IRISH BANKING FEDERATION

IBF RESPONSE TO CONSULTATION PAPER 47:
REVIEW OF CONSUMER PROTECTION CODE

Irish Banking Federation is the leading representative body for the banking and financial services in Ireland, representing some 70 member institutions, including licensed domestic and foreign banks and institutions operating in the financial marketplace here.

Introduction

IBF welcomes the publication of Consultation Paper 47- Review of Consumer Protection Code (hereafter 'the Code') by the Central Bank of Ireland (hereafter 'the Central Bank' or 'CBI'). Our members are committed to providing consumers and customers with the highest levels of customer service.

The need to protect consumers and re-build trust and confidence in the financial sector is fully supported.

However we also need to ensure that current efforts at re-building the banking sector are not undermined through the introduction of measures either individually, or when taken in total, are disproportionate in their impact on costs, on both consumers and regulated entities, and resources as against the incremental level of protection provided. This is key for the banking industry, at a time when much of it has survived thus far due to the investment of taxpayers' funds, both here and abroad. These funds must be carefully applied, in order to bring real benefit for the consumer, against a backdrop objective of a viable, sustainable banking industry, which is well positioned to meet the needs of its range of stakeholders.

In addition, consumer protection requirements should facilitate strong customer service, rather than restricting interaction with customers in a way which simply serves to regiment, rather than add value for the customer.

In a contracting market it is imperative that the regulatory environment fosters competition rather than inhibits it. Institutions must be encouraged to seek out new business and new customer opportunities, with a view to facilitating customer mobility across the full range of products and services. We believe some of the Central Banks proposals would inhibit that competition and detail these areas in our submission.

Scope of the Code

The IBF, in reviewing the proposed new Code, is of the opinion that a number of the proposals being considered by the Central Bank are ultra vires and radically amend legal rights and entitlements of regulated entities. We draw your attention to the following sections in particular:

1. Transfer of Residential Mortgages - Chapter Seven
2. Requirement of Notice before exercising power of set off - 9.10
3. Restricting Account Operation following Customer default - 9.11, 9.12 and 9.13.

Section 117 of the Central Bank Act 1989 allows for the drawing up, amendment or revoking of codes of practices. However these codes should be considered as supplementing rather than changing the law. It is not the case, in our opinion, that S117 permits or envisages far-reaching alteration to the legal rights or discretions of lenders. We feel that some of proposals in CP47 seek to amend existing legislation.

Consultation
We acknowledge that there is a considerable volume of issues on the Central Bank's regulatory agenda currently, as outlined in *Banking Supervision: Our New Approach*. We would however point to the timeframe outlined with consultation ending 10 January 2011 and with only an indication of an implementation date as being mid-2011. We ask that clarity around the implementation date and any lead in time is communicated to the industry as soon as is possible.

Changes to conduct of business rules involve massive implementation projects as they feed through to the everyday operations of the full network of systems and staff, engaged in the provision of products and services.

We would welcome further discussion with the Central Bank on the implementation date and implementation period to allow Members to make necessary changes to systems, products and documentation and to ensure adequate training is undertaken to ensure the revised Code is successfully implemented.

EU Developments
At present there are a number of developments in the EU around financial services and financial products. The IBF welcomes any attempts to harmonise approaches across the EU.

We would however suggest that any new requirements under the Code reflect the EU requirements and where consultation is still ongoing, the Central Bank refrains from introducing any requirements until such time as the EU introduces its requirements

Specific Feedback on the Code.
The IBFs specific comments in relation to the full range of draft provisions of the new CPC are attached in appendix three. However, we have set out immediately below comments on key, high level proposals that could have significant impact on regulated entities.

Unsolicited Contact (Cold Calling) (Chapter 3.29-3.34)
Our understanding is that the clauses contained in chapter 3.29 to 3.34 are not intended to prevent a regulated entity from engaging by telephone with its existing customers in respect of their general financial needs and in respect of products or services that are of clear benefit to the individuals concerned. We would seek confirmation in the code that this is the case.

Members are particularly concerned at the removal of the provision at Chapter 2 Para 32(d) which permits contact in circumstances where an existing customer has given consent for such contact. We would ask that this be reinstated.

The proposal does not appear to take account of existing consumer protections in this area. We believe these existing protections should be considered when framing the new code.

- Consumers have the protection of the National Directory Database whereby they can opt in or out of direct marketing calls. Financial institutions check this Database before making marketing calls. The Database may already achieve some of the desired

objectives of the Central Bank in this area while leaving those customers who are happy to receive marketing calls free to do so.

- Additional protection is afforded to Consumers under the Distance Marketing Directive and the Data Protection Acts which all members must adhere to.

We understand the concerns that gave rise to a number of the proposed amendments to existing unsolicited contact rules relate mainly to personal visits (i.e. door step selling) and the need to regulate this form of contact with consumers who fall within part (a) of the definition of consumer. Given this, we would propose that the section on Unsolicited Contact be split between phone calls and personal visits.

In this context, given that personal visits are an accepted form of introduction where a financial institution is seeking to do business with business consumers under definitions (b) and (c) in the proposed code, we also propose that a distinction is drawn between the unsolicited contact rules for consumers type (a) and consumers types (b & c).

The rules in the current CPC work well in allowing telephone calls to consumers to be made by phone up to 9.00pm, Monday to Saturday. These timeframes are in line with the Consumer Credit Act 1995; section 46 which allow institutions to contact consumers between the hours of 9.00am and 9.00pm Monday to Saturday in relation to credit products, which is a predominant part of a credit institutions business.

The introduction of a 7:00 PM watershed and the elimination of Saturday calling would we believe exclude many consumers from appropriate and indeed welcome contact from their financial institution in that working hours and related travel do not see them arrive home prior to 7:00PM. Consequently we believe that the rules, as stated in the current CPC should continue (Chapter 2.35) for phone calls.

Vulnerable Consumers

We understand the concerns of the Central Bank in relation to the protection of vulnerable consumers and agree that financial institutions should take particular extra care when dealing with these consumers. However the wording of the definition of vulnerable consumer will cause significant practical issues in the implementation of the Code. A number of examples are included below;

- What would constitute a long term illness or how could a regulated entity determine an episodic illness?
- How would a diminished mental capacity be assessed (against what criteria)?
- The level of educational attainment required may vary from product to product, and is also subjective (e.g. would the leaving certificate be considered sufficient for obtaining a mortgage?)

Furthermore the inclusion of a list of specific factors rendering a consumer vulnerable in the definition could result in a rigid approach to achieving compliance and what consumers might consider intrusive and insensitive questioning by regulated entities. Neither of these outcomes

would achieve the desired outcome of enhanced protection. We would propose that the list be removed from the definition so as to avoid entities focusing solely on those factors alone.

To provide protection in relation to sales to vulnerable consumers, we suggest that the Code should refer to a 'reasonableness' test, which would be covered by the obligations of the institutions to complete suitability testing. Where the financial institution is aware or ought reasonably to be aware, having carried out suitability testing, of circumstances that designate a consumer as vulnerable, the entity should have procedures in place to consider and address the potential risks to such consumers and must use such procedures to ensure the suitability of any products or services for that consumer's needs.

We also have a concern that the retention of certain sensitive personal information on, for example, a customer's health could be contrary to Data Protection principles. We suggest the Central Bank should engage with the Office of the Data Protection Commissioner on the issue prior to the inclusion of this provision in the final Code.

We understand the vulnerable consumer definition should be restricted to a natural person and is to be based on the information that emerges from 'Knowing Your Consumer ('KYC'). We look forward to seeing this amendment to the definition of a vulnerable consumer in the new CPC.

Transfer of Residential Mortgages (Chapter Seven)

We note that this Chapter involves an amendment to the existing Code of Practice on the Transfer of Mortgages. The new Code proposes that consumers be given a three month period to decide whether to permit a transfer of their residential mortgage. The effect of this change would be to prevent any transfer of mortgage lending as transfers could not be made contingent upon obtaining the consent of each relevant mortgage customer in writing.

This is a significant change to current practice adopted by banks in Ireland whereby borrowers give consent to a transfer as part of the mortgage application process. A loan agreement which permits assignment or transfer by the lender does not require any further or prior written consent for full legal assignment which becomes absolute pursuant to the provisions of the Judicature Act (Ireland) 1877. The effect of the proposed changes would be to amend existing law relating to the assignments of debts and mortgages.

This change will significantly impair a bank's ability to conduct transfers, which represents a considerable source of funding for Irish banks. Transfers of mortgages in the Irish marketplace do not disadvantage the consumer because they do not impact on either arrears policy or interest rate policy. In addition, any such transfers/securitisations would always require the prior-approval of the Central Bank and be subject to any of its conditions. The effect of the proposed consent requirement would be in fact to render such transfers impossible.

The effect of the proposed three month timeframe is to restrict the operation of securitisation programmes even in circumstances where there is no consumer protection issues arising. The proposed change could seriously inhibit restructuring in the banking sector.

The current Code of Practice in relation to transfer of mortgages has been in place for some time and our member firms are not aware of any consumer issues arising in this regard.

We would endorse the approach of the Central Bank to try to include Codes, such as this one, into one unified Code, however the Code of Practice on the Transfer of Residential Mortgages should be included without amendment.

Execution Only (Chapter 5.20)

The "Execution only" provisions have operated to provide consumers (who have received advice elsewhere e.g. independent press commentary or researched themselves) with a facility to obtain a product from a financial institution without the need to engage in a sales/advice process with that institution. The proposed new exemption for 'execution only' business is extremely narrow and will restrict consumers' ability to decline an advice based sale.

As presently proposed a consumer has to specify both the product and product provider and has otherwise '*not engaged with'* the regulated entity in relation to that product. Under the previous definition the requirement was that the consumer had to specify the product and provider and had not received 'any advice from' the regulated entity.

The 'not engaged with' wording is very broad and even a request to send a product brochure could be considered as the consumer 'engaging with' the regulated entity. The introduction of a concept of "engagement" rather than "advice" is likely to cause considerable confusion for sellers given that it is a departure from established conduct of business rules and in particular, the concept of advice which is fundamental to Minimum Competency Requirements. We note that such inconsistency is not helpful in promoting or achieving compliance with conduct of business rules.

An "execution-only" consumer will require some information to ensure that the product they specify is what is on offer, however, in providing that information, even a request for a product brochure could be interpreted as "engagement". This would then require that the consumer be taken through Know your Customer processes and provided with a suitability statement even though the consumer does not require any advice.

We believe that certain consumer requests (e.g. for a product brochure or information about interest rates or similar information requests), should not be treated as an engagement with the entity and therefore the execution only rules should still apply

We find it difficult to believe the Central Bank intended to have such a narrow definition of execution only and support a reversal back to the original definition of execution only under the current CPC (Chapter 2.24 i) and 2.30 i)).

Arrears (Chapter Nine)

Given the newly revised Code of Conduct on Mortgage Arrears (CCMA), we believe Chapter Nine in the CPC needs to clarify at the outset that it does not apply to arrears on a borrower's

primary residence as defined in the CCMA nor does it apply to business loans regardless of whether the consumer is defined under b) or c) of the definition of a consumer.

We would propose a clarification regarding the chapter is included, for example, "This chapter does not relate to mortgages covered by the CCMA nor business loans."

The protections afforded by the proposed chapter should only apply to those consumers who are co-operating reasonably and honestly with the lender. This would also be consistent with CCMA.

The CCMA defines arrears for a mortgage and we believe a definition of arrears should be included in the definitions section of the revised Code.

In addition,

a) the Chapter should specify the products to which it applies; and
b) the requirements should be proportionate to the nature of the product.

Regulated entities must be able to initiate necessary and meaningful contact with borrowers in relation to arrears to assist them to manage their situation. By restricting communication to a consumer to no more than 3 times in a calendar month will not support the need.

Notice in advance of calling in a guarantee

The proposed changes requiring lenders to notify guarantors in writing when an account goes into arrears and to give three months notice in advance of calling on a guarantee amount to an effective ending of the classical form of guarantee used by lenders which can be "called on demand" and, furthermore, that the notification of accounts going into arrears would be fraught with very considerable difficulty from a practical point of view.

When entering an agreement, a guarantor is advised to seek legal/professional advice and would be fully aware of the implications of becoming a guarantor and the terms of when it could be called upon. Therefore, we believe that no time restriction should be imposed on lenders calling in a guarantee.

Errors (Chapter 11)

In regards to error handling we appreciate the need to resolve errors quickly and efficiently and to rectify any consumer detriment. However in order to ensure that there is efficient reporting and that regulated entities are focused on the resolution of the issue as opposed to the reporting mechanism we believe that a reporting threshold should be included in the Code. We also believe that this chapter should be restricted to pricing and charging errors.

We understand that CP47 proposes that materiality is now considered to be where an error cannot be resolved within one month of its being first discovered rather than defining materiality by reference to financial impact or numbers of customers impacted. Furthermore, we understand that only errors that are not resolved within one month must be reported. However all errors should continue to be recorded on the firms errors log. This should be clearly documented in the new CPC.

We are concerned that consumer 'detriment' could be construed very widely and a consumer could consider the non-sending of a brochure to be to their 'detriment'. We would support the amendment of this to 'financial detriment' as it makes it clear that the errors are in relation to pricing and charging rather than, for example literature going astray in the post.

It should be noted that the Office of the Data Protection Commissioner is in receipt of errors that fall within the terms of the Personal Data Security Breach Code of Practice and this could result in regulated entities having duplicate reporting requirements for no added benefit to the consumer.

We would propose that a provision be built into the Code whereby the Central Bank can in exceptional circumstances grant exemptions to the six month rule, depending on the specific circumstance of the error. For example complex system fixes, which due to their nature can take more than six months to specify, test and implement.

General Communication Requirements

There are a number of areas in the proposed new CPC relating to providing information to consumers (e.g. 4.29 informing customers in advance of acting on any term or condition, 4.45 two months delay in acting on a tracker switch request, 6.3 separate statements to each party on a joint account,).

Whilst the industry supports the provision of information to consumers, a number of these new proposed requirements appear to be disproportionate to the benefit the consumer will achieve from them and when taken in their totality represent a very significant regulatory project. We request:

- That obligation 4.29 is deleted as it is unworkable and unreasonable. A regulated entity should be free to apply the terms and conditions of a product or service without further advance notice (notice is given with the product / service documentation).
- That such requirements (such as under 6.3) are made 'on request' from the consumer allowing for the consumer to choose if, how and when they receive such information.
- The period of time required (e.g. two months notice to switch from a tracker mortgage in paragraph 4.45) is amended to 'reasonable period of time'. It should be noted that when someone applies for a mortgage, for example, the time from application to completing the paperwork and eventually switching to the new mortgage can in many cases be many weeks and months. That period of time, should in effect be the period of reflection rather than, as implied by this rule, giving consumers a further two months to reflect on their decision.
- That consumers are allowed the option of waiving this reasonable period of time so that they can benefit from the product (e.g. fixed rate may not be available for two months)
- Requiring actual dates to be inserted on credit cards (6.9 and 6.10) advising consumers when for example postal payments must be made by or by paying the minimum repayment the balance would be cleared by dd/mm/yy could be more confusing to consumers than what is currently required today.

- The use of electronic methods of communicating with consumers should be permitted and encouraged rather than relying on the paper based, less environmentally friendly, communications.

In relation to paragraph 6.3 (joint statements), we understand the driving force behind this requirement is in relation to vulnerable consumers and ensuring they are not be abused by other parties by withdrawing funds from an account without the owners knowledge. We would like to highlight to the Central Bank that where an account is set up with a correctly executed mandate allowing a second party to access, manage an account and withdraw funds etc. regulated entities have to act on those instructions.

We would also highlight that sending out statements after the event may not avoid the problem the Central Bank is trying to minimise. Under the current CPC (3.9) Credit Institutions must advise a consumer before opening a joint account of the consequences of opening and operating such a joint account. We suggest this provision could be enhanced to achieve the objective of preventing elder abuse to provide for a formal process of ensuring that consumers are fully aware of the consequences of granting access to their bank accounts.

Contemporaneous record of verbal interaction (Chapter 12.1)
This proposed new requirement is too broad a requirement and includes potential consumers as well as consumers who hold a product or service with the entity. We have two significant concerns with this requirement.

i) The most significant issue relates to how we interact with customers in everyday situations if we have to maintain written records of all interactions. It is necessary to engage in initial dialogue with consumers approaching the bank to ascertain, in broad terms, what they require (e.g. I want a mortgage) so that the customer can be directed to the appropriate sales advisor. It would be unduly onerous and would not enhance consumer protection to require such interactions to be recorded.

ii) This proposed requirement also seems to include potential consumers. As presently understood, a potential consumer who enquires about a product or service which may or may not lead them to take out the product or service would have to have the contact recorded by the entity against a specific reference so that if the consumer subsequently contacts the firm again, the record of the interaction can be updated . There are significant Data Protection implications to this. Consumer consent, under the Data Protection Acts would be required to allow a firm to record such personal data. In addition, the Data Protection Acts also restrict the retention of records of prospective sales (usually a maximum period of six months).

The objective of enhanced consumer protection can be achieved through a properly documented sales advice process. A provision could be included to require regulated firms to ensure that all advice provided in relation to the suitability of a product must be recorded in the sales process documentation. This would allow staff greeting a customer at a reception desk to

ascertain which product they require and to direct them to a suitably qualified advisor without the need to record such routine interactions.

There is no definition set aside for Contemporaneous records, what would the Central Bank regard as Contemporaneous?

Advertising (Chapter 10)
IBF member institutions acknowledge their obligation to ensure advertising is responsible and transparent. The existing legal and regulatory requirements extend beyond the CPC and set high standards to be observed. We have the following comments on the proposals in CP47:

1. The CPC should distinguish between those advertisements that simply invite the customer to find out more about a product/service and those advertisements that make specific claims about certain products/services.
2. New and emerging media web-based formats have changed how firms approach advertising; they have also changed how firms interact with their customers. Regulatory requirements should be adaptable to facilitate consumers becoming aware of the financial services and products on offer through all media formats (e.g print, radio or online etc.) The proposed advertising rules set out in Chapter 10 do not support this. Some media advertising will, if the new rules are introduced, will no longer be viable (e.g. radio) due to the amount and detail of required warnings, definitions etc. which will be impossible for consumers to absorb and retain.

We suggest that the Central Bank should also take the opportunity to review the operation of the 1997 ODCA Direction in relation to S. 135 of the Consumer Credit Act.

The IBF's submission to the Financial Regulator in February 2010 is included as part of this submission on CP47 and we would welcome the opportunity to discuss this in more detail with you.

Non Regulated Products
We support the need to ensure consumers are aware of the status of entities that they deal with; however Chapter 4 includes restrictions relating to activities which fall outside a regulated entity's Central Bank authorisation. In a banking context, this is difficult to define and implement by having for example separate letter headed paper or websites for regulated and non regulated business.

The Central Bank Act, 1971 defines 'banking business' to include the following:

'b) any other business of a kind normally carried on by a bank (which may include the granting of credits on own account), '

Normal banking business can be widely construed thus making all activities of banks effectively regulated. We understand the concern of the Central Bank in relation to certain types of investment products that do not fall within the relevant definitions in the IIA or MiFID, usually

property related fund-type products. We agree that consumers should be aware that these products are not subject to the protections of the Code or MiFID.

However, there are many other 'financial products and services' offered by credit institutions which, while not specifically regulated by the Central Bank, are governed by other legislative requirements, e.g. the provision of trust services, acting as an executor, cash management, pension fund activities and Hire Purchase & Leasing. In addition, spot FX is excluded from the definition of investment products in both IIA and MiFID. However, it is a core service offered by credit institutions.

We do not believe that it would improve consumer protection to use separate business stationery and electronic communications in relation to these products and services as currently envisaged in the proposed CPC.

Code of Conduct on the Switching of Current Accounts with Credit Institutions.
Our comments in relation to the Switching Codes are set in Appendix two

Previously issued Industry Letters
Since the previous CPC came into effect, a number of industry letters have been issued by the CBI providing guidance, clarity or direction to the industry in relation to the CPC.

Members expect that the revised CPC, once issued, will take all these letters in account and Members can work on the new CPC without reference to previously issued Industry Letters.

Appendix One - IBF response to specific questions raised in CP47 – CPC Review
(Where a specific question is not listed below, the IBF response to the question is set out in the detailed submission.)

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?	IBF members practice responsible lending and have policies and procedures already in place to ensure responsible lending. However, members are concerned that the inclusion of a list of specific factors rendering a consumer vulnerable in the definition could result in a rigid approach to achieving compliance which will not necessarily be effective in achieving the desired outcome of enhanced protection and would suggest that our suggestion of an approach to the issue based on a reasonableness test be considered.
4	Do you agree with our proposal that the SFS should be used when assessing whether a mortgage is affordable for a consumer?	Much of the information obtained via the SFS would not apply to the assessment of mortgages at point of sale. In addition, we would be concerned that gathering the amount of data required by the SFS for all mortgages at the point of sale could be deemed to be intrusive and excessive. We would encourage the Central Bank to engage with the Office of the Data Protection Commissioner on this point.
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 would strongly urge the Central Bank to refrain from introducing any requirements prior to introduction of any requirements by the EU which may not be consistent with the EU.
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?	
8	Do you have any ideas about how to disclose risk in the case of investment products in a way that would	The adoption of a traffic light system to identify risk is a positive development; however definitions from product

	be consistent enough to be useful for consumers?	providers as to whether a product is low, medium or high risk could vary dramatically. The Central Bank, in conjunction with the industry, should develop definitions of risks categories so as to ensure consistency across the marketplace.
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?	
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 believe that identifying a target market is appropriate however the selling of a product outside of the target market should not be precluded. Suitability of a product for a consumer rests with the seller of the product. Determination of suitability is subjective and by identifying a 'target market' could have the effect of prohibiting investment by certain consumers in the product who, if assessed on an individual level, would be deemed to be suitable for investment. When assessing a product as being suitable for a consumer the following should be taken into account: • the consumers' goals, • personal financial circumstances, • the investment timeframe, and • consumers' appetite for risk.
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?	Members are concerned that imposing these requirements where there are no requirements to do so. The information which is required to be disclosed is commercially sensitive and we query whether there is any added value of disclosing such information to the client.
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?	Banking systems are inherently complex and there is always a risk of error. IBF member firms apply high standards of systems development and control methodologies and seek to reduce the risk of errors arising. In this context, we anticipate that the proposals will not significantly reduce the incidence of

		errors. Members are concerned that the new requirements, if implemented as proposed, will lead to more time spent on recording, monitoring and reporting errors rather than using the available resources to prevent and resolve errors.
24	Do you agree with the proposal to prevent the closure of accounts in arrears cases?	No comments at this point – matter referred to Senior Counsel for an opinion
25	Do you agree with our definition of 'key information'?	We have no specific comment on the definition of key information, however the Central Bank should ensure the information it requires under the CPC is consistent with the Key Investor Information Document (KIID) that is proposed under the PRIPs Directive, Prospective Directive etc.
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.	Please see the IBF submission in February 2010 on advertising which is attached to this submission.

Appendix two - Code of Conduct on the Switching of Current Accounts with Credit Institutions.

On October 1st 2010, the Central Bank of Ireland published the Code of Conduct on the Switching of Current Accounts with Credit Institutions. The Code of Conduct is informed by the IBF Personal and Business Account Switching Codes but differs in a number of respects.

Scope: Savings Accounts

The CPC Review seeks feedback on the application of the Code of Conduct to demand deposit and savings accounts. Under the IBF Personal and Business Account Switching Codes, such accounts did fall within scope but accounted for a very small percentage of total account switches (current accounts made up the vast majority). We believe that extending the statutory Code of Conduct to such a small number of products would be disproportionate, particularly for institutions that only provide savings accounts that would have to implement the Code of Conduct. However, if the Code of Conduct was to be extended then we would advocate that banking institutions are allowed to opt-in to the Code of Conduct for demand deposit and savings accounts which do not require advance notice of withdrawal.

We believe it is disproportionate to require institutions who only offer savings accounts to have to implement the Switching Code.

Scope: Types of Accounts

The IBF Personal and Business Account Switching Codes did not apply to accounts carrying guarantees and other obligations. Some types of accounts or arrangements include terms linked to other services or facilities and requiring that the account is switched will disrupt these arrangements.

Our understanding is that the Central Bank of Ireland is seeking a more specific wording with regard to this issue, and to that end, we would advocate that the following wording is included under *Chapter 1- Scope*:

*This Code applies to stand-alone current accounts held by **consumers.** The Code does not apply to current accounts where:*

- *advance notice of withdrawal is required,*
- *a lien is held on the funds in the current account as security for credit facilities, contingent liabilities, letters of credit, performance bonds, etc.,*
- *the funds in the account have been pledged to cover a guarantee to repay other credit facilities in the event of default,*
- *the current account is grouped to other accounts that are not being switched, or*
- *the current account is a servicing account for a credit facility.*

Specific Comments

IBF also have comments on a number of issues that require wording amendments to the Code of Conduct:

Provision 11 (a)

As currently drafted, provision 11 (a) states:

'Where the ***consumer*** has opted to close their existing ***account***, in addition to the steps required at provisions 13 to 16 below, the ***credit institution*** must:

a) with effect from the ***switching date***, reject any ***direct debits*** presented and cancel any standing orders on the existing ***account***;'

As the Credit Institution where the existing account is held will only be in a position to initiate the account switching process on the switching date, the credit institution will not be able to reject direct debits that are presented on the switching date itself. Direct Debits are sourced from third parties and can only be rejected once the account is closed. Thus we would propose an amendment to the wording as follows:

'Where the ***consumer*** has opted to close their existing ***account***, in addition to the steps required at provisions 13 to 16 below, the ***credit institution*** must:

a) with effect from the ***switching date*** ***and where the existing account has been closed***, reject any ***direct debits*** presented and cancel any standing orders on the existing ***account***;'

Provision 14

Provision 14 requires amendment similar to provision 11 as the Credit Institution where the existing account is held will not be in a position to reject direct debits presented on the switching date.

Also, the Single Euro Payments Area (SEPA) initiative seeks to standardise euro payments across Europe and it is anticipated that SEPA will be the payments platform of choice going forward. Under the SEPA Direct Debit Scheme, there is currently no reason code for

communication between the Credit Institution and the direct debit originator for 'account transferred.' Thus we propose an amendment to the wording marked below:

'With effect from the ***switching date*** ***and where the actions under provision 11(a) or provision 12(a) have been completed*****,** a ***credit institution*** must ensure that those ***direct debits*** that have been transferred to the new ***account*** are returned to the direct debit originator marked "account transferred" **or "account closed" or "other",** if presented in error on the existing ***account***.'

Appendix Three - IBF Comments in relation to Chapters 1 – 13 of proposed Consumer Protection Code

	Provision	Comments
Chapter One – Scope		
	Where ***regulated entities*** are providing ***payment services*** under the European Communities (Payment Services) Regulations 2009, only the following sections apply: ▪ Chapter 3, Conflicts of Interest: Provisions 23 to 28 ▪ Chapter 3, Unsolicited Contact (Cold calling): Provisions 29 to 35 ▪ Chapter 4, Provisions 38 ▪ Chapter 6, Provisions 2, 4, 5, 6 and 7 ▪ Chapter 10, Advertising: General Requirements ▪ Chapter 11, Errors and Complaints.	The General Principles in Chapter Two do not apply to entities providing payment services whereas they do apply for Consumer Credit Products (apart from two). Is this intentional?
Chapter Two - General Principles		
2.11	Without prejudice to the pursuit of its legitimate commercial aims, does not, through its policies, procedures, or working practices, prevent access to basic financial services;	'Basic financial services' has not been defined. We would propose the principle be amended to '**basic banking products and services'** which is defined in the Code.
Chapter 3 – Common Rules		
3.2	A ***regulated entity*** must ensure that all instructions from or on behalf of a ***consumer*** are processed	For consistency purposes we propose that the provision in the revised CPC reflects the same point as documented under the CCMA. In the CCMA (Chapter 3,

	properly and promptly. Where an instruction cannot be acted on within two ***business days***, the ***regulated entity*** must acknowledge in writing receipt of the instruction, outline the reason for the delay and confirm when it will be processed.	Provision 5), it is noted that "all requests from ***borrower***s for documentation and information required for the purposes of applying for State supports in relation to mortgages, are processed within **ten** ***business days*** of receipt of the request." It is not always possible for a consumer's instruction to be acted upon within two days. For example, a customer asks for a mortgage. This would result in an application, credit assessment etc. It would not be practical for this work to be concluded in two days. Perhaps the Central Bank could consider defining 'an instruction'. We would propose that 'acted upon' replaces 'processed' in the first line and would read 'A ***regulated entity*** must ensure that all instructions from or on behalf of a ***consumer*** are acted upon ~~processed~~ properly and promptly....' The Payment Services Regulations contains statutory timeframes for processing payments and funds transfer instructions.
3.4e	A ***regulated entity*** that is in direct receipt of a negotiable or non-negotiable instrument from a ***consumer*** as payment for a financial product or service must provide that ***consumer*** with a receipt. This receipt must include the following information: e) in the case of an ***insurance intermediary***, that the acceptance by the ***insurance intermediary*** of a completed insurance proposal does not itself constitute the effecting of a policy of insurance.	In some events the taking of a proposal from a consumer can constitute the effecting of a policy of insurance. For example some home insurance schemes are in place where Credit Institutions have been delegated the authority to put home insurances in place upon receipt of a completed proposal form and cheque/draft. We suggest the Central Bank include 'where relevant' to point e).
3.7	A ***regulated entity*** must ensure that all warnings required by this Code are prominent, i.e. in bold type and of a font size that is larger than the normal font size used throughout the document or ***advertisement***. The warning statement must be in a	We would ask for further clarification on this paragraph in relation, in particular to how in practice this requirement could be applied to TV advertising and radio advertisements. The Central Bank should consider that as long as warnings 'are prominent and in

	box separate to other information but must appear alongside the benefits of the product.	no way obscured or hidden' as being sufficient. Including the warnings alongside the benefits could obscure the purpose of the advertisement which is to encourage the consumer to discuss the product or service with the entity. We would also suggest that this section is moved to the advertising chapter for consistency and ease of reference in the new Code.
3.9	A ***regulated entity*** must have regard to the provisions of any relevant anti-money laundering guidance notes approved by the Minister for Justice, Equality and Law Reform under Section 107 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.	There is no need to include this rule in the Code as anti-money laundering is already adequately dealt with under the Criminal Justice Legislation. We are concerned that leaving this paragraph as drafted will result in the ML guidance notes having statutory effect by virtue of their inclusion in a statutory Code. This would be at variance with the position being advanced by Central Bank Representatives from Enforcement participating in the discussions on the AML Guidance notes.
Chapter 3 – Tying & Bundling		
3.14	Where a credit institution requires a consumer to operate a feeder account in order to avail of another product, all of the following conditions must be met: a) the consumer must not be obliged to use the account for purposes other than facilitating payments to the product concerned; b) charges cannot be applied for using the feeder account for the purpose for which it was established; c) where additional facilities are available on the account they must be optional and must be requested by the consumer; and d) these conditions must be communicated clearly to the consumer.	A consumer may already have an account with a regulated entity which it will be able to use as a feeder account. This new provision should be restricted to situations where a regulated entity obliges the consumer to *open* a feeder account
3.15	A regulated entity is prohibited from bundling except where it can be shown that there is a cost saving for the consumer.	Bundling of products in some events, can bring benefits to consumers that purchasing the constituents parts may not bring. Some entities offer 'packages' which is a number of products offered through the named package. The entity may only offer the package and not the items individually. The individual items are not available in the marketplace and therefore no cost saving can be

		demonstrated. We would also be concerned that this provision could restrict consumer choice. If the individual items are not available in the marketplace then is this is not *bundling* per the definition of bundling in CP47 which requires that each of the products can be purchased separately on the market;
3.16	Prior to the sale of a bundled product or service, a regulated entity must provide the consumer with information in writing on: a) the cost of the bundle; b) the cost of each item separately; c) how to switch products within the bundle; d) how to exit the bundle; and e) the cost of exiting the bundle.	In some offerings available in the marketplace, the cost of individual items in a 'bundle' may not be available. For example, with some credit cards, travel insurance is included as part of the product on offer. In some cases there is no cost of having the travel insurance with the credit card; it is included as a benefit to the consumer. There may not be an option to switch to another travel insurance policy as the provider only offers one travel insurance There appears to be some confusion between the terms "charge" and "cost" and the difference is between the two terms is significant. It is necessary to change the references to "cost" in this section to "fee/charge for"
3.17	Where a consumer wishes to exit a bundle, the regulated entity must allow that consumer to retain any product(s) in the bundle that the consumer wishes to keep, without penalty or additional charge.	Products may be available outside of a bundle. however because they are in the bundle the consumer may benefit from a price reduction due to cross subsidisation. Outside of the bundle the individual products may be more costly. It would not be fair to regulated institutions to have to subsidise the costs of products where consumers takes out a bundle where the intention is to retain one of the products with the cheaper premium. An entity should be entitled to charge the normal price for any products a consumer retains after exiting a bundle.
Chapter 3 - Payment Protection Insurance		
3.19	Where a regulated entity offers payment protection insurance in conjunction with a loan: a) the initial repayment estimate of the loan advised to the consumer must be exclusive of the payment protection premium and the amount of the premium must be advised separately; b) a combined application form may not be used; and c) a suitability assessment must be carried out separately in respect of the loan and in respect of	(b) – Regulated entities should be permitted to use a combined application form if the PPI section is clearly separate and requires a separate signature. To require two individual application forms would be costly and environmentally unfriendly and will not enhance consumer protection.

	the payment protection insurance.	
Chapter 3 – Remuneration		
3.20	A ***regulated entity*** may pay a fee, commission, other reward or remuneration in respect of the provision of ***regulated activities*** only to a ***person*** that is: a) a ***regulated entity***; b) a ***certified person***; c) an individual for whom a ***regulated entity*** has taken full and unconditional responsibility under the Investment Intermediaries Act 1995; d) an authorised credit intermediary (within the meaning of the Consumer Credit Act 1995 and the European Communities (Consumer Credit Agreements) Regulations 2010); or e) a former ***regulated entity***, where the fee, commission, other reward or remuneration is in respect of activities that the entity provided when it was regulated.	The list of who regulated entities can pay a fee etc., to has been amended from the previous version and excludes those entities that are exempt from authorisation. We would propose that Chapter 2.50(d) under the existing Code is reintroduced in this section. A de-minimus payment limit should be introduced, for example for simple 'introduce a friend' type promotions.
Chapter 3 – Conflicts of Interest		
3.24	A ***regulated entity*** must not knowingly create situations that may give rise to a conflict of interest.	Conflicts of interest may arise and are inevitable however firms must manage the situation so that consumer detriment does not arise (i.e. through adequate disclosure). MiFID concentrates on identifying and managing conflicts of interest as well as disclosure where necessary and we would support the adoption of similar rules under the CPC for consistency purposes. It is difficult to define 'may give rise to a conflict ...' as the event may take place in the future and was not envisaged. We would ask that the word 'may' is dropped from this provision.
3.25	Where conflicts of interest arise and cannot be reasonably avoided, a ***regulated entity*** must disclose the general nature and/or source of the conflicts of interest to the ***consumer***. A ***regulated entity*** may only undertake business with or on behalf of a ***consumer*** where there is directly or indirectly a conflicting interest, where that ***consumer*** has	We would be concerned that the new provisions to advise consumers of the 'source of the conflicts of interest' could give rise to confidentiality issues whereby we may be required to divulge the name of a third person or entity and thus potentially breach confidentiality with the other party. We would suggest the original wording used in the current Code is retained (CPC Chapter 2.51).

	acknowledged, in writing, that it is aware of the conflict of interest and still wants to proceed.	
Chapter 3 – Unsolicited Contact (Cold Calling)		
		Our main concerns are as stated in the front of the submission, however included here are some general comments in relation to the provisions for the Central Bank's perusal and consideration. We understand that the concerns that gave rise to a number of the proposed amendments to existing unsolicited contact rules relate mainly to personal visits (i.e. door step selling) and the need to regulate this form of contact with consumers who fall within part (a) of the definition of consumer. Given this, we would suggest that the section on Unsolicited Contact is split between phone calls and personal visits. We would also suggest that the rules differentiate between consumer (natural persons) and others (partnerships and businesses) so as to allow unsolicited contact to partnerships and businesses as currently allowed.
3.29 & 3.30	29. A ***regulated entity*** must not make an unsolicited personal visit or telephone call for the purpose of offering a product or service to a ***consumer*** except where the purpose of the contact is limited to offering a ***protection policy***. 30. A ***regulated entity*** may make an unsolicited personal visit or telephone call to a ***consumer*** who is an existing ***customer*** provided the contact is in relation to a product held by that ***consumer***.	Our understanding is that these clauses are not intended to prevent a regulated entity from engaging by telephone with its existing customers in respect of their general financial needs and in respect of products or services that are of clear benefit to the individuals concerned. We would seek confirmation in the code that this is the case. In this context, given that personal visits are an accepted form of introduction where a financial institution is seeking to do business with business consumers under definitions (b) and (c) in the proposed code, we suggest that a distinction is drawn between the unsolicited contact rules for consumers type (a) and consumers types (b & c). Consumers have the protection of the Data Protection Acts and the National Directory Database where they can opt in or out of marketing. The revised CPC would appear to remove any customer choice of whether they want marketing or not. Consumers also continue to have the protection of Cooling Off periods – 14 days in the case of general insurance and 30 days in the case of life products.

3.31	An unsolicited personal visit or telephone call may be made only between 9.00 a.m. and 7.00 p.m. Monday to Friday (excluding bank holidays and public holidays) except where the purpose of the contact is to protect the ***consumer*** from fraud or other illegal activity.	The Consumer Credit Act 1995, section 46 allows institutions to contact consumers between the hours of 9.00am and 9.00pm Monday to Saturday in relation to credit products. We would suggest that the rules be aligned with the provisions of the CCA and as stated in the current CPC (Chapter 2.35). The best and most convenient time to make contact with consumers is in the evening before 9pm (Mon to Sat). Keeping these lines of communication open and making contact at a time that suits consumer best (7-9pm) is key for banks. Customer behaviour has changed dramatically in recent years with more and more customers selecting to engage their Banks through Remote channels such as Phone, Online and Mobile Banking. This growth in usage is driven by customer demand for “convenience” and “accessibility” in a 24x7 environment. (This number continues to grow.) In this changing environment it is critically important for Banks to remain in contact with its customers. Reducing the timeframe from 9pm to 7pm for proactive telephone contact will significantly impact on an entities ability to engage customers effectively

		Many customers now work beyond the traditional 9-5 working day and face longer commutes after work. Our experience is that customers are receptive to proactive telephone contact from their bank up to 9pm on weekday evenings, once the contact is relevant. A vast number of consumers would not be home before 7.00pm.
3.33	A ***regulated entity*** must not provide a ***protection policy*** to a ***consumer*** on the basis of an unsolicited personal visit or telephone call alone. A ***regulated entity*** may, during the course of an unsolicited visit or telephone call, provide the ***consumer*** with information about a ***protection policy*** but must allow at least five ***business days*** and no more than 10 ***business days*** to elapse before making a further visit or telephone call for the purpose of offering, arranging or recommending a ***protection policy*** or requesting the ***consumer*** to make any payment in relation to the ***protection policy***. Where a ***consumer*** purchases a ***protection policy***, the ***regulated entity*** must provide the ***consumer*** with details in writing of any cooling-off period that applies.	We agree that consumers be allowed time to reflect on a conversation relating to a protection policy and not feel pressurised into taking the policy. However, we feel that the timelines imposed are too restrictive and inflexible for both the consumer and the regulated entity. It should also be noted that consumers have the protection of a cooling off period under the Distance Marketing Directive to allow them to reflect on their purchase. The following example demonstrates the practical implications of implementing the prescribed timescales: A credit institution calls a customer about a protection policy on day one. The customer is interested and wishes to purchase a product but is going on holiday for two weeks. The bank cannot, therefore, call the customer back within the 5-10 days proposed. Another example would be that of Travel Insurance or Car insurance, whereby very often the consumer wishes to take up the product very near to the required date of insurance (sometimes even just one day).
Chapter 3 – Product Producer Responsibilities		
3.41	Where a product producer distributes its products through an intermediary and imposes target levels of business or pays commission based on levels of business introduced, the product producer must be able to demonstrate that these arrangements: a) do not impair the intermediary's duty to act in the best interests of consumers; and b) do not give rise to a conflict of interest, either between the product producer and the intermediary	A detailed examination of an intermediary's records would be required to implement this obligation. Product producers do not have the statutory authority to investigate intermediary compliance with any provision contained within the Code. There are also confidentiality issues for the intermediary that needs to be considered should a regulated entity start examining intermediaries' records. It is difficult to see how this obligation as currently drafted can be met by product producers.

	or between either of them and the consumer.	
3.42	A product producer must not terminate a letter of appointment with an intermediary solely based on the volume of new business introduced by the intermediary.	Terminating an agency because an intermediary is not reaching specific levels of business should be permitted. The management of an intermediary relationship costs money and certain levels of business are required to make the arrangement commercially viable. Terminating an intermediary for producing little or no business should also be permitted. Where an agent is producing little or no business the commercial reason for the relationship has ceased and there should be no reason why the agency should not be terminated. This practice is a commercial reality particularly in a contracting market. For consumer protection, entities should be able to revoke an agency. For example an agent producing little or no business may not be fully familiar with the full range of features of the products of the product producer in comparison to products which are being sold by the intermediary on a regular basis.
3.43	When designing a new ***investment product***, a product producer must identify the target market for the product, the nature and extent of the risks inherent in the product and the level, nature, extent and limitations of any guarantee attaching to the product and the name of the guarantor. The target market must only comprise the types of ***consumer*** for which the product is likely to be suitable. The product producer must also identify the target market for which the product is not suitable.	We believe that identifying a target market is appropriate however the selling of a product outside of the target market should not be precluded. Determination of suitability is subjective and by identifying a 'target market' could have the effect of prohibiting investment by certain consumers in the product who, if assessed on an individual level, would be deemed to be suitable for investment. When assessing a product as being suitable for a consumer the following should be taken into account: • the consumers' goals, • personal financial circumstances, • the investment timeframe, and • consumers' appetite for risk. However, we would question the requirement for a product producer to identify groups of consumers for whom a product would be unsuitable. Defining unsuitable consumers for a particular product would have to be high level.
3.45	Within the first year of launching an ***investment product***, and annually thereafter, a product producer must check whether the product is	We would support the need for a review of products to ensure they continue to meet their objectives. This provision should however reflect that it relates to new sales of the product, rather than for consumers who have already taken out

	continuing to meet the general needs of the target market for which it was designed. Where the product producer establishes that a product no longer meets the general needs of the target market, the product producer must: a) reassess the product to identify the ***consumer*** type for which it is suitable; b) immediately update the information it provides under Provision 44 above; and c) notify the Central Bank	the product. We would also propose that this requirement be product specific. For example open-ended products or products with terms greater than five years can continually be reviewed. However a short fixed term product is a closed-end investment with a predefined start and maturity date (for example a two year fixed term deposit or 3 year tracker bond), and is only available to buy for a short period of time. c) We would question or seek clarification as to why an entity would need to notify the Central Bank following such a review.
Chapter 4 – Provision of Information		
4.4	a) Where a ***regulated entity*** intends to cease operating or to transfer all or a part of its business to another entity it must: i) provide at least two months notice to affected ***consumers*** to enable them to make alternative arrangements; ii) advise the ***consumer*** of the option to have their details transferred (where relevant); iii) ensure all outstanding business is properly completed; and iv) notify the Central Bank immediately. b) When intending to close or move a branch, a ***credit institution*** must give three months notice to affected ***consumers***; advise the Central Bank immediately, and notify the wider community in the local press.	For 4.4.a) ii) this option should not apply where an intra-group transfer is taking place and therefore the wording should be amended accordingly. The Central Bank should also consider whether these requirements allow transfers imposed by, for example, Governments under any financial stabilisation requirements (e.g. forced mergers of two entities). For 4.4 b) We would propose the inclusion of a waiver 'in exceptional circumstances'. For example where a building is destroyed by fire or banks merge and two branches are now located in the same street. This waiver could be applied by the Central Bank on application.
Chapter 4 – Information on Regulatory Status		
4.10 & 4.11	10. A ***regulated entity*** must use separate business stationery and electronic communications where it engages in an activity that falls outside of its Central	Section 2 of the Central Bank Act, 1971 defines 'banking business' to include "any other business of a kind normally carried on by a bank (which may include the granting of credits on own account)",

	Bank authorisation, registration or license. 11. In the case of a website, a ***regulated entity*** must have separate sections for the activities that fall inside and those that fall outside of its Central Bank authorisation, registration or license.	There are many activities such as cash management and sale of/dealing in foreign exchange for which a bank is not separately regulated but which is understood as being part of normal banking business. We would like confirmation from the Central Bank that we are not obliged to use separate business stationery/electronic communications where we engage in activities we consider being normal banking business.
4.12	12. Where a ***regulated entity*** is licensed, authorised, or registered by, the Central Bank, the regulatory disclosure statement must take the following form: "*Full legal name of regulated entity (and trading name(s), if applicable)+ is regulated by the Central Bank of Ireland". The regulatory disclosure statement must not include any additional information.	Clarification should be included to confirm whether the statement should be clearly separate from other statements, for example 'telephone calls are recorded' or 'XYZ is a member of the London Stock Exchange' or whether additional statements can be added after the regulatory statement thus making one long paragraph.
4.13	13. Where a regulated entity is operating in this State under EU law freedom of services or establishment provisions, the regulatory disclosure statement must take the following form in its business stationery, advertisements and all electronic communications: "**Full legal name of regulated entity (and trading name(s), if applicable) is authorised by (name of the competent authority from which it received its authorisation or licence, or with which it is registered) in (the name of the State where that competent authority resides), and is regulated by the Central Bank of Ireland for conduct of business rules only**."	This section will cause significant difficulties for the advertising of products by passporting banks particularly via certain media such as radio and television. Such a long regulatory statement, we feel, will lose the sense of any message that is sought to be communicated to the consumer, and will add significant costs, which could be considered discriminatory, to such entities. Other issues relating to advertising are set out in Chapter 10.
Chapter 4 – Information about the Firm and its Services		
4.16d	The ***terms of business*** must set out the basis on which the ***regulated entity*** provides its services and must include at least the following: d) a statement that it is subject to the provisions of	We would suggest the NCA's website 'itsyourmoney.ie' is where consumers should be referred to rather than the central bank website. The NCA's Little Red Book on the CPC should also be updated, and re-launched,

	the Central Bank of Ireland's Consumer Protection Code which offers protection to ***consumers*** and that the Code can be found on the Central Bank's website www.centralbank.ie;	to ensure that consumers understand the revised Code particularly in respect of the sections that do not apply to Consumer Credit or Payment Services.
4.16g	The ***terms of business*** must set out the basis on which the ***regulated entity*** provides its services and must include at least the following: g) if the ***regulated entity*** is tied for any of the services outlined in e) above, the name of each product/service and ***regulated entity*** to which it is tied;	Members assume that generic terms can be used rather than specific products names. If the latter the Terms of Business would have to be changed very frequently than if generic terms are used. For example 'for pension business' rather than 'for XYZ insurance Company Standard PRSA'. These frequent changes will not only add costs to regulated entities but also create information overload to consumers for no benefit.
4.20	20. A ***regulated entity*** must always disclose the following to ***consumers***: a) where the ***regulated entity*** has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in another ***regulated entity***; b) where another ***regulated entity*** has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in the ***regulated entity***.	Regulated entity is a wide definition and as such there could be some regulated entities that have large numbers of vested interests of more than 10%. We would recommend that this section is amended to reflect where the consumer may be impacted. In the instance of a branch where the parent company is regulated in another EU state and offers financial services in other EU member states, is it necessary for the branch to identify the parent company's other businesses and disclose this in all correspondence with consumers? In addition this area should be managed, by the entity, under the potential conflicts of interest rules.
Chapter 4 – Information about Products		
4.29	A ***regulated entity*** must inform each affected ***consumer*** in advance of acting on any term or	Regulated entities should continue to be allowed to exercise rights under the Terms & Conditions (T&Cs). Consumers will have received T&Cs when effecting a

	condition attaching to a product or service purchased by the ***consumer***.	particular product or service (or on request at any time). By giving consumers notice of the intention to act on a particular term or condition, consumers may take action that could restrict the entity from applying the term or condition. For example in the right of set off, by giving the consumer notice, which is already specified in the T&Cs supplied, the consumer could remove any credit funds leaving the institution with a debt and very little recourse. Further, it could be difficult to pre-advise Consumers of applying a term before it happens, i.e. automated systems. For example, a consumer uses a debit card and reaches their limit in a particular day. Under the Term and Conditions, the bank has stated the limit will apply. If the customer then uses the card again the amount makes them exceed their limit, the card will be rejected. The bank would be in breach of this part of the Code as we have not contacted them prior to acting on the term set out in the T&Cs.
4.30	When announcing a change in interest rates, a regulated entity must publish a notification which states clearly the date from which the changes will apply.	We assume that a letter to an individual consumer will be sufficient as "publication" as other public methods may not be appropriate. For example, an interest rate may be changed for some consumers but not all.
Chapter 4 – Investment Products		
	'Offering, arranging or recommending'	The inclusion of the word 'Offering' has no impact on the consumer and we would propose it is deleted from all references of this phrase. Entities can offer products to consumers however it is the arranging or recommending of the product that leads to the consumer being bound by its terms and conditions.
4.32i	Before offering, arranging or recommending an ***investment product*** the ***regulated entity*** must provide the ***consumer***, where relevant, with information about: i) the risk that the estimated or anticipated return will not be achieved; and	We must advise consumers of 'the risk that the estimated or anticipated return will not be achieved.' Under Code 3.7 all warnings are to be in a box, bold etc. It is not clear if this is a warning and needs to be in a box. For consistency purposes we would propose the Central Bank defines a warning and ensures they are clearly identified.
4.32j	Before offering, arranging or recommending an ***investment product*** the ***regulated entity*** must provide the ***consumer***, where relevant, with	The analysis of this information in j) is extremely technical and could be difficult to present. To dilute the analysis into a more simplified form could result in misleading and erroneous information.

	information about: j) the potential effects of volatility in price, fluctuation in interest rates, and/or movements in exchange rates on the value of the investment.	
4.36	Where a prospectus, other than a prospectus falling within the scope of the Prospectus Directive (2003/71/EC), represents or contains the terms of a contract between the ***regulated entity*** and one or more of its ***consumers***, this fact must be clearly stated in the prospectus.	We would suggest that the Prospectus Directive number is tracked as it is due to change.
Chapter 4 - Credit		
4.38	A ***credit institution*** must ensure that at least 10 ***business days*** before the maturity of a fixed term deposit, it alerts the ***consumer*** about its impending maturity.	The current wording in CPC should continue to be used as term deposits less than one year are exempted from this requirement. It would be impossible to advise customers of a maturity 10 days before, for example a seven day term deposit matures.
4.39	A regulated entity must, before a consumer opens a joint account: a) warn such consumer of the consequences of opening and operating such a joint account; b) ascertain from the account holders any limitations that they wish to impose on the operations of the account including any limitations in the event of the death of either account holder.	We would suggest that this paragraph is enhanced to specifically address the elder abuse issue instead of the requirement to issue individual statements on joint accounts.(Chapter 6 Rule 3)
4.40	Where credit is being advanced subject to a guarantee, the guarantee documentation must outline the obligations of the guarantor and must contain the following warning:	We support the thrust of ensuring consumers who provide guarantees are aware of their obligations and the risks attaching. Guarantees vary depending on the requirements of credit approval/loan agreement. For example a guarantor may provide a guarantee up to a maximum value or guarantee capital payments only; others may provide a guarantee limited in recourse to a particular property.

	Warning: As a guarantor of this credit, you will have to pay off the debts of the borrower up to the level of your guarantee, the interest and all associated charges if the borrower does not. Before you sign this guarantee you should get independent legal advice	We would suggest that the words 'up to the level of your guarantee' be moved to the end of the first sentence and the warning would read **'Warning : As a guarantor of this credit, you will have to pay off the debts of the borrower, the interest, and all associated charges, up to the level of your guarantee, if the borrower does not. Before you sign this guarantee you should get legal independent legal advice.'**
4.41	The regulated entity must notify the guarantor in writing: a) if the terms of the credit agreement change; b) when an account goes into arrears; and c) three months in advance of calling on a guarantee.	The proposed changes requiring lenders to notify guarantors in writing when an account goes into arrears and to give three months notice in advance of calling on a guarantee amount to an effective ending of the classical form of guarantee used by lenders which can be "called on demand" and, furthermore, that the notification of accounts going into arrears would be fraught with very considerable difficulty from a practical point of view. When entering an agreement, a guarantor, is advised to seek legal/professional advice and would be fully aware of the implications of becoming a guarantor and the terms of when it could be called upon. Therefore, we believe that no time restriction should be imposed on lenders calling in a guarantee. In practical terms waiting three months would also mean additional charges and interest could be added thus increasing the liability for a guarantor. The three months period could also negate the value of the guarantee if the guarantor avails of the three month period to move assets outside of the reach of the regulated entity.
4.42	A ***regulated entity*** must notify affected ***consumers*** in writing in advance of any change in the interest rate. This notification must include: a) the date from which the new rate will apply; b) details of the old and new rate; c) the revised repayment amount; and d) an invitation for the ***consumer*** to contact the lender if he/she anticipates difficulties meeting the higher repayments.	This rule will apply to credit agreements not within the scope of the European Union (Consumer Credit Agreement) Regulations 2010 i.e. consumer loans greater than €75,000 but will not apply to consumer loans less than €75,000 (and greater than €200). From the consumer's perspective, it would be preferable to have consistency of treatment of all consumer loans. We would request the Central Bank review these requirements and ensure they are in line with the Consumer Credit Regulations and do not 'gold plate'. Regarding point d): in relation to the obligation to advise the borrower to contact the lender if he anticipates difficulties in meeting the higher repayments we

		believe that the obligation could be misinterpreted by borrowers who may understand that based on the wording that they do not have to pay the increased payment. There is already extensive coverage through media, banks' websites and periodic mailings, encouraging borrowers to contact their lenders should they anticipate difficulties meeting their mortgage repayments.
4.44	Where a ***consumer*** is not in arrears and a ***regulated entity*** is seeking to move a ***consumer*** from a tracker rate to an alternative rate, for any reason, the lender must provide the ***consumer*** with the following information in writing at least two months before the proposed change, where applicable: a) indicative comparisons of the cost of monthly repayments at the ***consumer***'s tracker rate and the alternative rate(s) being offered; and b) details of the advantages and disadvantages of both the tracker mortgage rate compared to the other rate(s) being offered. The following warning should also appear: **Warning: By switching to an alternative rate, the tracker rate option will be terminated.**	Consumers, by having to wait two months, may miss the opportunity of availing of limited time offers, for example a fixed rate loan which may be available for a short period of time. Therefore, the two month period could be seen to be acting against the interests of the consumer. We propose this is amended to 'a reasonable period of time'. The inclusion of a customer waiver facility in respect of the 'waiting period' would be beneficial here.
4.45	Where a ***consumer*** is not in arrears and wishes to change from a tracker rate to an alternative rate, for any reason, the lender must provide the ***consumer*** with the information and warning outlined in Provision 44 at least two months before the proposed change, where applicable.	
4.47	Where a ***regulated entity*** provides a fixed interest rate on a mortgage to a ***consumer***, it must provide the *consumer* with a worked example of the early redemption ***charge*** in financial terms and details in relation to the calculation of this ***charge*** in the mortgage documentation.	It would be helpful if the Central Bank provided clarity as to the details to be included in a worked example e.g. at what stage of the loan should we assume the loan will be repaid early etc. This would assist consumers in comparing loans between different loan providers. The 'details (required) in relation to the calculation of this ***charge*** in the mortgage

		documentation' duplicates the requirements of the CCA 1995 S121 (5) and should be removed.
4.49	Where a ***consumer*'s** credit application is rejected, a ***regulated entity*** must clearly outline in writing to the ***consumer*** the reasons why the credit was not approved.	We endorse the approach of advising consumers of a rejected application however entities should be free to decide how they communicate with the consumers. Some consumers prefer to receive the information verbally whilst others prefer it in writing. We suggest the removal of the words 'in writing' as this would allow that freedom and would be consistent with the Business Lending Code. We would also request the Central Bank to amend this provision to include 'on request'; '…. a regulated entity must *"on request*", clearly outline in writing...'
Chapter 4 – Information about Charges		
4.71	A regulated entity must, where applicable: a) provide the consumer with a written breakdown of all charges, including third party charges, which the regulated entity will pass on to the consumer, prior to providing a product or service to the consumer. Where such charges cannot be ascertained in advance, the regulated entity must advise the consumer that such charges will be levied as part of the transaction; b) advise affected consumers of changes in charges, specifying the old and new charge, or the introduction of any new charges, at least 30 days before the change takes effect; and c) where charges are accumulated and applied periodically to accounts, advise consumers at least 10 business days before deduction of charges and give each consumer a breakdown of such charges, except where charges total an amount of €10 or less.	We would request that the Central Bank would round the threshold up to €15.00 from €12.70 instead of down to €10.00. The original threshold of IR£10.00 was introduced in the mid 1990's and we believe a threshold of €15.00 is now appropriate. To reduce the threshold to €10.00 will bring about increased costs to the industry that are disproportionate to the minimal benefit to the consumer.
Chapter 4 – Information about Remuneration		
4.74	Prior to offering, arranging or providing a product or service other than a non-life insurance product or service, a ***regulated entity*** must disclose in writing to a ***consumer*** the existence, nature and amount of any	This is a complex issue and one that has been subject to lengthy consultation and discussion in the UK. While we understand that this issue was discussed during the Review of the Intermediaries Market, products such as mortgages and investment products did not come within the scope of that Review. This proposal

	fee, commission or other remuneration received or to be received from a product producer in relation to that product or service. Where the amount cannot be ascertained, the method of calculating that amount must be disclosed. The disclosure must be in a manner that is comprehensive, accurate and understandable.	has potentially far reaching consequences for the financial services market in Ireland and should ideally form part of a separate consultation. The information which is required to be disclosed is **commercially sensitive** and we query whether there is any added value of disclosing such information to the client.
Chapter 5 – Knowing the Consumer and Suitability		
5.1	Before offering, arranging or recommending a product or service, a ***regulated entity*** must gather and record sufficient information from the ***consumer*** to enable it to provide a recommendation or a product or service appropriate to that ***consumer***. The level of information gathered should be appropriate to the nature and complexity of the product or service being sought by the ***consumer***, but must be to a level that allows the ***regulated entity*** to provide a professional service and must include, where relevant, details of the ***consumer***'s: a) Needs and objectives (including, where relevant, the length of time for which the ***consumer*** wishes to hold a product, need for access to funds, need for emergency funds); b) Personal circumstances (including age, health, knowledge and experience of financial products, dependents, potential changes to his/her circumstances); c) Financial situation (including income, financial products and other assets, debts and financial commitments); and d) Attitude to risk (in particular, the importance of capital security to the ***consumer***). In the case of a mortgage, a regulated entity must	

	use a Standard Financial Statement to obtain financial data from the consumer.	The SFS (as currently drafted) is to be used to ascertain the financial standing of a consumer in financial distress. Much of the information obtained via the SFS does not apply to the assessment of mortgages at point of sale. The SFS is to be used to assist all parties understand how a consumer might change their expenditure in order to service their debt (e.g. reduce phone bill). The assessment of the ability to repay a mortgage at point of sale looks at income and expenditure at a higher level than that required to address a debt situation. Use of the SFS at point of sale could be considered to contravene section 2(1) of the Data Protection Acts 1988 & 2003 and should be referred to the DPC for guidance.
5.3	A ***regulated entity*** must ensure that, where a ***consumer*** refuses to provide information sought in compliance with Provisions 1 and 2, the refusal is noted on that ***consumer's records*** and that it advises the ***consumer*** that it does not have the information necessary to assess suitability and cannot offer the ***consumer*** the product or service sought.	We suggest the provision under the current CPC, Chapter 2.27 be re-inserted as this does allow consumers to take out a product, with warnings, should the consumer not provide some information to the entity. As this provision currently stands, a product or service could not be provided to a consumer if they refused to provide one piece of information which was to be sought under provision 5.1. For example, a consumer wishes to take out a tracker bond but refuses to provide details of investments elsewhere; the entity would not be allowed to provide the product. This will inhibit access to the provision of financial services.
5.5	Before a mortgage can be drawn down a lender must have had sight of all original supporting documentation including bank statements, P60/certificate of earnings and other supporting documentation evidencing the consumer's identity and ability to repay. A declaration signed by the consumer, (or his representative), certifying their income and/or ability to repay is not sufficient evidence for these purposes.	It should be clarified that this relates to direct mortgage business only. Where business is submitted through a mortgage intermediary provision 5.6 applies. The wording "**all** original supporting documentation" is overly excessive. This rules out utilising copies of certain minor documentation requirements. We suggest that a lender must have sight of "**key** original supporting documentation." Documents obtained for verification of identity should be in line with the Criminal Justice Act 2010 and related guidance notes. Therefore we would propose the removal of the words 'identity and' at the end of the first sentence. Where consumers' representatives are subject to the rules and regulations of

		their own regulatory bodies (e.g. Accountants / Auditors / Solicitors) this restriction on certification by a consumer's representative should not apply. The Central Bank should clearly show that this section relates to 'natural persons' ((a) in consumer definition) and not those falling within parts b) and c) of the consumer definition
5.10	When assessing the suitability of a product or service for *a* ***consumer***, the ***regulated entity*** must, at a minimum, consider and document whether: a) the product/service meets that ***consumer's*** needs and objectives; b) the ***consumer*** is able to meet the financial commitment associated with the product on an ongoing basis and/or is financially able to bear any related risks consistent with their needs and objectives; c) the ***consumer*** has the necessary experience and knowledge in order to understand the risks involved; and, d) the ***consumer*** may be a ***vulnerable consumer***, and as such, has particular needs and circumstances that require due consideration. In addition, in the case of a mortgage, a ***regulated entity*** must consider the information contained in a ***Standard Financial Statement*** when assessing the ***consumer***'s ability to service mortgage repayments.	Regarding part (b) and the reference to "an ongoing basis" - suitability can only be based on a consumer's circumstance at a point in time. The huge number of potential changes to a consumer's circumstance during the life of a product is such that identification and analysis of same at the outset of the relationship with the consumer is impossible.
5.12	Before offering, arranging or recommending credit to a ***consumer***, a ***regulated entity*** must fully assess the ***consumer***'s ability to service the repayments.	The KYC and suitability rules in this chapter will take the consumer's ability to service repayments into account. This paragraph appears to be a duplication of those requirements and we suggest this provision could be removed.
5.13	A ***regulated entity*** must, when assessing the consumer's ability to repay, calculate the impact on the repayment amount of a 2% interest rate increase above the interest rate offered to the consumer. Where the consumer is availing of an introductory interest rate, the calculation must be based on the	We assume that this does not relate to revolving credit facilities e.g. credit cards.

	lender's standard variable rate or fixed rate, whichever is to be applied after the introductory period.	
5.14 & 5.15	Before offering, arranging or recommending an interest-only mortgage to a ***consumer***, a ***regulated entity*** must be satisfied that the ***consumer*** will be able to repay the principal at the end of the mortgage term. Before offering, arranging or recommending a mortgage on an interest-only basis for a limited duration, a ***regulated entity*** must be satisfied that the ***consumer*** will be able to meet the increased mortgage repayments at the end of the interest-only period.	Clarification is required in the new CPC that these obligations do not apply to restructures provided to distressed customers.
5.16	A regulated entity must not advise a consumer to carry out a transaction, or a series of transactions, with a frequency or in amounts that, when taken together, are deemed to be excessive and/or detrimental to the consumer's best interests. The regulated entity must make a contemporaneous record that it has advised the consumer that in its opinion the transaction(s) is/are excessive, if the consumer wishes to proceed with the transaction(s).	Under the previous CPC this requirement related to investment business services whereby switching from one product to another would incur charges both when leaving one product and entering the new one. The revised wording now extends the requirement to all products under the CPC. In theory this could apply to current accounts. For example a customer exercising their rights under the Switching Codes to move from one institution to another. We would propose the existing wording in the current CPC is used (Chapter 6.6)
5.18	The written statement must be dated on the day that it is completed and tailored to the particular circumstances of each consumer. In the case of personal motor and home insurance, a statement of suitability may be in a standard format.	The addition of the word 'tailored' is a new requirement. It is unclear why a suitability statement can be in a standard format for car insurance and home insurance only. We propose that this exemption be extended to all non life insurance, protection insurance, credit cards and overdrafts.
Chapter 5 – Exemptions from Knowing Your Consumer and Suitability		
5.20	20. Provisions 1- 4, 10-11 and 17-19 (inclusive) do not apply where:	The current CPC sets out that KYC and suitability do not apply where the consumer has specified both the product and product producer and where the

	a) the ***consumer*** has specified both the product and the product producer and has otherwise not engaged with the ***regulated entity*** in relation to that product; or b) the ***consumer*** is purchasing or selling foreign currency; or c) the ***regulated entity*** has established that the ***consumer*** is seeking a ***basic banking product or service***; or d) the ***consumer*** is seeking credit that falls within the scope of the European Communities (Consumer Credit Agreements) Regulations 2010. In relation to a) above, before providing the product or service the ***regulated entity*** must warn the ***consumer*** that the ***regulated entity*** does not have the information to determine the suitability of that product for the ***consumer*** and must obtain written confirmation from the ***consumer*** that such warning has been received. This exemption does not apply where the ***consumer*** is availing of a credit facility that falls outside the scope of the European Communities (Consumer Credit Agreements) Regulations 2010 or is purchasing a ***lifetime mortgage*** or ***home reversion agreement***.	consumer has not received any advice. This facility for execution only business has now been restricted through requiring that the "consumer has not engaged with the regulated entity in relation to that product". Given the wide manner in which 'engaging with' could be construed, this is effectively prohibiting execution only business. We suggest that the previous wording should be reinstated. We do not believe this requirement should include requests from consumer for entities to provide them with product literature or information about deposit rates etc. If execution-only business is not permitted, banks may no longer be able to sell certain products to consumers online.
Chapter 6 - Statements		
6.2	A ***regulated entity*** must not use abbreviations, acronyms or numerical references to depict any of the items of information listed in a statement of transactions.	We would agree with ensuring Consumers have sufficient information about transactions on their statements however information for inclusion on statements comes from a number of sources (e.g. direct debit originators) and the detail is sometimes out of the entity's control. For example the narrative on a statement for a direct debit will be provided by the DD originator. DD originators who operate under the DD Plus scheme must prefix the statement narrative with OP/ which means Originator Plus. An entity can control entries in a statement that originate from that entity and rather than potentially having entries running to many lines we recommend a

		table or key setting out the common abbreviations could be added to a statement. There are also requirements under the Payment Services Regulation (PSD) for transaction identification data which may be in abbreviated format. We believe that this paragraph contravenes the maximum harmonisation of the PSD and should not apply to PSD accounts.
6.3	Where the account is a joint account, the statement must be issued separately to each of the joint account holders.	We understand the driving force behind this requirement is in relation to vulnerable consumers and ensuring they are not be abused by other parties by withdrawing funds from an account without the owners knowledge. We would like to highlight to the Central Bank that where an account is set up with a correctly executed mandate allowing a second party to access, manage an account and withdraw funds etc. members' have to act on those instructions. We would also highlight that by sending out statements after the event may not avoid the problem the Central Bank is trying to minimise. Under the current CPC (3.9) Credit Institutions must advise a consumer before opening a joint account of the consequences of opening and operating such a joint account. We suggest this provision could be enhanced to achieve the objective of preventing elder abuse to provide for a formal process of ensuring that consumers are fully aware of the consequences of granting access to their bank accounts. We agree that sending statements to each person in a joint account where the parties have different correspondence addresses is appropriate; however where both parties live at the same address, providing exact copies of statements to each party at the same address is excessive. We would propose the inclusion of 'where requested' as this would reduce the need to automatically generate identical statements. We believe by automatically providing this information could be to the consumer detriment. There would additional costs associated with duplicating statements, cost of providing them on paper and costs to the consumer to store the information or to destroy them. We would also highlight that with online accounts in joint names, it is common practice for there to be only one correspondence address, one set of log-in

		details and only one in-box for both parties to receive correspondence. This provision isn't practical for certain types of joint account, e.g. partnership accounts, and we would suggest that this provision should not apply to Consumers who fall within part b) and part c) of the definition of consumer. The industry should be encouraging more use of electronic methods of receiving such correspondence so as to be able to move to a smarter economy.
6.5	A credit institution must, on request, provide consumers who fall within part b) and part c) of the definition of consumer, with three years of current account history without charge and provide other consumers with 12 months of current account statements without charge.	Current account statements for many Consumers are available on-line through many internet banking services. Consumers should be encouraged to retain this information electronically rather than relying on institutions to reproduce the information on request. The provision of out of course statements has an underlying cost and consumers should also be limited to the number of requests they can make under this provision. For example one request per annum.
6.6	6. A ***credit institution*** must provide a ***consume***r who holds a deposit account with: a) details of the different interest rates that are being applied to the ***credit institution***'s other deposit accounts; and b) a stand-alone annual statement of the total interest earned on the account.	Members make this information available on request as well as publishing on websites and in the printed media. We would ask for 'on request' to be added after '... must provide' Rates on deposit accounts can change frequently and could result in consumers receiving this information very frequently if the information has to be sent, whilst providing consumers with limited added value. The range of deposit accounts that are also available through entities can be extensive, therefore we suggest the inclusion of 'similar' before 'deposit accounts' in a). b) Should 'total interest earned' be 'total interest credited'?
6.7	7. A ***credit institution*** must provide a ***consumer*** who holds a current account with a stand-alone annual statement setting out:	We would suggest that such a standalone statement should be provided 'upon request' by the consumer due to costs, privacy and environmental issues.

	a) the total amount of ***charges*** applied to the account during the year, b) the total amount of interest earned on the account during the year, and c) the total amount of interest paid on the account during the year.	 b) Should 'interest earned' be 'interest credited' c) Should 'interest' be 'tax' or 'DIRT'
6.9	A ***regulated entity*** must include the following information on all credit card account statements: a) opening balance; b) details of all transactions posted to the account; c) interest amount charged; and d) any outstanding balance due. The statement must also include the following information presented in a separate summary box: e) details of the interest rate applied to the account during the period covered by the statement; f) details of any ***charges*** applied to the account; g) final payment dates applicable to postal, branch and telephone/internet payments; and h) the amount of stamp duty liable and a notification that this is due on 1 April annually or at the date of account closure.	The requirement to include actual final payment dates applicable to postal, branch and telephone/internet payments would require significant system changes. We would suggest timescales are sufficient e.g. if you make your payment via internet banking it will take 3 business days to reach us etc.
6.10	In addition to Provision 9 above, a credit card statement must include the following notices, where applicable: b) A minimum payment warning: Warning: If you only make the minimum payment each month, you will not clear your balance until [Insert Date]	In order to add in the minimum payment warning would mean significant system changes. We suggest a more generic version that would not specify dates. As these are in relation to credit cards and because credit cards are revolving credit, a different date would potentially be given to customers each month and could lead to confusion.

	or You will have to pay [€X amount] over [X months] to clear the debt. c) A statement regarding transactions outside the normal spending pattern: You should advise your lender if you will be making transactions outside your normal spending pattern, as unusual transactions may be declined.	
Chapter Seven – Transfer of Residential Mortgages		
7.1	1. A loan secured by the mortgage of residential property may not be transferred to a third party without the written consent of the borrower. When seeking consent from a borrower, the lender must provide a statement containing sufficient information to enable the borrower to make an informed decision. This statement must include a clear explanation of the implications of a transfer and how the transfer might affect the borrower. Each borrower must be afforded three months to decide whether to give or to decline to give his/her consent. The lender must also provide the borrower with the following information: a) the name and address of the intended transferee, and of any holding company, if applicable; b) the nature of the relationship, if any, between the lender and the transferee; c) a description of the intended transferee and of its business, including details of how long it has been in operation, and of its experience in the management	This section is a copy of the current code of Practice for transfer of residential mortgages however this section has been amended and proposes that consumers be given a three month period to decide whether to permit a transfer of their residential mortgage. This is a significant change to current practice adopted by banks in Ireland whereby borrowers give consent to a transfer as part of the mortgage application forms. A loan agreement which permits assignment or transfer by the lender does not require any further or prior written consent for full legal assignment which becomes absolute pursuant to the provisions of the Judicature Act (Ireland) 1877. This change will significantly impair a bank's ability to conduct transfers, which represents a considerable source of funding for Irish banks. Transfers of mortgages in the Irish marketplace do not disadvantage the consumer because they do not impact on either arrears policy or interest rate policy. The effect of the proposed three month timeframe is to restrict the operation of securitisation programmes even in circumstances where there is no consumer protection issues arising. The proposed change could seriously inhibit restructuring in the banking sector. The current Code of Practice in relation to transfer of mortgages has been in place for some time with no issues having been raised because of it.

	of mortgages; d) an explanation of the transferee's policy and procedures which will apply for the setting of the mortgage interest rate and for making repayments if the transfer takes place; and e) confirmation that, in the absence of the borrower's specific consent, the existing arrangements will continue to apply.	
7.5	Provisions 1, 2, 3 and 4 do not apply to: a) a transfer connected with the making of further advances to the borrower; b) a transfer of engagements in whole or in part effected under Part X of the Building Societies Act, 1989; c) a winding up effected under Part XII of the Building Societies Act, 1989; or d) a transfer within the same corporate ***group*** or a transfer arising from serious business difficulties, where the lender satisfies the Central Bank that, in the circumstances, the application of this Code would not be appropriate and that the transfer is being effected on terms which are just and equitable and which a borrower would be reasonably entitled to expect.	Include in this provision "(e) a transfer connected with a securitisation transaction" (i.e. as noted in provision one, securitisation should be excluded).
Chapter Nine – Arrears Handling		
Definition		Arrears are mentioned throughout this section however there is no definition of 'arrears'. The Code of Conduct on Mortgage Arrears (CCMA) defines arrears for a mortgage and we believe a similar definition should be included in the definitions section of the proposal new CPC.

Chapter – general layout		Given the newly revised Code of Conduct on Mortgage Arrears (CCMA), we believe Chapter Nine in the CPC needs to clarify at the outset that it does not apply to arrears on a borrower's primary residence as defined in the CCMA nor does it apply to business loans regardless of whether the consumer is defined under b) or c) of the definition of a consumer. We would suggest a clarification regarding the chapter is included, for example, "This chapter does not relate to mortgages covered by the CCMA nor business loans." The protections afforded by the proposed chapter should only apply to those consumers who are co-operating reasonably and honestly with the lender. This would also be consistent with CCMA. The CCMA defines arrears for a mortgage and we believe a definition of arrears should be included in the definitions section of the revised Code. In addition, c) the Chapter should specify the products to which it applies; and d) the requirements should be proportionate to the nature of the product.
9.3	Where an account (other than a mortgage account that is subject to the Code of Conduct on Mortgage Arrears) is in arrears, a ***regulated entity*** must inform the ***consumer*** in writing of the status of the account as soon as it becomes aware of the arrears. This information must include the following: a) the date the account fell into arrears; b) the number and total amount of payments (including partial payments) missed; c) the amount of the arrears to date; d) the interest rate applicable to the arrears; e) details of any ***charges*** in relation to the arrears that may be applied; f) the importance of the ***consumer*** engaging with the ***regulated entity*** in order to address the situation;	We would ask the Central Bank to review if this paragraph could unintentionally result in gold-plating of EU legislation. This paragraph requires an entity to inform consumer of "arrears" as soon as entity becomes aware. CCR 21 (2) requires lender to inform consumer of "significant overrunning" that continues for longer than one month CCR require the following information – without delay: (*a*) of the overrunning, (*b*) of the amount involved, (*c*) of the borrowing rate, and (*d*) of any penalties, charges or interest on arrears applicable. CPC requires more detailed but similar information. The definition of "as soon as it becomes aware" must, in our view however, allow

	g) relevant contact points; h) the consequences of continued non-payment, including any possible impact of the default on other accounts held by the ***consumer*** with that ***regulated entity***, if relevant; and i) the contact details of the ***consumer***'s nearest Money Advice and Budgeting Service (MABS) office and a statement to the effect that the involvement of MABS could help the ***consumer*** if they are experiencing financial difficulty.	tolerance for late payments. The issuance of communication immediately without allowing for a tolerance period will cause confusion and unnecessary stress to the consumer as they may already have addressed the arrears situation in advance of receiving the communication. We believe the systems development effort to deliver this information initially and on a monthly basis will be of significance and consideration for a reasonable lead in time should be provided to the regulated entities. Regarding point (h) and in light of the CCMA, there should be consistency regarding non-payment. The nearest MABS Office for a consumer may not be local to the correspondence address on the entities records (for example someone working in Dublin but has their 'home' in Donegal). We would propose that this is amended to encourage consumers to call the MABS helpline (1890 283438) or log onto the MABS Website. Also 'where relevant' should be included as some consumers may not be able to use the MABS service, e.g. corporate bodies as 'consumers' under the CPC.
9.4	Where the arrears situation persists, an updated version of this information must be provided to the ***consumer*** on a monthly basis.	We would propose that a deminimus limit is introduced in relation to arrears. By contacting customers monthly to remind them of arrears that are very small may irritate them and Regulated Entities may be happy to allow the arrear to continue with no financial penalties to the consumer. However the limit should not deter some entities from contacting consumers who remain in arrears for an extended period of time and who make no effort to resolve the situation.
9.5	Where a consumer has purchased payment protection insurance (PPI) in relation to that loan from the lender, it must advise the consumer in writing of the following: a) that the consumer has purchased PPI;	We would suggest a generic statement is used on letters going to consumers in arrears that state*: If you currently have Payment Protection Insurance on your account, you may be entitled to claim. Please call XXXXXX for more information*. It would require significant systems changes to be able to distinguish which

	b) the circumstances under which a claim can be made; c) the consumer's policy number; and d) the procedure for making a claim under the policy.	accounts have PPI, with which insurance company (as they may be more than one), what benefits that the insurance has on them in order to make sure we are providing them with this information.
9.6	In respect of a mortgage (other than a mortgage account that is subject to the Code of Conduct on Mortgage Arrears), where a third full or partial repayment is missed and remains outstanding and, where an approach to resolving the arrears situation has not been agreed, a ***regulated entity*** must advise the ***consumer***, in writing, of the following: a) the potential for legal proceedings and loss of the property, together with an estimate of the costs to the ***consumer*** of such proceedings; and b) that irrespective of how the property is repossessed and disposed of, the ***consumer*** will remain liable for the outstanding debt, including accrued interest, ***charges***, legal, selling and other related costs, if this is the case.	This provision should only apply if there are no on-going discussions with a borrower to resolve the situation. If, for example, discussions with a consumer regarding an approach to solve an arrears situation are ongoing but not agreed (and three payments have been missed), the regulated entity must advise of the potential for legal proceedings. Sending such information could alarm consumers who are engaging with the regulated entity and harm the ongoing discussions.
9.7	Where a ***regulated entity*** reaches an agreement on a revised repayment amount or revised repayment schedule with a ***consumer***, the full terms of the agreement must be confirmed with the ***consumer*** in writing.	Replace "full terms" with "amended terms" (as the rest of the existing terms of the original agreement will still apply). Also require that "confirmed with" is replaced with "confirmed to".
9.8	Where a ***consumer*** makes an offer of a revised repayment amount or schedule that is rejected by the ***regulated entity***, the ***regulated entity*** must formally document its reasons for rejecting the offer, and this must be communicated to the ***consumer*** in writing.	The provision as written is unworkable. Where a consumer makes an offer, the regulated entity will usually accept or may counter with a revised schedule. An entity is unlikely to reject an offer of a revised repayment schedule totally. The regulated entity wishes to work with the client to come to a mutual agreement. In instances where an alternative suitable arrangement is agreed the regulated entity will communicate appropriately with the consumer.

		The proposed paragraph may actually work against consumers.
9.10-9.12	10. A ***regulated entity*** must give a ***consumer*** three months notice in writing where it intends to offset any credit balances in other accounts held by the ***consumer*** with that ***regulated entity***, against any arrears outstanding. 11. Where a ***consumer*** is in arrears but continues to operate other account(s) held with the ***regulated entity***, within the agreed terms and conditions, the lender must not close such accounts. 12. Where a ***consumer*** is in arrears in respect of an overdraft facility on a current account, but is otherwise operating within the terms and conditions, the ***credit institution*** must not close the ***consumer's*** current account without the ***consumer***'s consent.	Regulated entities should continue to be allowed to exercise rights under the Terms & Conditions (T&Cs). Consumers will have received T&Cs when effecting a particular product or service (or on request at any time) without prior notification to the consumer. By giving consumers notice of the intention to act on a particular term or condition, consumers may take action that could restrict the entity from applying the term or condition. Paragraph 11 provides that where a consumer is in arrears but continues to operate other accounts held with the regulated entity within the agreed terms and conditions, the lender must not close such accounts. This provision, if implemented, would very seriously trench upon the right of set off. Paragraph 12 provides that where a consumer is in arrears in respect of an overdraft facility on a current account, the credit institution must not close the consumer's current account without the consumer's consent where the consumer is otherwise operating within the terms and conditions of the account. This means that a consumer has the right to continue to operate a current account in respect of which there is an unauthorised overdraft and that the Bank may not prevent a consumer from doing so without the consumer's consent.
9.13	Where a ***consumer*** has not engaged or cooperated with the ***regulated entity*** and the ***regulated entity*** intends to place restrictions on the operation of the account in arrears, the ***consumer*** must be provided with a minimum of three months notice of this in writing.	The provision as currently written is unreasonable. Where a consumer is not engaging or co-operating with an entity and has received all communications, contact etc. and is still not co-operating, the entity should be able to place restrictions under the Terms & Conditions without further notice. This could be a licence to account holders to abuse their position Clarification is required as to what accounts this provision relates to. This also appears to conflict with Regulation 16 (3) of the CCR – If agreed in the credit agreement concerned, a creditor may, for objectively justified reasons, terminate a consumer's right to draw down on an open end credit agreement

		with prior (undefined) notice. The 'not cooperating' definition used in the new CCMA should be considered here for consistency.
9.16	Each calendar month, a ***regulated entity***, and/or any third party acting on its behalf, may not initiate more than three unsolicited communications, by whatever means, to a ***consumer*** in respect of an arrears situation. The three unsolicited communications do not include any communications to the ***consumer*** which are required by this Code.	The CCMA covers mortgages secured on a primary residence. Therefore, this provision should relate to other mortgages and other corporate loans and products. We are dealing with people outside of the CCMA and it is in the best interests of both parties that the lender is able to contact the borrower, who for example is the company financial controller. We recommend the deletion of this provision as regulated entities will be required to comply with provision 15 ("communication to be proportionate and not excessive"). It is critical for arrears resolution that a lender should not be prohibited from making necessary and meaningful contact with the borrower. Hence the determination of the level of contact should be left to the discretion of the lender acting responsibly and proportionally to the specific circumstances. The term 'may not initiate' is used in this provision and it is unclear on whether we are being advised that we cannot communicate to a consumer more than 3 times in a calendar month or whether we cannot attempt to communicate to a consumer. More clarity required surrounding this. By using the reference 'unsolicited communications' are we now obliged to comply with Chapter 3 provision 31 on unsolicited contacts for consumers that are in arrears?
Chapter 10 – Advertising		
In the context of the review of the Consumer Protection Code (CPC), we feel that it is timely to also examine how the advertising requirements detailed in the current CPC have operated in practice. All financial institutions acknowledge their obligation to ensure advertising is responsible and transparent. Many of the requirements of the CPC help us to achieve these goals. However, there are areas where CPC could be improved. In particular, CPC should distinguish between those advertisements that simply invite the customer to find out more about a product/service and those advertisements that make specific claims about certain products/services. The Central Bank should also take the opportunity to review the operation of the 1997 ODCA Direction in relation to S. 135 of the Consumer Credit Act. In addition, concerns have been raised in relation to some aspects of communication		

between the Central Bank and Industry on advertising. New and emerging media web-based formats have changed how firms approach advertising; they have also changed how firms interact with their customers. Regulatory requirements should be able to facilitate the customer acquiring knowledge about financial services and products through all media formats; the current advertising rules set out in Chapter 10 do not support this. The IBF's submission to the Central Bank in February 2010 (enclosed with this submission) and we would welcome the opportunity to discuss this in more detail with you.		
10.6	The design and presentation of an ***advertisement*** must allow it to be clearly understood and key information in relation to the product must be included in the ***advertisement***. Small print or footnotes should only be used where appropriate and should be linked to the relevant part of the main copy. Where small print or footnotes are used, they should be of sufficient size and prominence to be clearly legible.	This provision states the key' information' must be included whereas General Principle 6 asks for all 'relevant material information' must be disclosed. A consistent approach to the information required to be provided to the consumer would greatly benefit the industry.
10.8	An ***advertisement*** that uses promotional or introductory rates must clearly state the expiry date of that rate and provide an indication of the rate that will apply thereafter.	It should be confirmed that the 'indication of the rate that will apply thereafter' is sufficient to be stated as, for example 'the standard variable rate applicable at the time'. It is not always possible to state some time in advance an exact figure highlighting what the rate will be. A promotional rate or introductory rate could run for many months (or even years) and the rate that will apply at the end of the term could be vastly different from the actual rate that is in is use now. Placing figures in the advertisement could mislead the consumer more than advising the consumer of the name of the rate that will apply at the time.
10.17	Where an ***advertisement*** contains an acronym (AER, EAR, CAR, APR etc.), a clear and understandable definition for such acronym(s) must also be included in the ***advertisement***.	This new provision will unfortunately lead to very wide 'understandable definitions' of acronyms as each institution will devise its own definitions and which would lead to confusion amongst consumers. It would also be unworkable for radio (and online) advertisements where adverts are limited to for example 30 seconds (space restrictions as in banner advertisements). The definitions section of the 'itsyourmoney.ie' website ('jargon buster' section) contains the necessary definitions and we would propose that referral to that is made. Alternatively could the Central Bank provide the definitions as the terms emanate from CPC, CCA etc.

10.19	Where an ***advertisement*** includes an annual percentage rate, the ***advertisement*** must clearly state if the underlying interest rate is fixed or variable. In the case of fixed interest rate, the term of the fixed rate must be displayed and, where relevant, an indication of the rate that will apply thereafter.	We would refer to comments above 10.8 for a similar confirmation/approach
10.20	An ***advertisement*** for a term loan must, if displaying the annual percentage rate and the term, display the total cost of credit. A term loan is a fixed-period loan, usually for one to 10 years but does not include the provision of loans for mortgage credit.	The second sentence appears to be a definition and therefore could be better placed in Chapter 13, Definitions.
10.26	An ***advertisement*** must not describe a product or service as free where only a proportion of the ***charges*** for the service or product are free of ***charge***.	This provision does not read correctly. We would suggest it is changed to An ***advertisement*** must not describe a product or service as free where only a proportion of the ~~***charges*** for the~~ service or product ~~are~~ is free of ***charge***.
Savings and Investments (28 – 46)		Some of these provisions relate to savings accounts and some relate solely to investments. We would suggest that provision 28 relates solely to savings and 29 onwards relate to Investments. By requiring some of the information from 29 – 46 to be used for savings accounts for example, the consumers could be confused with information overload. We would suggest that two sections appear; one relates to savings and one relates to investments
10.28	Where an interest rate for a savings or deposit account is displayed in an ***advertisement***, it must clearly state the following: a) whether the rate quoted is variable or fixed, and if fixed, for what period and, where relevant, an indication of the rate that will apply thereafter; b) the relevant interest rate for each term quoted together with the annual equivalent rate, and each rate should be of equal size and prominence; c) the minimum term and/or minimum amount required to qualify for a specified rate of interest, if applicable; and	Similar clarification to 10.8 above is required in respect of a)

	d) if any tax is payable on the interest earned.	
10.29	An ***advertisement*** for a product where the promised return is known but is less than the initial 100% invested must contain the following warning: **Warning: If you invest in this product you could lose xx% of the money you put in.**	As currently written this provision is not clear as it relates to a return of less than 100%. We would suggest this should relate to the return of capital and should be amended as follows; "An ***advertisement*** for a product where a customer may not receive the initial 100% capital invested (other than in circumstances where that risk arises as a result of limits in the Deposit Guarantee Scheme and / or Investor Compensation Scheme) must contain the following warning:"
10.30 & 10.31	30 An ***advertisement*** for a product where the promised 'return of capital' is only applicable on a specific date, must contain the following warning: **Warning: If you cash in your investment before (specify the particular date) you may lose some or all of the money you put in.** 31 An ***advertisement*** for a product where there is no access to funds for the term of the product must contain the following warning: **Warning: If you invest in this product you will not have any access to your money for (insert time required before the product matures).**	It should be clarified that provisions 30 and 31 can be used independently or together as appropriate. For example a fixed term tracker bond may only return the capital on a specified date but the consumer will not have access to the funds during the term. Provision 30 should be used, as currently drafted, but may mislead consumers into thinking they can access their funds before the maturity, however the return of capital is only available at a specified date. Provision 31 is the most appropriate Warning to use in this event.
10.37	Where an ***advertisement*** describes a product as "guaranteed", the ***advertisement*** must also clearly state the level, nature and extent of limitations of the guarantee and the name of the guarantor.	This provision would be unworkable in relation to advertisements for example on the radio. For press advertisements the amount of information that will be required will mean significant extra text which could result in information overload for a consumer, thereby reducing the effectiveness of the advertisement.
Chapter 11 – Errors and Complaints		
11.3	A ***regulated entity*** must speedily, efficiently and fairly, correct an error that has resulted or may result in ***consumer*** detriment. All such errors must	The six month resolution is too restrictive to resolve issues, for example an IT solution to fix an issue or consumers delay responding to regulated entities. We would support the inclusion of 'or as otherwise agreed with the Central Bank' as

	be fully resolved within six months of the date the error was first discovered, including: a) correcting any systems failures; b) making all reasonable efforts to effect a refund (with appropriate interest) to all ***consumers*** who have been affected by any error; and c) notifying all affected ***consumers***, both current and former, in a timely manner, of any error that has impacted or may impact negatively on the cost of the service, or the value of the product, provided.	this will allow the flexibility for those errors that exceptionally could take longer than six months to resolve. We would propose the words 'or may result' are removed as it is difficult to ascertain whether an error may result in consumer detriment. All errors will be corrected and should avoid any detriment if corrected timely. Errors should relate to 'financial detriment' as previously set out in this submission. We would ask for the inclusion of 'making all reasonable efforts' to notify consumers is included in c).
11.5	A ***regulated entity*** must inform the Central Bank, in writing, of any errors that have resulted or may result in ***consumer*** detriment that have not been resolved in accordance with provision 3 or are not likely to be resolved within one month.	We would propose the words 'or may result' are removed as it is difficult to ascertain whether an error may result in consumer detriment. All errors will be corrected and should avoid any detriment if corrected timely. It is also not known at the identification of an error whether it can be resolved within one month. We would ask for the words 'likely to be' to be deleted. Reporting of errors not resolved can then take place at the end of the month. We would also seek that a financial materiality threshold be included in this reporting provision, as the absence of a threshold for reporting items to the Central Bank could result in extremely onerous and burdensome processes between regulated entities and the Central bank to report non-material items and could deflect attention from what we believe is the priority which is to prevent and resolve the issues as early as possible.
11.8	A ***regulated entity*** must take all reasonable steps to seek to resolve any ***complaints*** with ***consumers***.	Under 11.10, the Central Bank sets out the procedures that an entity should adopt, as a minimum, and we assume these are all the reasonable steps that need to be taken.
11.10 e)	A ***regulated entity*** must have in place a written procedure for the proper handling of ***complaints***. This procedure need not apply where the ***complaint*** has been resolved to the complainant's satisfaction within five ***business days***, provided however that a	Under e) entities are required to advise consumers of the Ombudsman details. This includes complaints that are satisfied to the consumer's satisfaction. This section should be updated to remove the need to include the Ombudsman details where a complaint has been satisfied and the consumer has indicated this to the entity.

	record of this fact is maintained. At a minimum this procedure must provide that: a) the ***regulated entity*** must acknowledge each ***complaint*** in writing within five ***business days*** of the ***complaint*** being received; b) the ***regulated entity*** must provide the complainant with the name one or more individuals appointed by the ***regulated entity*** to be the complainant's point of contact in relation to the ***complaint*** until the ***complaint*** is resolved or cannot be processed any further; c) the ***regulated entity*** must provide the complainant with a regular written update on the progress of the investigation of the ***complaint*** at intervals of not greater than 20 ***business days***; d) the ***regulated entity*** must attempt to investigate and resolve a ***complaint*** within 40 ***business days*** of having received the ***complaint***; where the 40 ***business days*** have elapsed and the ***complaint*** is not resolved, the ***regulated entity*** will inform the complainant of the anticipated timeframe within which the ***regulated entity*** hopes to resolve the ***complaint*** and of the ***consumer's*** right to refer the matter to the Financial Services Ombudsman or the Pensions Ombudsman, and will provide the ***consumer*** with the contact details of such Ombudsman; and e) within five ***business days*** of the completion of the investigation, the ***regulated entity*** must advise the ***complaint*** *in writing* of: i) the outcome of the investigation; ii) where applicable, the terms of any offer or settlement being made; iii) the right to refer the matter to the Financial Services Ombudsman or the Pensions Ombudsman, and iv) the contact details of such Ombudsman.	

Chapter 12 – Records and Compliance		
12.1	Where there is a verbal interaction with the ***consumer*** to assist the ***consumer*** in understanding the product or service on offer, a ***regulated entity*** must keep a contemporaneous ***record*** of the detail of such verbal interaction.	This proposed new requirement is too broad a requirement and includes potential consumers as well as consumers who hold a product or service with the entity. We have two significant concerns with this requirement. 1) The most significant issue relates to how we interact with customers on a normal commercial basis if we have to maintain written records of all interactions. Any note we take of interaction could also be challenged in the event of a complaint unless it is agreed at the time with the consumer as being a true reflection of an interaction. 2) This proposed requirement also seems to include potential consumers. As presently understood, a potential consumer who enquires about a product or service which may or may not lead them to take out the product or service would have to have the contact recorded by the entity. There are significant Data Protection implications to this. Consumer consent, under the Data Protection Acts would be required as personal details (name, address, phone number etc.) will be held on a system or file note in the event the consumer reverts wanting to take out the product. This consent to hold personal data from a potential consumer has to be obtained, stored appropriately and destroyed when no longer required. This provision should be amended to relate only to when the consumer enters the sales process in relation to assessing the suitability of a product or service for a consumer.
Chapter 13 – Definitions		
Basic Banking Product or service	"**Basic banking product or service**" means a current account, a demand deposit account, or a term deposit account with a term of less than one year and where withdrawals are. permitted;	We would propose that term deposits within this definition should include • a term deposit account with a term of less than one year or • a term deposit account with a term in excess of one year but less than two years where withdrawals are permitted
Product Producer		Is mentioned throughout the draft CPC however it is not defined and for clarity we would suggest a definition is introduced

Limited Analysis of the market		The phrase 'product product' is used and should be amended to 'product producer'
Vulnerable consumers	***"Vulnerable consumer"*** means a ***consumer*** that is vulnerable because of mental or physical infirmity, age, circumstances or credulity. These can include, but are not limited to, the following: • those with a low level of educational attainment; • those with a low income; • those with a high level of indebtedness; • those with a poor credit history; • those who do not have English as a first language; • those suffering from a long term illness or disability or episodic illness; • those whose mental capacity to make a decision is diminished; • those that are near, or over the statutory retirement age, are retired from their occupation or are retiring soon; • those who are recently bereaved; • those with a substantial sum to invest who have little or no investment experience.	We understand the concerns of the Central Bank in relation to the protection of vulnerable consumers and agree that financial institutions should take particular extra care when dealing with these consumers. However the wording of the definition of vulnerable consumer will cause significant practical issues in the implementation of the Code. A number of examples are included below; - What would constitute a long term illness or how could a regulated entity determine an episodic illness? - How would a diminished mental capacity be assessed (against what criteria)? - The level of educational attainment required may vary from product to product, and is also subjectivity (e.g. would the junior certificate be considered sufficient for obtaining a mortgage?) Furthermore the inclusion of a list of specific factors rendering a consumer vulnerable in the definition could result in a rigid approach to achieving compliance and what consumers might consider intrusive and insensitive questioning by regulated entities. Neither of these outcomes would achieve the desired outcome of enhanced protection. We would recommend the list is removed from the definition so as to avoid entities focusing solely on those factors alone. To provide protection in relation to sales to vulnerable consumers, we suggest that the Code should refer to a 'reasonableness' test, which would be covered by the obligations of the institutions to complete suitability testing. Where the financial institution is aware or ought reasonably to be aware, having carried out suitability testing, of circumstances that designate a consumer as vulnerable, the entity should have procedures in place to consider and address the potential risks to such consumers and must use such procedures to ensure the suitability of any products or services for that consumer's needs. We also have a concern that the retention of certain sensitive personal information on, for example, a customer's health could be contrary to Data Protection principles. The Central Bank should engage with the Office of the Data Protection Commissioner on the issue prior to the inclusion of this provision in

		the final Code. We understand the vulnerable consumer definition should be restricted to a natural person and is to be based on the information that emerges from 'Know Your Customer' ('KYC'). We look forward to seeing this amendment to the definition of a vulnerable consumer in the new CPC.

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IBF SUBMISSION ON ADVERTISING REQUIREMENTS FOR FINANCIAL SERVICES

The Irish Banking Federation (IBF) is the leading representative body for the banking and financial services sector in Ireland.

Our membership comprises banks and financial services institutions both domestic and international operating in Ireland.

INTRODUCTION

In the context of the proposed review of the Consumer Protection Code (CPC) in 2010, we feel that it is timely to also examine how the advertising requirements detailed in the CPC have operated in practice. We acknowledge that all financial institutions have an obligation to ensure that their advertising is responsible and transparent. Many of the requirements of the CPC help us to achieve these goals. However, there are areas where we feel that CPC could be improved.

In particular, we feel that CPC should distinguish between those advertisements that simply invite the customer to find out more about a product/service and those advertisements that make specific claims about certain products/services. We would also like to take the opportunity to review the operation of the 1997 ODCA Direction in relation to S. 135 of the Consumer Credit Act. In addition, we have concerns in relation to some aspects of communication between the Financial Regulator and Industry on advertising. Furthermore, we would like to discuss some definitions of terms in order to receive great clarity as to, for example, the calculation of the Annual Equivalent Rate (AER).

Finally, new and emerging media web-based formats have changed how firms approach advertising; they have also changed how firms interact with their customers. Regulatory requirements should be able to facilitate the customer acquiring knowledge about financial services and products through all media formats; this is an issue we would like to explore further.

This submission sets out below further details on the areas of concern. We also make specific proposals to address these concerns.

The Role of Advertising versus the Wider Sales Process

It is important to bear in mind that advertising is an invitation to engage and only the first step in the sales process. Following on from the initial advertising stage, when the consumer approaches an institution or logs onto the website of an institution, they are actively seeking more detailed information. When a consumer decides to take this additional step, they have a genuine interest and are progressing into the sales process. It is from this point onwards

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that the consumer will receive full information on the relevant product/service. They receive this information by way of:

1. Printed Brochures/Internet Portal Pages - which incorporate full details of the features/benefits of a product, together with all required regulatory warnings and required disclosures. This detailed information enables the consumer to make an informed decision regarding the product/service;

2. Pre-contractual stage of the sales process where consumers are provided with information e.g. Terms of Business, Distance Marketing Information, specific product Terms and Conditions etc.

The information cited above is in addition to the Know Your Customer and Suitability processes which institutions carry out with consumers. These processes are designed to ensure that the consumer is being provided with an appropriate product or service based on their identified needs and objectives.

Invitation Advertisements

Financial institutions often use invitation or generic advertisements in order to raise consumer awareness about product offerings in the market. These advertisements are often communicated using limited space media e.g. generic posters, press advertisements, internet banner advertisements, radio advertisements etc.

Advertising is a realm where creativity and originality are key in capturing consumer attention. Competition between financial institutions is healthy and is in the consumer interest. The need to apply disproportionate requirements to invitation advertisements is beginning to dissuade institutions from embarking on campaigns or utilising certain types of media. This may potentially have the negative and undesired effect of reducing the amount of information available to consumers. This, in turn, could limit consumer choice as consumers may opt to stay with their existing institutions instead of shopping around. Consumers will not be encouraged to shop around to find the best product/best price.

It is important to stress that the Industry accepts that the appropriate level of disclosure is required where an advertisement contains a greater amount of detail e.g. prices, interest rates, special offers, features/benefits etc. However, including disproportionate regulatory information in invitation advertisements is of limited benefit to the consumer and can dilute the effectiveness of generic advertisements. Recent research shows that the average consumer only absorbs a certain amount of information and that overloading consumers with information such as regulatory disclosures dilutes the effectiveness of the product information and is often rejected by consumers on this basis[1]. Having to include

[1] Better Regulation Executive and National Consumer Council, *A Final Report by the Better Regulation and the National Consumer Council on Maximising the Positive Impact of Regulated Information for Consumers and Markets*, November 2007.

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disproportionate regulatory disclosures not only detracts from the effectiveness of the marketing message of the advertisement, but there is a risk that the regulatory disclosures will detract from each other, given the limited window the consumer has to absorb all the relevant information.

An example of an historic requirement which could be considered disproportionate regulatory information is the 1997 ODCA Direction in relation to S. 135 of the Consumer Credit Act. This Direction currently applies to printed and internet advertising for residential mortgages and requires the inclusion of:

- a statement of the percentage of the value of the property which will be advanced;
- the loan to income requirements of the borrower;
- the cost of a typical EUR100K mortgage and the additional cost of a 1% increase in the rate of interest of such mortgage;
- CCA health warning; and
- other criteria which may apply.

While this information can be useful for a consumer when advertising a specific mortgage product, it is of no relevance to a consumer when applied in the context of a generic or invitation mortgage press, poster or internet banner advertisement as the consumer has nothing to relate this information back to in the invitation advertisement e.g. “Talk to us about a mortgage today.”

Communication between the Industry and the Financial Regulator

Situations have arisen where the Financial Regulator has determined that certain advertisements are not consistent with the CPC Advertising Requirements. While some of these determinations are clearly justified, there have been occasions where the financial institution involved did not agree with the Regulator’s findings. The Financial Regulator has, on occasion, instructed institutions to withdraw campaigns at short notice with no facility for discussion or appeal. This may often be on foot of an isolated complaint and can potentially result in significant expense for institutions. A more balanced review process together with open and enhanced communication with industry is needed to ensure greater clarity and an appropriate and consistent approach to advertising requirements.

Transparency of Communications

Since the introduction of the Consumer Protection Code, the Industry has received two additional communications from the Financial Regulator in relation to advertising i.e. June 2007 and July 2008. These communications have been in addition to specific directions received by individual institutions. As pointed out in the overall IBF submission on the CPC

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Review, this method of communication is not fully transparent. Furthermore, the status of these directions is often unclear.

Definitions

It is important that there be clear definitions of key advertising concepts. Since the introduction of CPC, it has become apparent that there is a need for increased clarity around some key definitions e.g. Annual Equivalent Rate (AER) and Advertising (as distinct from sponsorship or merchandising).

Reference Source of All Advertising Requirements

It is felt that Industry would benefit from a centralised reference source for regulatory requirements for financial services advertising. We would envisage this taking the form of a document/website which would list all relevant legal and regulatory requirements. This would also facilitate future regulatory developments as there would be less risk of unintended duplication of requirements across different Codes/Acts.

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PROPOSALS

On foot of the issues raised above which have emerged since the introduction of the Consumer Protection Code, and in light of the review of the Code, IBF members would like to make the following proposals:

1. Proportionate Requirements

The CPC Review should seek to ensure that advertising disclosure requirements are proportionate to the detail / lack of detail contained in the advertisement.

Due consideration should be given to invitation advertisements e.g. "Talk to Us about Mortgages" as opposed to the disclosure requirements for a detailed advertisement for a specific fixed-rate mortgage, for example. Putting in place a regulatory environment for advertising that is proportionate and appropriate is crucial in facilitating a competitive and dynamic marketplace for the benefit of the consumer

We outline below the distinction between "Invitation" and "Detailed" advertisements as well as those aspects of the requirements which we believe need to be reviewed in this context.

Invitation Advertisement
An 'invitation' advertisement is understood to be an advertisement that is generic, contains a limited amount of information and does not refer to any specific features, prices or interest rates of the product or service. An invitation advertisement may invite a response from the audience (i.e. ask the consumer to drop in to or call a branch/contact institution) and may also include generic brand promotion.

- We propose further exploration of CPC provision 7(16) to clarify what is meant in practice by "benefits".

- We are seeking the review of the current application of the 1997 ODCA Direction in relation to S. 135 of the Consumer Credit Act. While we accept that the requirements of this Direction are relevant in the context of detailed mortgage advertisements, we feel the Direction should be reviewed in the context of generic or invitation mortgage advertisements across all media. Invitation advertisements e.g. "Talk to us about a Mortgage today"; "Mortgages for Sale" or "Talk to us about our range of Mortgage Products" should not require a paragraph of regulatory wording which the customer cannot relate back to the advertisement itself.

- Due consideration should be given to the functionality (click through) of the Internet as an advertising medium. Generic Internet advertisements such as banner ads should not be viewed as "standalone" where they link back to the main landing page on an institution's website. Rather, they should be assessed in conjunction with the landing page where further product detail is displayed and where the regulatory disclosures are required and can be easily displayed.

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Detailed Advertisements

We consider a 'detailed' advertisement to be an advertisement that is product/service or offer-specific. It may involve the promotion of a single product or product line and will typically include a reasonable level of detail such as price, rates, specific product features etc.

With regard to detailed advertisements, we suggest that the CPC review include:

- Reviewing the content of the regulatory warnings/disclosures required by CPC and CCA directions with reference to the forthcoming Consumer Credit Directive, to ensure that only those which effectively convey a necessary message to the consumer are included in detailed ads. The market has now had three years' experience of the inclusion of the CPC requirements (longer for some disclosures e.g. CCA warnings or those covered in the previous Central Bank Codes) and we now believe that we are in a position to assess whether they are meeting the desired objective in an effective and efficient way for the consumer.

- Where necessary, if a requirement already comes under legislation e.g. CCA or CCD, it should not be required again under CPC.

- Consideration should be given to facilitating a mechanism whereby the text of CPC Warnings can be adjusted where appropriate in relation to given circumstances. For example, the wording of the CPC warning for interest-only mortgages (7(25)) is inappropriate for a consumer already three years into an existing mortgage who is now availing of a 1 year interest-only option.

- Appropriate distinctions / restatement of the requirements relevant to differing advertising media, e.g. many of the provisions use terminology reflecting visual media e.g. "shown", "display" etc.

- Realistic assessment of the nature and quantity of information which can be absorbed by consumers via different media and reflection of this in the requirements.

2. Communication between the Industry and the Financial Regulator

The Industry feels that there is scope for improving the communication process between institutions and the Financial Regulator in relation to complaints received/directions given on specific advertisements. Where the Financial Regulator is not satisfied with an advertisement or campaign and seeks to intervene, we propose that the institution in question be allowed a set timeframe to respond in writing to the Financial Regulator. In their written response, the institution should have the opportunity to set out their rationale in terms of compliance with the relevant regulation, before the matter is adjudicated on by the Financial Regulator and a final decision made. Withdrawing advertisements or campaigns at short notice can potentially incur significant costs, not just for the institution,

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but also for the media providers who are unable to find replacement advertisements at short notice.

3. Transparency of Communications

It would be helpful for Industry if, in the future, the Financial Regulator could communicate interpretations of the advertising requirements to all financial institutions rather than to one individual institution. As the Industry representative body, the IBF is ideally placed to facilitate this and the Financial Regulator could consult with IBF in advance of issuing such communications. This would ultimately be to the benefit of both the Industry and the consumer as it would ensure greater clarity and consistency in the interpretation of advertising requirements by all financial institutions.

4. Definitions

Clear definitions of important concepts are key to ensuring the Industry applies a consistent interpretation of regulation. This is important to ensure that the consumer can make informed comparisons/choices with regard to products and services.

AER
The Industry requests as part of the CPC review, that the Financial Regulator provides a clear definition of the term AER. In deriving this definition, worked examples of various scenarios would have to be considered e.g. the AER for products of a term less than one year, in order to agree the assumptions that can be made in the calculation. Particular problems arise in calculating the AER where products have a fixed rate for less than one year and also where a promotional fixed rate applies for less than one year to be followed by a variable rate which has not yet been decided.

'Advertisement'
The term 'Advertisement' needs to be more precisely defined (as was the case in the 2001 Central Bank Advertising Requirements) in order to ensure that other promotional activities such as sponsorship and merchandising materials are not caught within the scope of advertising requirements.

5. A Centralised Reference Source for all Advertising Requirements for Financial Services

There is a significant volume of requirements that may apply to an advertisement for a financial product or service. In order to ensure clarity of interpretation, we would advocate that the Financial Regulator should centralise all financial advertising requirements in one source document or system. The centralised source should also indicate where requirements overlap and which takes precedence. The reference source should include the advertising requirements of:

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a) The Consumer Credit Act (CCA), 1995
b) CCA Directions
c) Consumer Protection Code (CPC)
d) Consumer Credit Directive
e) "Guidance notes" on CPC issued by the Financial Regulator
f) European Communities (Misleading and Comparative Marketing Communications) Regulations 2007
g) European Communities (Markets in Financial Instruments) Regulations 2007
h) Deposit Protection Scheme regulations – Advertising Provisions
i) Government Guarantee Scheme – Advertising Provisions

All other relevant legislative and voluntary advertising requirements should be referenced if not included in the centralised source, such as relevant sections of the Advertising Standards Authority for Ireland (ASAI) Code, the Broadcasting Commission of Ireland (BCI) Code, Equal Status Act, etc.

6. New and Emerging Media Formats

Web-based advertising and customer interaction is a realm evolving as rapidly as the internet itself. Formats such as social networking websites and discussion fora have transformed how consumers can learn from each other and firms about products and services. We would feel that in responding to queries or making clarifications online it would be appropriate for firms to furnish a weblink to the relevant disclosures, including the legal and regulatory terms and conditions. Creating suitable and future-proofed regulatory guidance on new and emerging media formats is clearly a challenge but the CPC Review provides a timely opportunity for the Financial Regulator and the Industry to discuss it.

CONCLUSION

To conclude, we welcome the opportunity provided by the Financial Regulator to review the CPC advertising requirements which have now been in place for almost three years. While many of the requirements are working well, there are some areas where the advertising requirements have caused difficulties for industry while, at the same time, not providing any additional benefits or protection for consumers. We look forward to discussing these issues and possible solutions with the Financial Regulator in the forthcoming review of the CPC.

February 2010