



Response of the Mental Health Commission to the Consultation Paper CP47 “Review of Consumer Protection Code”

The Mental Health Commission welcomes the opportunity to respond to the Consultation Paper on the Review of the Consumer Protection Code. This response addresses the questions posed in relation to the proposals around the ‘vulnerable consumer’. The other questions posed in the Consultation Paper are not considered by the Commission as they are outside the statutory remit and/or the technical competence of the Commission.

The Mental Health Commission (MHC), an independent statutory body, was established in April 2002, pursuant to the provisions of the Mental Health Act 2001. Section 1 to 5, 7 and 31 to 55 of the Act were commenced on 5th April, 2002. The 2001 Act was commenced in full on 1st November, 2006.

The functions of the Mental Health Commission as specified by the Act are:-

- To promote, encourage and foster the establishment and maintenance of high standards and good practices in the delivery of mental health services and
- To take all reasonable steps to protect the interests of persons detained in approved centres under this Act. (Section 33(1), Mental Health Act 2001).

The Mental Health Act 2001 has introduced comprehensive human rights protections for those admitted involuntarily, leading to a high level of accountability and external scrutiny.

Specific functions of the Mental Health Commission include:-

- Appointment of the Inspector and Assistant Inspectors of Mental Health Services;
- Appointment of persons to mental health tribunals which review the detention of involuntary patients and appointment of legal representatives for the patient;
- Establishment and maintenance of register of Approved Centres (i.e. licensing of inpatient facilities providing care and treatment for people with a mental illness or mental disorder).

- Making of Rules regarding specific interventions – Electroconvulsive Therapy, Mechanical Means of Bodily Restraint and Seclusion;
- Developing Codes of Practice for the guidance of persons working in the mental health services.

The remit of the Commission covers the broad spectrum of mental health services including general adult mental health services, mental health services for children and adolescents, older people, people with learning disabilities and forensic mental health services, regardless of the source of funding.

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

(i) Definition of vulnerable consumer

The inclusion of a category of ‘vulnerable consumer’ in the revised Consumer Protection Code is welcomed by the Commission. The need to identify consumers who may require a greater level of protection in financial matters is recognised.

In terms of the definition of vulnerable consumer; the term ‘mental infirmity’ is one which is not commonly used, either by persons with mental health difficulties themselves or in the relevant legislation, the Mental Health Act 2001. The Act uses the term *mental disorder* and *mental illness*¹. The National Mental Health Policy document *A Vision for Change* uses the term *mental health problem* throughout the policy “to describe the full range of mental health difficulties that might be encountered, from the psychological distress experienced by many people, to serious mental disorders and illnesses that affect a smaller population”. The term mental health problem is thus a useful way of capturing the wide range of experience that may be relevant to the definition of vulnerable consumer.

¹ Extract from the Mental Health Act 2001:

“mental disorder” means mental illness, severe dementia or significant intellectual disability where—

a) because of the illness, disability or dementia, there is a serious likelihood of the person concerned causing immediate and serious harm to himself or herself or to other persons, or

(b) (i) because of the severity of the illness, disability or dementia, the judgment of the person concerned is so impaired that failure to admit the person to an approved centre would be likely to lead to a serious deterioration in his or her condition or would prevent the administration of appropriate treatment that could be given only by such admission, and

(ii) the reception, detention and treatment of the person concerned in an approved centre would be likely to benefit or alleviate the condition of that person to a material extent. In

subsection (1)— “mental illness” means a state of mind of a person which affects the person's thinking, perceiving, emotion or judgment and which seriously impairs the mental function of the person to the extent that he or she requires care or medical treatment in his or her own interest or in the interest of other persons;

The Commission suggests the amendment of the definition vulnerable consumer to include reference to **mental health problems** or **mental health difficulties** to refer to the full range of mental health difficulties as described in *Vision for Change*:

“vulnerable consumer” means a *consumer* that is vulnerable because of a **mental health difficulty**, physical infirmity, age, circumstances or credulity.

(addition is in bold)

(ii) Comment on list of circumstances attaching to definition of vulnerable consumer

The indicative list of circumstances attached to the definition of vulnerable consumer in the revised Code is very comprehensive. However, the list does not specifically mention mental health difficulties, which do not fall easily into the relevant circumstance “those suffering from a long-term illness or disability or episodic illness”. Mental health difficulties can be long term or episodic and are not usually referred to as a disability by those affected.

The Commission suggests amending the wording of the relevant circumstance as follows:

“those suffering from a **mental health difficulty** or long term illness or disability or episodic illness; (addition is in bold)

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

The proposals and amendments are welcome and help to clarify specific actions required to protect vulnerable consumers. The provisions under the proposal “Knowing the consumer” are particularly relevant. However, they may present particular challenges to financial institutions because of the specific vulnerabilities of people with mental health difficulties in relation to dealing with financial institutions. These vulnerabilities include the following:

- Due to the stigma associated with mental health difficulties, many individuals choose not to reveal the presence of such as difficulty in their dealings with organisations such as financial institutions;
- Features of specific disorders may result in excess spending (e.g. a manic episode in a person with bipolar disorder can sometimes result in spending sprees). Other features of mental health difficulties such as withdrawal and communication difficulties can present a vulnerability to getting into financial difficulties and can present challenges in terms of the communication required to address such difficulties;
- Many people with mental health difficulties have multiple vulnerabilities, i.e. they have many of the vulnerabilities in the list; they tend to have low incomes; have poor credit history; have a high level of indebtedness (an English study found that one in

four adults with a pre-existing mental health problem was also in debt); and at times, their decision-making capacity may be diminished.

The Mental Health Commission is currently completing a paper “The Human cost of the Economic Crisis: A Review of the Evidence on Economic Adversity and Mental Health and Suggestions for Action “ which may be of assistance to financial institutions. The Commission will make this paper available to the relevant bodies when it is complete.

If you have any queries in relation to this submission please contact the Office of the CEO, Mental Health Commission on(01) 6362404.