹⁸ – with ‘community bankers’ are likely to be more necessary than improving procedural steps relating to closures, albeit the proposed procedural improvements are welcome.

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

Safeguarding Ireland highlights the ADMC Act and the related Codes for Financial Service Providers¹⁹ and the Code for Supporting Decision-Making and Assessing Capacity. The latter states at **3.2 Access to information** *‘You must ensure that the relevant person has access to sufficient information to enable them to make the decision in question or, where appropriate, to participate in the decision-making process to the fullest possible extent’*. and the detailed provisions under

- 3.2.1 Appropriate information
- 3.2.2 Considering specific needs
- 3.2.3 Clear presentation

In Safeguarding Ireland’s view ‘informing effectively’ must be aligned with these standards.

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

¹⁸ <https://claritywealth.co.uk/banking-hubs-a-lifeline-for-uk-communities-otley-hub-to-open-soon/#:~:text=Banking%20hubs%20offer%20several%20key,having%20to%20travel%20long%20distances.>

¹⁹ [https://decisionsupportservice.ie/sites/default/files/2023-04/11.%20COP for financial service providers.pdf](https://decisionsupportservice.ie/sites/default/files/2023-04/11.%20COP%20for%20financial%20service%20providers.pdf)

Notwithstanding any ‘challenges’ firms may identify in responses under this heading Safeguarding Ireland suggests that they are **required** to meet the above standards and if necessary, should work together or via their representative bodies to achieve a best practice approach. Meeting the above standards will improve the information available to **all** consumers.

- **Do you have any comments on the proposed enhanced disclosure requirements for mortgages? (home reversion)**

Under this heading ‘Lifetime Mortgages and Home Reversion Agreements’ are mentioned – together with the following text *‘For example under a home reversion agreement, the inheritance a customer passes on to their beneficiaries could be substantially reduced and may not include the property itself.’*

Safeguarding Ireland suggests this is a very poor example. An individual’s concerns about any product should in the first instance be for their **own** welfare. Too often older peoples’ financial affairs are subject to the (often undue) influence of others concerned to safeguard an inheritance. The **customer’s interests** must be to the fore and not the interests of ‘beneficiaries’.

In the case of such products (release of equity/home reversion) the primary considerations should be impact on access to social welfare, costs of future maintenance on the home, and long-term financial planning, including, in particular, ‘future care needs’ and then any impact on the person’s estate. (It is the value of the homeowner’s **estate** that may be diminished (as opposed to someone else’s inheritance!).s

Safeguarding Ireland strongly agrees with the **intent** of the proposal for an additional disclosure viz. *‘In relation to home reversion agreements, an enhancement is proposed to the warnings already required in the existing Code that will include prompting consideration of the connection between transferring a share in the home and the potential negative impact on ability to fund future needs’*, and the proposed warnings at 158 (b) and 150 (b)²⁰.

Safeguarding Ireland suggests that in the context that someone availing of one of these products will be receiving a lump sum or an income and may believe this will assist in funding their ‘future needs’, the proposed wording is not explicit enough and may be confusing. The wording should refer to **‘future care needs’**. We further propose that there is a requirement to signpost to, or provide information on, the Nursing Home Support (Fair Deal) Scheme and the impacts for some of such products.

²⁰ https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/other-codes-of-conduct/consumer-protection-code-review/central-bank-supervision-and-enforcement-act-2013-section-48.pdf?sfvrsn=d45f631a_1

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

We note the new *‘requirement to provide additional information on the implications of a **personal insolvency** arrangement for a borrower and his/her mortgage loan account in a number of borrower communications’*

The CBI does not regulate Personal Insolvency Practitioners (PIPs) (which are regulated by the ISI) but does regulate ‘debt management firms’²¹ and Safeguarding Ireland suggests there are ‘level playing field’ issues in terms of the proposed approach required to be adopted by a regulated ‘debt manager’ and a regulated PIP when dealing with borrowers/customers (and sometimes the same customer- where the PIP is also a debt manager or where a borrower is first required to engage with the MARP before engaging with a PIP) who are likely to overwhelming be people in ‘vulnerable circumstances’.

The potential for ‘perverse incentives’ should be examined. The borrower engaging in good faith to address their mortgage arrears, often in ‘vulnerable circumstances’ should be afforded the same good practice approach to ‘vulnerability’ regardless of the ‘treatment’ most suited to addressing their arrears. This is a matter which we suggest the ISI and the CBI may be able to address but it is suggested that the *‘Guidance on Protecting Customers in Vulnerable Circumstances’* should apply regardless of the route to mortgage arrears resolution or the relevant regulated professional the borrower has engaged with to address their arrears.

In relation to references to insolvency in the CCMA, Safeguarding Ireland notes that recent Personal Insolvency Arrangements (PIAs) have extended the mortgage term very considerably²². Indeed, where other solutions have failed, a term extension either within a PIA or via an ‘informal arrangement’ may be a necessary remedy for legacy arrears in some cases.

As this is a relatively new development, Irish banks and others (funds, credit servicing firms) have little experience in working with aging mortgagors (the cohort in mortgage arrears or in an arrangement beyond retirement age, i.e., 65+) and in complying with the CCMA may need to be cognisant of the unique ‘vulnerable circumstances’ of this group. (See 2.27 ‘Process and Product Design’ Guidance²³²⁴)

²¹ <https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/debt-management-firms/debt-management-services.pdf?sfvrsn=0>

²² <https://www.rte.ie/news/courts/2021/0513/1221453-insolvency-arrangement/>

²³ https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/other-codes-of-conduct/consumer-protection-code-review/guidance-on-protecting-consumers-in-vulnerable-circumstances.pdf?sfvrsn=d55f631a_1

²⁴ *‘need to design their products and processes so that **specific predictable vulnerabilities** do not adversely impact on some customers, resulting in less favourable outcomes’.*

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Finally, section 'A18' of the 'Standard Financial Statement'²⁵ lists the range of factors that can give rise to mortgage arrears including factors such as 'illness' and 'bereavement', etc., we propose that if a borrower provides information in this section that suggests that they are in 'vulnerable circumstances' that banks/credit servicing firms/funds should ensure that Guidance on Protecting Customers in Vulnerable Circumstance is applied and demonstrated.

It is noted that the CBI refers to the fact that the IBCB has produced 'a Common Commitment' on Bereavement²⁶ (but this is not sector-wide).

Additionally, there is no relevant guidance on serious illness including terminal diagnosis, or acquired disability, and the impact of these factors on a borrower's ability to meet their mortgage commitments or to the treatment of such borrowers in the CCMA/MARP.

Similar issues would be relevant to other areas of credit and relevant insurance products²⁷.

- **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?**

Safeguarding Ireland is of the strong view that the Standards for Business and particularly those relating to 'Financial Abuse' as well as finalised guidance on Protecting Consumers in Vulnerable Circumstances should be applied to all firms to evidence their commitment to Irish consumers in both regards, regardless of regulatory status. (The Decision Support Services Code of Practice for Financial Service Providers applies in any event.)

It is acknowledged that the CBI does not have the power to compel this for firms outside its regulatory perimeter. However, there are other routes to its achievement particularly where a firm is carrying out business as an agent of the State. All State bodies engaged in the provision of relevant services could adopt this model voluntarily. (A useful precedent is the Local Authority MARP, where local authorities (who are not regulated by the CBI) nonetheless adopted the MARP in respect of mortgage arrears owed to local authorities).

Understanding regulatory status of firms and products

²⁵ <https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/other-codes-of-conduct/36-gns-4-2-7-financial-statement.pdf>

²⁶ The Irish Banking Culture Board has developed a Common Commitment of Care for Bereaved Customers,

²⁷ <https://www.irishtimes.com/your-money/2024/03/04/our-young-children-will-in-all-likelihood-lose-their-mother-we-did-not-want-to-spend-six-months-calling-ptsb/>

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A main impediment in this area is for consumers to understand the regulatory status of the firms they are engaging with and the services they offer. We note that *‘This overarching obligation on firms will be complemented by additional requirements to ensure firms enable customer understanding of the status of unregulated products and services provided’*.

Safeguarding Ireland has direct experience of endeavouring to establish the regulatory status of certain firms and products and, even with a good degree of understanding of the regulatory regime, the relevant firms and their product offering, view it as challenging. The CBI’s registers are not particularly user-friendly and only identify regulated activity. Accordingly, there is no single point of access for information on firms that lists their regulated and unregulated activity. Safeguarding Ireland suggests the need for further consideration on how clarity will be achieved on this issue.

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

‘Frauds and Scams’

We note in this section and elsewhere, the heading used is ‘Frauds and Scams’. **‘Frauds and Scams’ should not be used as shorthand** – the term should either be – ‘Financial Abuse’ (incorporating financial abuse, frauds, and scams) – or ‘Financial Abuse, Frauds, and Scams’.

The definition provided is quite legalistic and while appreciating the need in regulatory documents for a legal definition – a consumer-focused definition in plain English should be adopted. By way of good practice example, we note that HIQA has recently prepared a ‘Lexicon’ of commonly used terms in health and social care²⁸. ‘Financial abuse’ is defined as *‘A situation in which someone harms another person in ways that relate to money’*.²⁹ The terms in the ‘Lexicon’ do not take precedence over terms defined in law.

As above, it is vital that ‘financial abuse’ is recognised beyond the firms regulated by the CBI, accordingly, the Standards of Business relating to ‘financial abuse’ should be adopted by other Government Departments and State Agencies. Likewise, we believe that finalised *‘Guidance on Protecting Customers in Vulnerable Circumstances’* should be adopted more widely and should be a requirement for any State entity with a role in providing a ‘financial service’ to citizens. This would apply specifically to the Department of Social Protection and its contract with An Post and the National Treasury Management Agency and its agency arrangement with An Post for the delivery of State Savings, as well as the Department of Expenditure, National Development Plan Delivery and Reform and the delivery of services on its behalf by the National Shared Services Office (NSSO).

²⁸ The Lexicon provides a list of commonly used words relevant to social care, along with a definition. The use of standardised language is important for clarity and consistency and all providers of social care are encouraged to use the Lexicon in their communications with HIQA.

²⁹ <https://www.hiqa.ie/sites/default/files/2024-03/Lexicon-for-Social-Care.pdf> 9 (p6).

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Innovation

There is a need for innovation in this area. We note that one of the ‘winners’ of the FCA’s recent financial inclusion tech-sprint³⁰ was ‘Ask-Silver’³¹ an AI-driven scam checker designed to protect older people from fraud, scams and financial abuse. There is no evidence of where such innovation may emerge in the Irish context, or which arm of the State may foster it.

Effectiveness requires regulatory co-operation and harmonisation of approach

The CBI is to be commended for advancing a definition of financial abuse and related Standards of Business as well as generating Guidance on Protecting Customers in Vulnerable Circumstances, but the approach needs to extend more widely.

The effective implementation of these aspects of a new Code may require joint work with a range of other regulators, the Decision Support Service and HIQA have been referenced, and there are roles also for the Data Protection Commission, Coimisiún na Meán, amongst others, not least to ensure that a consumer having experienced harm knows which regulator is ultimately responsible for the issue, where to report it or how to complain or access remediation.

The new Adult Safeguarding Body as proposed by the Law Reform Commission will also be an important stakeholder due to the proposed nature of its functions and its proposed role as an entity to which ‘financial abuse’ is to be reported.

It is imperative that data on financial abuse – and not just ‘frauds and scams’ is recorded, published, and monitored. We suggest that the CBI should play a leading role in this.

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

This section should refer to the proposed crime of ‘coercive exploitation’, as defined by the Law Reform Commission viz: *Coercive exploitation of relevant person - A person who, without reasonable excuse, engages in controlling or coercive behaviour in relation to a relevant person for the purpose of obtaining or exercising control over any of the property (whether real or personal) or financial resources of that relevant person in order to gain a benefit or advantage, whether for himself or herself, or for any third party connected with him or her, shall be guilty of an offence*³².

The Law Reform Commission refers to the act of ‘cuckooing’ – *where a person befriends an at-risk adult and takes over their home to conduct illegal activities or engage in anti-social behaviour*. Safeguarding Ireland submits that coercive exploitation can occur in

³⁰ <https://www.fca.org.uk/firms/innovation/techsprints>

³¹ <https://www.ask-silver.com/>

³² <https://www.lawreform.ie/fileupload/Reports/as/draft-criminal-adult-safeguarding-bill-final.pdf> p13.

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relation to financial products – e.g., a takeover of an adult at risk’s bank accounts for criminal or other purposes.

Reference should also be made to ‘coerced debt’ - *a form of financial abuse that happens when an abuser uses fraud, theft, force, or misinformation to get their partner into debt*.³³. Coerced debt, like coercive control, occurs in Safeguarding Ireland’s experience both within and beyond the ambit of ‘intimate partner relations’³⁴.

- **What are your views on the proposed amendments to the Consumer Protection Code about consumers in vulnerable circumstances?**

Training

Safeguarding Ireland notes provisions relating to training. Safeguarding Ireland suggests that training on ‘financial abuse’ should be mandatory for staff of regulated firms.

Trusted Contact Person 2.3.17

Safeguarding Ireland refers to concerns about implementation identified in its response to the Discussion Paper, as well as to points raised by the BPFI and the Data Protection Commission on ‘Trusted Contact Person’ in their responses to the Discussion Paper³⁵³⁶.

While this initiative has the potential to provide positive and necessary support it could also become a tool of abuse unless there are adequate safeguards around its implementation.

There are also some practical concerns about the availability of a ‘Trusted Contact Person’ out of hours and at the weekends.

There are also concerns that it could serve to ‘deresponsibilise’³⁷ firms and ‘responsibilise’ the ‘Trusted Contact Person’ for stopping harms to a person in vulnerable circumstances.

There are also serious risks of conflicts of interest – where for example the ‘Trusted Contact Person’ is the beneficiary of a transaction.

It is possible and may be advantageous, for an Advocacy body to become the ‘Trusted Contact Person’ in some instances, particularly for people who neither have nor wish to

³³ <https://www.ukfinance.org.uk/news-and-insight/press-release/changes-needed-help-victim-survivors-economic-and-financial-abuse>.

³⁴ <https://safeguardingireland.org/financial-abuse-blog/>

³⁵ <https://bpfi.ie/publications/bpfi-submission-to-cbis-consultation-paper-cp153/>

³⁶ https://www.centralbank.ie/docs/default-source/publications/discussion-papers/discussion-paper-10/data-protection-commission---response-to-dp10.pdf?sfvrsn=be339f1d_2

³⁷ [Coronavirus and Fraud in the UK: From the Responsibilisation of the Civil Society to the Deresponsibilisation of the State https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3751262](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3751262)

have, a friend or relative perform this role. How this would be resourced or implemented needs further consideration, and issues relating to the potential 24/7 nature of the role need to be considered.

Safeguarding Ireland would wish to see it implemented in tandem with better product design and again highlight the need for product and service innovation in this regard. In the context that a consumer may have multiple accounts with multiple providers where the role could apply, an app-based solution with appropriate registration and conflict of interest safeguards would be useful.

While noting the above proposals for safely implementing a 'Trusted Contacted Person' it is also noted that there are existing systems (outside of financial services) such as 'monitored alarms' that call a nominated third party when an alarm sounds at a person's home. Such systems are widely used. Although there is a price premium attached to the service.

It is noted that FINRA has issued guidance on the operation of this role³⁸.

As with other aspects of the Guidance and relevant parts of the Standards of Business, Safeguarding Ireland suggests that this aspect could also apply to organisations that are not regulated by the CBI.

Finally, we note that this is an opt-in proposal and would not wish to see any adverse consequences for consumers (increased pricing or less access to remediation) who chose not to appoint a 'Trusted Contact Person'.

Do you have any comments on the draft Guidance on Protecting Consumers in Vulnerable Circumstances?

We have previously noted that good practices such as the IBCB's 'Common Commitment on Bereavement' are not sector-wide. UK Finance has a 'Financial Abuse Code'³⁹, which is a good practice example, but again that applies to 29 UK members and 39 brands only. While appreciating that it may be beyond the scope of the CBI to generate such granular guidance some issues present acute risks for people in some circumstances and more guidance or codes developed on a cross-sectoral basis would assist. Regulated firms should be encouraged to develop them in cooperation with their representative bodies. Issues for consideration in this regard include 'financial abuse', and money management issues relating to life-changing illness, injury and disability, and life-limiting illness.

³⁸ <https://www.finra.org/rules-guidance/guidance/reports/2022-finras-examination-and-risk-monitoring-program/trusted-contact-persons#:~:text=These%20conflicts%20of%20interest%20can,the%20detriment%20of%20a%20customer.>

³⁹ https://www.ukfinance.org.uk/system/files/2022-12/Financial-Abuse-Code-2021_Updated_2022.pdf

The Guidance refers to ‘blocks’ and ‘brakes’ as design features that could assist customers in some instances. Safeguarding Ireland suggests that these product features should be much more widely available to all customers on an opt-in basis.

Safeguarding Ireland is not clear on the precise nature of the efforts firms should make in identifying consumers in vulnerable circumstances. There are risks of bias and unethical and discriminatory profiling, and as above, the terminology may be stigmatising and may limit self-disclosure for that reason. A further dimension to this issue has emerged also in the UK’s implementation of its Consumer Duty and the FCA has issued further guidance on this very recently⁴⁰ including an emphasis on firms’ efforts to contact ‘*gone-away or unresponsive consumers*’. Safeguarding Ireland makes no additional proposals on this, other than to underline the complexity and sensitivity of the issues involved.

- **Are there specific elements of the revised Code that should be tailored to BNPL, PCP, HP and consumer hire providers?**
NA
- **Are there other protections within the General Requirements under the revised Code that we should apply to High Cost Credit Providers?**
NA
- **Do you have any comments on the proposals to apply an explicit opt-in requirement for gadget, travel, dental and pet insurance only?**

Safeguarding Ireland in general agrees with the opt-in provisions but warns of any potential adverse consequences for people with an illness who may face higher premiums or be unable to access travel cover under these proposals.

⁴⁰ <https://www.fca.org.uk/publication/correspondence/dear-ceo-letter-implementing-consumer-duty-closed-products-services-all-other-firms.pdf>