

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

10 January 2011

Dear Sir

**Consumer Protection Code**

I am pleased to provide ACCA's response to the Central Bank of Ireland's consultation paper on the Review of the Consumer Protection Code (CP 47).

I hope these comments are helpful and should you wish to discuss them further, please contact Ian Waters, Regulatory Policy Manager (tel: +44 20 7059 5992, email: [ian.waters@accaglobal.com](mailto:ian.waters@accaglobal.com)), in the first instance.

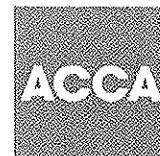
Yours sincerely

A handwritten signature in black ink, appearing to read "Sundeep Takwani". The signature is written in a cursive style and is positioned above a horizontal line.

Sundeep Takwani  
Director – Regulation

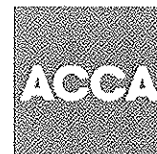
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Enc.



## **CP 47: Review of Consumer Protection Code**

Comments from ACCA  
January 2011



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ACCA works to achieve and promote the highest professional, ethical and governance standards and advance the public interest. We support our 140,000 members and 404,000 students throughout their careers, providing services through a network of 83 offices and centres.

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### ***General comments***

ACCA welcomes the opportunity to comment on the consultation on the review of the Consumer Protection Code ('the Code').

There are many places in which the draft revised Code refers to the consumer as 'he/she' instead of 'they'. As the definition of a consumer includes a group of persons or an incorporated body, we suggest that the term 'they' should be used consistently throughout.

There are some places within the draft revised Code where the words 'must not' have been used, and others where the document uses 'may not'. In order to meet the stated objective of clarification, we suggest that the words 'must not' should be used consistently throughout the document.



## ***Vulnerable consumers***

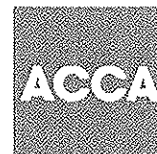
**Question 1: Do you agree with the indicative list of circumstances that could render a consumer vulnerable that have been included in the definition of 'vulnerable consumer'?**

Although the definition itself appears reasonable, the indicative list of circumstances provided includes circumstances that should be taken into account in respect of *all* consumers – namely income level, indebtedness, credit history, and investment experience. We recommend that these be removed from the list, in order to ensure that their importance is not diminished when considering the needs of other consumers.

**Question 2: Do you think that the inclusion of a definition for a vulnerable consumer and the proposals and amendments outlined above will be effective in improving the level of care afforded to vulnerable consumers during the sales process? If not, please outline any further measures you think are necessary.**

We support the inclusion of a definition of a vulnerable consumer. However, having defined this class of consumer, we believe it would be appropriate for the burden of proof of suitability to be transferred to the regulated entity in respect of a vulnerable consumer. For a non-vulnerable consumer, it would remain an adequate defence to claim that sufficient information was provided; but this would not be an available defence where there is a vulnerable consumer. In this case, the regulated entity would have to prove that it believed that the decision was in the client's best interests, and should be able to provide records of all communications (written and verbal), adequate knowledge of the consumer and their needs, and the assessment of the suitability of the product or service.

We also believe that the requirements within the Code should be more specific. Having defined a 'vulnerable consumer', it would be appropriate to explain *in each area* of the revised Code how the Code relates to a vulnerable consumer. (Apart from the definition, the term is only used once in the draft revised Code – in Provision 10 of Chapter 5.) For this to work well, there should be a specific requirement, near the start of Chapter 5, to consider whether or not a consumer meets the definition of a vulnerable consumer.



### ***Suitability of mortgages***

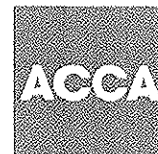
**Question 3: Do you think the inclusion of these provisions will result in a greater level of responsible lending or is more needed? If you think more is needed, what additional requirements would be appropriate?**

We believe that the new provisions will be helpful in encouraging a greater level of responsible mortgage lending. However, please refer to our response to question 4 in respect of the 'Standard Financial Statement'.

We also believe that, prior to a loan being approved, the regulated entity should provide the consumer with a 'life event' warning. For example, the consumer should be encouraged to consider the risks attaching to the loss of one income in a married couple, or the birth of a child. (Credit institutions have a 'calculator' of mortgage suitability, which takes into account, among other factors, joint income and dependants.) A 'warning' might take the form of a sensitivity analysis, whereby a drop of more than x% or €x in net income, caused by either a reduction in hours or loss of employment, will make the mortgage unaffordable. There might be some transfer of responsibility to lending institutions in respect of loans that are deemed subject to such risk, and full transfer of responsibility in respect of loans to vulnerable consumers.

**Question 4: Do you agree with our proposal that the SFS should be used when assessing whether a mortgage is affordable for a consumer?**

We are in favour of the use of the 'Standard Financial Statement' ('SFS') when assessing the consumer's ability to meet their mortgage obligations. The SFS to be used, according to the consultation paper, is that referred to within the Code of Conduct on Mortgage Arrears, but this is not clear from the definition in Chapter 13 of the draft revised Code. In fact, the Code of Conduct on Mortgage Arrears does not formally define the SFS or set out its standard contents.



### ***Information about products***

**Question 5: Do you think the proposed requirements in relation to the provision of information about products are adequate? If not, please set out how you think the requirements could be strengthened.**

Generally, we believe that the proposals are constructive. However, other requirements to consider might include the provision of details of charges (in general terms) in the waiting room of the regulated entity. However, such a requirement is not so relevant if best advice is applied.

**Question 6: In light of the developments at European level, do you think we should introduce requirements in relation to the presentation of information on investment products in a short 'Key Facts' Document?**

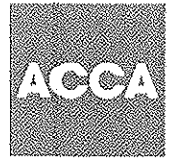
We believe that this would be a constructive approach in any event.

**Question 7: Is there any specific information that should be provided, either in a 'Key Facts' Document or otherwise, in respect of other types of product?**

We suggest that there might be a similar pro forma document for insurance products also.

**Question 8: Do you have any ideas about how to disclose risk in the case of investment products in a way that would be consistent enough to be useful for consumers?**

In the case of a well-diversified investment, the risk will tend towards the market risk. In other cases, the consumer should be advised that the risk is heightened. It should also be noted that the risk to a consumer will depend on other investments in the consumer's portfolio. Beyond that, it may be possible to organise different types of investment into different risk categories depending on, for example, the type of listing.



**Question 9: In a system such as a 'traffic light' system, how do you think the different categories of risk, i.e., red, amber and green, should be determined?**

Risk is difficult to quantify. Therefore, if a scale of 1 to 10 is used, the burden should be transferred to the regulated entity to justify a particular score. A score should not be predetermined for certain products; rather the regulated entity should be prepared to justify a score in arrears. If a consumer does not understand an explanation of risk, they are more likely to understand a score on a scale of 1 to 10. Such a system may be supported by broad guidelines.

However, risk cannot be expressed solely in terms of a numerical risk factor, even if this is supported by a 'traffic light' warning system. Instead, an explanation of risk (as discussed in 8 above) combined with other information (as in proposed Provision 32) will enable the consumer to assess risk, among other factors, as it relates to them.

**Question 10: Do you think the requirements in respect of PRSAs continue to be appropriate?**

As these products are most appropriate for individuals with little or no investment experience (ie employees), we believe that these information disclosure requirements remain appropriate.

***Product producer responsibilities***

**Question 11: In relation to identifying a target market of consumers for a product, what are the key consumer criteria that you believe should be used?**

We note that product suitability is ultimately the responsibility of the selling intermediary. However, we believe that the product producer should have regard to the criteria set out in Chapter 5, Provision 1 of the draft revised Code.





**Question 12: Is the consumer information listed in Chapter 4, Provision 32 useful when identifying a target market?**

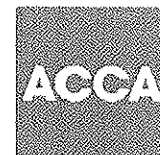
This information must be provided to the intermediary by the product producer (Chapter 3, Provision 44), so that it may be communicated to the consumer. Although Provision 32 of Chapter 4 and Provision 44 of Chapter 3 are both useful, it is not clear how much the information listed will assist in identifying and defining a target market. We believe a conceptual approach should be adopted whereby the product producer is required to focus on the characteristics of the consumer, rather than the nature of the product.

**Question 13: Do you agree with the requirements outlined in Chapter 3, Provision 45? How often do you think that reviews of products should be undertaken?**

This proposed requirement (for the product producer to review annually whether the product continues to meet the requirements of the target market) does not appear too onerous or too prescriptive, and is considered to be appropriate. The burden should be placed on product producers to demonstrate, if challenged, that they have performed such periodic reviews.

**Question 14: should product producers be required to periodically review applications for their investment products, received through their direct sales force and through the intermediary channel, to ensure that actual sales are consistent with the targeted market? Do you foresee any hurdles to the implementation of this requirement in practice?**

Such a process will inevitably form part of the periodic review discussed above. Therefore, we consider it to be unnecessarily prescriptive to include this specific requirement within the Code.



## ***Recommendations from the Review of the Intermediary Market***

**Question 15: Do you agree with this proposal? If not, what specific issues arise in respect of appointments from entities other than insurance providers?**

We would applaud the general principle of objectivity. However, the proposed specific provisions in respect of insurance intermediaries should be reviewed to determine which may apply equally well to mortgage intermediaries.

**Question 16: Do you agree with the proposal that a requirement to disclose remuneration from product producers should be imposed in circumstances where there are currently no requirements in place in this regard?**

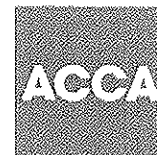
The proposed revised Code states that remuneration should be disclosed to consumers in respect of the provision of non-life insurance by intermediaries (Provision 76, page 18). In order to be *seen to be* objective, we believe that this requirement should be extended, beyond the legislative requirements, to other products.

## ***Errors handling (Chapter 11, Provisions 1 to 7)***

**Question 17: Do you think this approach to errors handling will reduce the incidence of errors and lead to an improvement in the way in which regulated entities handle errors involving consumer detriment?**

Yes. We are in favour of the implementation and documentation of procedures for handling errors, but would like to see a requirement for procedures to *identify* specific errors. (Proposed Provision 1 only provides for the review of systems.) A regulated entity will most commonly become aware of an actual error if a consumer is able to identify it. For example, a consumer receiving a 3% return from an investment may be content, although they may deserve a 5% return given their risk exposure. Therefore, we suggest that there should be a requirement for active cold case reviews by the regulated entity.

The current proposals only require the monitoring and testing of internal control systems, but there is no mention of reporting requirements within the regulated



entity. Documented internal reporting requirements will also assist in bringing errors to light and controlling quality.

**Question 18: Do you think the proposals are adequate to prevent repeat errors from occurring?**

Included within the log of errors required by proposed Provision 6, there should be a note of the impact that the discovery and investigation of the error have had on the control systems of the regulated entity.

**Question 19: Do you think the six-month timeframe to rectify errors involving consumer detriment is appropriate?**

There is a risk that such an absolute deadline could inhibit the diligent investigation and resolution of an error. Also, the draft Code contains no guidance on the point at which an error may be said to have been 'resolved'. Rather than *requiring* a regulated entity to resolve the error within a fixed time period, it would be more realistic to require the regulated entity to use *best endeavours* to resolve such an error, and to make a detailed record of why certain errors were not resolved within six months. The burden would be on the regulated entity to demonstrate that the error had been resolved and that best endeavours had been employed.

**Question 20: Do you think our proposal that only errors that cannot be resolved within one month should be reported is an improvement on the current situation? Is the one-month timeframe appropriate? If not, please suggest an alternative.**

Similarly, we believe that such a requirement could inhibit the diligent investigation and resolution of errors. It might also result in a large volume of documentation in respect of notifications to the Central Bank, and in some of these cases, there may be legitimate reasons for the delays. We would prefer the quality of complaints-handling to be enhanced by a requirement that the terms of business state that the regulated entity is required by the Code to investigate and resolve errors efficiently. They might also advise the consumer that they may notify the Financial Services Ombudsman or the Pensions Ombudsman if they consider this requirement has not been met.



We note that errors and complaints are considered independently of each other in the draft Code. In practice, they will be linked by the consumer's right to complain in respect of an error that has been brought to their attention. Therefore, a consumer will also be able to embark upon the complaints process if they are unhappy about the outcome of an investigation of an error. We should like to see a clearer link within the Code between errors discovered and notified to clients, and the clients' right to complain. This should be made clear in the terms of business, along with the clients' general right to complain to the Financial Services Ombudsman or the Pensions Ombudsman.

### ***Unsolicited contact (Chapter 3)***

#### **Question 21: Do you think that the proposed times for permitting unsolicited contact are appropriate?**

We believe that proposed Provisions 29 to 31 of Chapter 3 are unclear. We suggest that paragraph 29 should be amended to make it clear that it overrides the paragraphs that follow it. We also believe that there may be circumstances that require some flexibility in the times for permitting 'unsolicited contact'. For example, in order to provide a complete service to a consumer who is in full-time employment, it may be appropriate to contact them in the evening or at the weekend. Therefore, under certain circumstances, we would be in favour of retaining the regulated entity's ability to make 'unsolicited contact' outside of the hours set out in the draft Code. We believe it should be possible for a client to authorise such contact (possibly within revised parameters) in writing. It may be necessary to define exactly what is meant by 'unsolicited contact'.

#### **Question 22: Do you think the restriction on the sale of products or services to protection policies only and the prohibition on the sale of protection policies on a first unsolicited contact will enhance consumer protection?**

This seems to be very prescriptive. It might be possible for the range of products be extended, but based on the regulated entity's knowledge of the customer. Also, provided there is the need for a cooling off period, and in view of the requirement that the regulated entity must seek permission to continue the telephone call or visit, it seems unnecessary to prohibit the sale of a policy

on a first contact and require a follow-up contact to take place five to ten days after the initial contact. (The consumer might not be available during that time.)

### ***Arrears handling (Chapter 9)***

**Question 23: Do you agree with the proposals in relation to arrears handling? If not, please set out your suggestions on appropriate measures.**

These proposals appear reasonable. However, the requirement to provide updated information on a monthly basis if 'the arrears situation persists' appears excessive. If the arrears are abating, the situation may nevertheless be deemed to persist. In this situation, the monthly provision of the information listed may be unhelpful. We suggest that the requirement be expressed differently, in order to avoid unintended consequences.

**Question 24: Do you agree with the proposal to prevent the closure of accounts in arrears cases?**

Generally, we support the proposals. However, we suggest there could be a further requirement whereby a financial institution would be obliged to take institution proceedings within a specified time frame or else formally renegotiate or forgive the debt. For example, if no repayments have been made within a six year period; the debt has not been renegotiated; and no bankruptcy proceedings have been initiated, the lender should formally notify the borrower that the debt has been forgiven.

### ***Small print***

**Question 25: Do you agree with our definition of 'key information'?**

We note that the proposed revised Code, as set out in the consultation paper, has not included the proposed definition of 'key information'. While we are generally supportive of the proposals to enhance the clarity and prominence of 'key information', we are not persuaded that the proposals will be effective, as it



is difficult to identify any difference between 'key' information and 'relevant' information (as already required to be disclosed in a way that seeks to inform the customer). In addition, a regulated entity cannot determine what information will influence a customer's decision of whether to purchase a product. (An alternative approach is suggested under 26 below.)

**Question 26: Do you think that we should go further than proposed? In particular, we would welcome your views with regard to the usefulness of small print in advertisements.**

A different approach should be taken whereby there is emphasis on the general principle. The general principle should refer to 'full *and clear*' disclosure, and examples should explain that, in some cases, the use of footnotes is not deemed to be 'clear'.

There should be a responsibility on the part of the regulated entity to demonstrate why the use of footnotes and other small print has enhanced the clarity of communication.

### ***Review on the transparency of credit card statements***

**Question 27: Do you think this proposal will provide clear and useful information for consumers? Do you think the method of presentation is suitable?**

Proposed Provision 9 does not make it clear that amounts paid must be shown separately on any credit card statement, and that the amounts set out in (a) to (d) should permit a reconciliation between the opening and the closing balances.

Provision 9 does not currently require the closing balance to be highlighted on the statement.



### ***Sectoral commitments***

Tying and bundling should be discouraged in financial services. Tying and bundling can be anti-competitive and anti-consumer. Anecdotally, it has been said that tying and bundling can take place informally, rather than always being a formal requirement with, for example, some mortgage approvals reported as being dependant on mortgage protection being taken out with the same firm. Therefore, we welcome the proposed provisions within the Code, but we should like to see the spirit of the code applied as well as the letter.

We have no comments to make concerning the Code of Conduct on the Switching of Current Accounts with Credit Institutions.



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