

Private and Confidential

The Consumer Protection Code Department
Central Bank of Ireland
PO Box 559
Dame Street
Dublin 2

Re: CP47 Consultation Paper on the Consumer Protection Code (the “Code”)

Dear Sir/Madam,

EBS Building Society (the EBS) welcomes this opportunity to provide feedback to the Central Bank of Ireland regarding CP47 – Consultation on the Consumer Protection Code.

The significant changes in regulation made in the last decade have strengthened the rights of consumers with regard to the provision of personal finance. The Central Bank is to be congratulated, rightly, for driving forward, with the Industry, these important regulatory changes. The use of iconic advertising (“I don’t know what a Tracker Mortgage is”) coupled with easy-to-access and easy-to-understand information via the NCA website www.itsyourmoney.ie has enhanced the understanding of consumers with regards to personal finance products.

We fully support the Central Bank in its publication of this consultation paper and believe the broad thrust of it will further strengthen consumer rights.

EBS has worked with the Irish Banking Federation (IBF) in preparing a detailed submission across all elements of this consultation paper. Our submission here represents our views on a small number of areas which we feel warrant a further examination by the Central Bank prior to inserting in the code. These areas are as follows;

1. Vulnerable Customers;
2. Advertising; and
3. Information about remuneration.

Vulnerable Customers

EBS is cognisant of, and supportive of the Central Banks’ objectives in setting a higher bar for financial service providers to anyone who is rendered at greater risk of protecting their own interests due to incapacity or circumstances. We do however have concerns with the Central Banks’ proposed definition of vulnerable as set out in CP 47.

The definition as it is framed in CP47 would require financial service providers to collect and maintain information on various and disparate aspects of a consumer's profile which could be deemed to be excessively intrusive by the consumers themselves in the context of supplying financial services. By way of example, financial services providers in the ordinary course are not permitted under the Data Protection Acts to ask about a person's medical history (except in relation to the provision of life assurance), or their level of educational attainment. Such information has not to date been construed as directly relevant and hence a change to the Data Protection Acts would be required to ensure that entities did not contravene same.

The assessment of 'vulnerability' will also be somewhat subjective and this may lead to inconsistencies in practice. The practical application of the definition of vulnerable consumers will be particularly problematic. Financial services providers are required to collect a significant amount of information and documentation from consumers (for Anti Money laundering, Know your Customer and Revenue Commissioners as well as for Account Administration) and will be required to gather more personal information as a result of this proposed new requirement. It has been our experience that consumers are increasingly frustrated at what some perceive as the harvesting of personal, private details which they may have certain understandable sensitivities about. Requesting some of the details to assess whether a customer is vulnerable may be seen as particularly arbitrary (in the context of the provision of financial services) and in some cases, regardless of the sales process it entails, may not be welcomed by customer.

It may also be deemed disproportionate to seek the information required to make the assessment currently proposed from the entire population, when the extra protection is only necessary for a limited number of individuals. This will be compounded by the fact that detailed records will need to be created, maintained and refreshed in relation to consumers' circumstances.

The treatment of vulnerable customers is, we believe, currently well legislated for under the current CPC regime and it is not readily apparent how further regulation is required. EBS' existing sales processes seek to gather any and all relevant facts, to provide the service being sought in fulfilment of the current Know Your Customer and Suitability requirements of the CPC. For example, if, in the course of an interaction with a customer, it becomes apparent that the consumer is experiencing challenging circumstances, where relevant, financial services personnel are required to take this into account (e.g. where someone is in difficulties regarding loan repayments).

A more consumer friendly, sensitive and less intrusive approach would be to require an entity, where it is or becomes aware of characteristics or circumstances which would render the customer vulnerable during the sales process, to have enhanced procedures when providing the service.

We fully recognise and are appreciative of the needs of our most vulnerable customers and believe that sufficient safeguards are in place at present to protect their rights and ensure they are fully informed and understand any financial arrangement they are entering into. The inclusion of a definition of vulnerable, as it currently stands, will, we fear, unintentionally create an operationally cumbersome process for all consumers and has the potential to potentially cause offence to a number of them.

Advertising

The regulation of advertising has been a feature of the financial services industry for several years in Ireland and is well monitored by the Central Bank. The introduction of the Advertising rules have demonstrably succeeded in raising standards in relation to advertising and marketing content over the recent past and has met the Central Bank's objectives to ensure that consumers are not misled and to make it easier for consumers to make like-for-like comparisons. EBS welcomes the opportunity afforded by the review of the CPC to examine the current advertising requirements.

We believe that standards for advertising should be proportionate and not so onerous as to deter entities from undertaking advertising, or from advertising through certain media. Advertising performs an important function within a competitive market and to dissuade entities from undertaking this activity would not be in the interests of consumers or in the proper functioning of a competitive market in Ireland. This is increasingly important in an environment where products are being reviewed / withdrawn and even where participants are withdrawing from the market.

By way of example, the proposed General Requirement 17 to include a clear and understandable acronym for certain abbreviations in advertisements will present a number of challenges (ensuring the definition is understandable, consistent with other institutions to enable comparison, and where to place on the advertisement so as not to obscure the message and other regulatory disclosures). The requirement may result in advertisements causing confusion and fail to achieve their purpose in drawing attention to a particular product. The same would potentially also hold for Common Rule 7 – a requirement to give prominence to warnings in advertisements. This would be problematic to implement in practice and could render any advertisement ineffectual as regards its original marketing objective.

Advertisements are the precursor to an engagement with a financial services provider. Once contact is initiated by the consumer on foot of an advertisement, the sales process is well regulated thereafter by, among others, the CPC and the Distance Marketing Regulations. Furthermore, the consumer receives a significant amount of information and documentation during the sales process and is afforded legal safeguards and means of redress. We would request that the Central Bank takes these important elements into account when reviewing the advertising aspects of the Code.

We note that the Central Bank is considering requiring entities to produce a "Key Features" document for an extended range of products, which we would regard as a welcome innovation. We support the Central Bank's holistic approach to revising advertising and consumer documentation and to consider whether its objectives would be better fulfilled if certain information were highlighted to the consumer in the Key Features Document as opposed to the Advertising material.

Information about Remuneration

We note new measures proposed in relation to transparency of commission, fees and remuneration and the requirement of "regulated institutions to disclose in writing the existence, nature and amount of any fee, commission or other remuneration received or to be received from the product producer".

We support the Central Bank's initiative in this area but have a number of specific concerns in relation to the disclosure of commissions and remuneration practices.

EBS has a network of tied branch agents and non-tied agencies throughout the country. Remuneration paid to these franchised operations is commercially sensitive and can in some instances differ between operations. We do not believe that the publication of remuneration, for a basic banking product or indeed for a standard term deposit account, in any way is of assistance to the consumer in making an informed choice as to product or product provider. We feel it would be more appropriate to limit the publication of remuneration to those areas where the product is more sophisticated and technical in nature.

Furthermore the disclosure of commission is only relevant in relation to comparable commission models from which consumers can make an informed decision. Without harmonised commission models, we believe that the publication of commission (whether it be deferred, variable or target driven) may well result in some products or services being selected by consumers on the basis of commission factors rather than benefit, need or appropriateness.

In some circumstances, the final commission rate may not be known for a number of months and that any calculation or working example of the commission may not appropriately represent the true value in terms of the product or service being provided. Indeed, some commission models may well require complex mathematical modelling and calculations which may not be understood by all consumers. This, we fear, would detract from a needs based approach leading to the rejection of products or services which may otherwise have provided appropriate protection for consumers and fulfilled their financial needs.

We believe the disclosure of remuneration models as contained in EC (Markets in Financial Instruments) Regulations 2007 and Life Assurance (provision of Information) Regulations 2001 are adequate for more sophisticated financial services and the extension of it to basic banking products and fixed term deposit accounts does not enhance any consumer decision making.

Summary

We welcome the Central Banks' consultation process and believe that the review is both timely and appropriate. The Code has brought many benefits to consumers since its adoption in 2007 and we believe that many of the proposed changes will provide consumers with more information across a broader range of financial products and services being offered in Ireland today. While we have concerns regarding some of these proposals we believe that the best interests of consumers are at the heart of this consultation paper.

Should you have any queries in relation to the above or wish to meet to discuss the above proposal please do not hesitate to contact me or Neil McKeever, Head of Compliance.

Kind regards



Fidelma Clarke
Chief Risk Officer