



Central Bank of Ireland
Consultation paper on Consumer Protection Code

June 2024

Introduction

The Society of Actuaries in Ireland (“the Society”) is the professional body representing the actuarial profession in Ireland. The Society welcomes the opportunity to engage with the Central Bank through this consultation process. In responding, we have focussed our comments on the topics likely to impact Insurance businesses, whilst recognising that the Consumer Protection Code also applies to other financial institutions such as banks and intermediaries. The response has been prepared by a cross section of members of the Society and does not purport to reflect the views of the insurance industry.

Our responses are presented below according to the questions asked by the CBI in the Consultation Paper, and responses are only included for the questions where we felt the need to respond, or where we felt further clarity was required.

At an overall level the Society is supportive of the proposed changes which aim to improve Consumer Protection across the Financial Services industry.

Key points

There are a number of key points in our responses to the questions below which it is worth summarising:

- There are many areas of overlap between the CPC and other EU regulations for example, DORA, IDD, evolving sustainability regulations, etc. Where possible we feel that CPC should not seek to replicate these regulations but to make reference to them where appropriate.
- In the spirit of standardisation and informing effectively the principles of the CPC should apply consistently to all relevant financial products such as occupational pensions not directly in scope of CPC. It is important that consumers receive similar protection across all financial products.
- Informing consumers effectively suggests that companies may need to adopt a more succinct and targeted approach to consumer communication. This proposal may be at odds with meeting current regulatory requirements, resulting in additional rather than simplified communications. Defining what is ‘important’ for different consumers and products will be a challenging task.

Responses to Specific Questions

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have any comments on the Securing Customers' Interests Standard for Business, Supporting Standards for Business or the draft Guidance on Securing Customers' Interests set out in Annex 5?

We welcome the Securing Customers' Interests, supporting standard and draft guidance in providing detail on the expectation of firms in this regard.

There is a significant amount of additional detail in the guidance and we are pleased to see the proportionality considerations outlined in the guidance provided. It is crucial to recognise the importance of proportionality, to distinguish between the best endeavours of the insurer to secure the best interests of their customers, considering the nature of their operations, products, etc, and placing an unrealistically high burden on them, that may have the unintended consequences of discouraging new entrants to the market or new product developments within existing companies. Similarly, we are pleased to see Customer Autonomy explicitly referenced, as Securing Customers Interests cannot be entirely the responsibility of the insurer and will depend on the customer making the most informed decision using the information presented to them and guidance provided.

Example 6 in the guidance refers to presenting information to customers in an effective way to secure customers interests. It should be acknowledged that there are sometimes conflicting objectives between providing the customer with a large amount of detail required by regulation and at the same time communicating as effectively and as succinctly as possible. An example of this is the prescribed amount of disclosures required by PRSA regulations. We comment further on this in section 2.3.

The regulations themselves can be a cause of confusion and conflicting intent, for example, inconsistencies between the disclosure methodologies and detail required by products subject to PRIIPS regulation which also fall under the Life Disclosure regulations. The customer will receive these disclosure documents at different stages of the product lifecycle, the PRIIPS KID is a pre-sale document and the life disclosure rules apply post-sale. Nevertheless, there should be consistency in communication and we believe it makes sense to align the disclosure methodologies between both sets of regulation as much as possible.

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

We believe that there is a benefit to consumers where there is a consistent approach to the application of regulations – and in particular, where there is a consistent approach to regulations which are designed for the protection of consumers.

As such, we are supportive of a consistency of approach, notwithstanding that certain elements of guidance or regulations may not apply or may be disapplied. Reflecting this view, we are supportive of the expectations.

2.2 Digitalisation

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

We believe the digitalisation section should be reviewed to explicitly consider the impact of the generative AI “explosion” over the last year and how that will likely form part of the customer engagement for most major companies in the near future. We feel that the definition of a “digital platform” doesn’t account for Generative AI. Consumers might not realise they are engaging with AI and AI is not guaranteed to produce consistent outputs for the same inputs.

There are important questions here around whether consumers should know if they are engaging with AI, how it is making decisions and whether there should be a right to request a human interaction. The proposed guidance for supporting consumers in accessing information digitally should also include guidance on the use of AI in chatbots or to support/service customers.

The code could also give more guidance on what happens if the digital platform isn't working, or maybe point to other relevant acts such as the Digital Operational Resilience Act (DORA). We have seen several cases where the digital platform or phone apps of Financial Institutions have ceased to work. Could customers be left weeks without access to their money/services? Or should firms be required to outline what steps will be taken if such scenarios arise and how those actions will evolve depending on how long the service is down? Or would the code be met if a company was compliant with DORA in these circumstances. Where there are existing regulations that firms need to follow, we feel it would be useful if the Code aligned to these rather than prescribing something else in the same space.

Further comments in relation to the impact of digitalisation on customers in vulnerable circumstances are provided in section 2.7 below.

2.3 Informing Effectively

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

The intent of the “informing effectively” proposals is clear, however their implementation will be significantly open to interpretation.

Consumers already receive a lot of information when buying financial products. However, the volume of information currently provided is potentially off-putting for a lot of consumers and they may not read all or any of it. “Informing effectively” seems to indicate that more focussed information should be provided, allowing an understanding of the main features of a financial product.

Shifting the focus of firms from meeting disclosure requirements in a ‘tick-box’ way to a duty to present information to customers in a way that informs them effectively, means that firms need to make judgements about what is the most relevant information. These judgements will potentially be different across firms and across product lines, which would be inconsistent with an ambition of having standardisation and simplicity of information. Further guidance on common terminology to use from the CBI could be useful to support simplification.

Where the information being provided is condensed, that raises questions around the level of prominence of different features - product benefits, product costs, downside risks, upside potential

etc. Finally, different products have different levels of complexity, different sales or distribution channels, different time periods and financial impacts, different levels of consumer knowledge - which highlights how open to interpretation an objective of “informing effectively” might be.

It is assumed that any attempt to “inform effectively” would be developed in addition to existing disclosure information, as in, it would be a very short supplementary document, but would not replace (or require amendment to) the existing regulatory disclosure requirements for products. Having consistency of approach (e.g. terminology, disclosure requirements etc) across all financial products could also improve customer understanding – products such as occupational pensions sit outside of CPC, PRSAs have their own disclosure requirements, and investment products also have to provide information under PRIIPs.

There would be value in appropriate discussion with industry representatives about how these principles would be achieved, to include, for example, the production of pro-forma templates for a number of different financial products, to ensure that this principle delivers the intended benefit. This would also have the advantage of allowing better comparisons across products.

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

The key challenge is that implementation will be open to interpretation. The Standard refers to a requirement to “provide information to customers on a timely basis”, and to “bring key information to the attention of customers”.

Firms may be inclined to err on the side of caution, and to over-communicate to customers. This would lessen the impact of each individual communication and would likely not be consistent with the objective of the principle.

As previously, there would be value in appropriate discussion with industry representatives around how these principles would be achieved, and to develop additional guidance (which can stop a long way short of a “tick box”) for different financial products, to ensure that this principle delivers the intended benefit.

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 Code is focussed on regulated firms which provide both regulated and unregulated activities, and the recommendations are sensible.

It is highlighted that there are a number of areas of the financial services industry that do not come under the auspices of the Consumer Protection Code, in particular:

- Auto-enrolment - the State-run pension arrangement
- Occupational Pension Schemes, including Master Trusts

While it is acknowledged that regulation does apply to these sectors, the regulation of these key financial products (which will impact a majority of households from 2025 onwards) will be different to the regulatory approach under the Consumer Protection Code.

This inconsistency is not easily reconciled with the overall intent of the Code which is to deliver standardisation and simplicity of information and language, albeit may not directly be a matter for the Central Bank.

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?

Other initiatives we feel could be considered are:

- It would be useful for consumers to be able to verify if the financial advisor or firm they are dealing with is genuine. This might help prevent fraud/scams. While the CBI website currently provides some functionality for this by allowing the public search the registers, it is not presented in a very consumer friendly way, and is not well promoted to consumers. As an example, the website <https://safeelectric.ie/find-an-electrician/> allows a consumer to search for registered electricians and is more consumer friendly.
- The Garda website notes this when it comes to fraud investigations:

“All members of An Garda Síochána can investigate crimes of a fraudulent nature and many members throughout the country have received specialist training in this area of crime investigation. In that context reports should be made in the first instance to your local Garda station. The Garda National Economic Crime Bureau (GNECB) is a specialist Bureau within An Garda Síochána that investigates the more serious and complex cases of economic crime, and cases which are deemed unsuitable for local attention are forwarded to that section for investigation. The Bureau also provides assistance to local investigations. “

There does not seem to be a clear approach to reporting fraud/scams between the consumer and financial institutions e.g. if there are suspicious phone calls and/or someone uses your credit card online for a small purchase fraudulently. It is likely that this will a) never be reported and b) if reported, then a local Garda is unlikely to have the resources/skills to investigate that properly. Most of the amounts would be too small for the GNECB to get involved. This is further complicated by the fact that a lot of phone/online fraud/scams are instigated abroad.

There should be an easier way to report suspicious phone numbers e.g. a website portal which allows the number to be permanently blocked on the network if the investigator believes the number is being used for malicious purposes so the fraudsters are prevented from contacting anyone else.

Also, when credit card fraud happens there should be a requirement it is reported to the authorities and there should be a more active pursuit of the perpetrator. It should not just be a case of cancelling and reissuing of the card, which seems to be what happens in most cases, as the fraudster will just continue with the next account unhindered. There is likely a

need for more coordination between the Gardaí and the main Financial Institutions to spot patterns and approaches in relation to fraud and a method to share details of suspected fraudulent transactions with the Gardaí in a streamlined and efficient fashion.

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?

In general, the approach of ensuring that firms are prepared to and able to assist consumers in vulnerable circumstances, as such circumstances arise, makes sense. The specific amendments set out in the regulations support this, and the approach is carried through in the guidance note.

Some specific observations that we had are:

Defining Consumers in Vulnerable Circumstances

The change in focus from “Vulnerable Consumers” to “Consumers in Vulnerable Circumstances” is a positive step as it recognises that all consumers can potentially move in and out of vulnerable circumstances and requires firms to recognise this.

Training:

The requirement for training of staff involved in all stages of the product lifecycle is appropriate, but it is important that it is something that is embedded in the culture of the company and not just a “tick-box” compliance requirement.

The regulations require that a review is carried out at least every 2 years as to whether the training objectives have been met, and this to be reported to the board of directors. We feel that reporting to the Board Risk Committee may be a more appropriate reporting line for this.

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

The guidance in general is useful for firms to understand what is expected of them.

Section 2.2.8 of the guidance refers to distribution of products via a digital platform. We feel that this should be extended to cover distribution and servicing, as the customers’ understanding and capability to use digital platforms may reduce over time.

Our view is that firms need to consider the long-term impact of digital delivery. While customers may embrace digital technology and use it comfortably for many years, a new cohort of vulnerable customers is beginning to emerge, i.e. those who comfortably made the transition to digital delivery in their 70s / 80s but are now older and finding it more difficult to keep on top of digital communications. Firms need to consider how to ensure these customers don’t suffer poor outcomes, such as missing renewal notices as they moved all their notifications to on-line (or missed an “opt-out” of a switch to paperless communications), but no longer engage with email for example. Firms should also consider if it is appropriate to default customers who may be coming vulnerable due to age into digital only communications.

2.2.10 – “Proper product and process design should also involve firms testing and reviewing them, to ensure that the firm has appropriate supports in place.”

We were unclear around the intended meaning of this sentence and it would be helpful for it to be clarified.

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

The role of the trusted contact person is clearly set out. However we feel that its usefulness is somewhat limited. It would be useful if this person could also carry out some basic tasks on behalf of the customer without needing the customer present – e.g. paying premiums, requesting quotations/documentation to be sent to the customer etc.

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?

We support the proposed requirement to prevent misleading advertising and appreciate its intention. However, we are concerned about the calibration of specific requirements for disclosing sustainability features. Different companies may have varying interpretations of "green credentials" or sustainability features, leading to inconsistencies in disclosure. This could make it challenging for customers to compare and evaluate the sustainability of different products or services. Additionally, verifying the accuracy of sustainability claims may be difficult, further complicating efforts to ensure consistency in disclosure.

We note that in the Securing Customers' Interest Guidance paper the requirements for 'sustainable' or 'green' products to be clearly explained in plain and simple terms, but we note that such descriptions can be open to interpretation and places significant reliance on having an "informed consumer". We would appreciate clarification from the CBI on how companies can classify products to ensure clarity for consumers while minimising overhead for businesses. We would also seek clarity on how this proposed requirement aligns to the EU Directive on Green Claims.

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

While we appreciate the proposed amendment to the existing Code's requirements relating to suitability, we have concerns about how sustainability preferences will be consistently captured. It is important that firms take into account customers' sustainability preferences when undertaking suitability assessments, as consumers increasingly want to make sustainable investments to support the climate transition. However, there may be challenges in capturing and interpreting these preferences consistently across different firms. Without a clear and consistent approach to capturing sustainability preferences, there is a risk that these preferences will not be appropriately reflected in the financial products and services provided to consumers. We would appreciate further guidance from the CBI on how firms can consistently capture and interpret sustainability preferences to

ensure that consumers' needs and objectives are appropriately considered in the suitability assessment process.

We would also note that under IDD there are already existing requirements for advisors to capture information on customers sustainability preferences and would feel that there should be consistency between the CPC and this.

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?

We agree with the proposed principle that sustainability preference questions are captured in the Know Your Customer part of the sales process along with assessing risk and return preference and financial needs/goals and should form part of the suitability statement. We agree with the view that while sustainability preferences are a key consideration when recommending a product, that these preferences should not readily jeopardise the product selected being affordable for the consumer or fulfilling the consumers financial needs. We recognise that the importance of sustainability features will vary across different segments of the market.

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?

We would agree with the rationale set out by the CBI in the consultation paper for introducing the explicit opt-in requirement for automatic renewal for gadget and travel insurance only (ancillary products). In the case of pet and dental insurance, some of the same considerations why health insurance does not require an explicit opt-in also apply i.e. waiting periods, pre-existing conditions, distressing scenarios where the customer finds themselves without coverage. We suggest that further consideration be given to these insurance types as the argument for requiring an explicit opt-in is not as clear cut.

We would highlight that there may be a knock-on impact of this change on the pricing of these ancillary products where the opt-in requirement is introduced.

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

We believe that this change is unlikely to have a significant impact on consumer behaviour, and may result in superfluous communications which get disregarded. We suggest that, prior to adopting this proposal, customer research is carried out to determine if the additional notification will have the intended result or if including the proposed additional information within the current renewal notification could achieve the intended outcome. Sending additional communication to customers may conflict with the principles of Informing effectively if customers do not read the notice. There may also be sustainability considerations if the notification is required to be delivered by post.

3.4 Investments and Pensions

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

In terms of the principle in 3.4, it is acknowledged that inertia around long-term saving behaviours is very high. Written communications can assist, however, in isolation, the experience has been that they are unlikely to change behaviour, e.g. a requirement to *“inform their customers of the importance of considering the ongoing suitability of investment and pensions products for their needs at the point of sale, and in annual statements”*. It would be important that the responsibility for this action is clearly delineated between product manufacturers (e.g. life insurance companies) and advisers (e.g. brokers and other intermediaries).

In respect of this reference, *“ongoing suitability assessments, firms will be required to explain to the customer the reasons for this”*, it would again be helpful to be clear around the definition of “firm”.

The Code refers to the ongoing suitability of investment and pension products, and a specific area for consideration should be where investment or pension savers have used “default strategies”, versus where they have self-selected a strategy. These could be considered as distinct groups with different communication requirements - including, in particular, the implications of moving away from any default strategy that is available. It would be useful for the guidance to make clear any requirements for capturing existing customers sustainability preferences as part of this on-going suitability assessment.

4 – Benefits and Costs

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

We are fully supportive of the broad thrust of the proposals, and of the intent of the protections that are being put in place.

We have highlighted two key points in relation to the engagement of consumers of financial services products – firstly, that there would be the greatest level of consistency possible across all financial products (including those products regulated by the Pensions Authority, for example), and secondly that succinct and focussed information is the most effective means to generate engagement, accepting that this means a decision is needed around what information is key.

These two key points also ensure that costs are minimised. This is increasingly important where financial services providers are faced with a range of EU and local regulations and legislation to comply with (e.g. the Insurance Distribution Directive, IORP II, MiFID). Auto-enrolment and occupational pension schemes do not come under the auspices of the Consumer Protection Code, for example.

Costs that are incurred due to a lack of consistency around the application of regulations are unhelpful and are ultimately not in the consumers best interest, as costs of regulation are ultimately passed on to consumers.