



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

22 July 2011

Dear Sir

Consumer Protection Code

I am pleased to provide ACCA's response to the Central Bank of Ireland's second consultation paper on the Review of the Consumer Protection Code (CP 54).

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

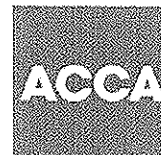
Yours sincerely

A handwritten signature in black ink, appearing to read 'Sundeep Takwani', is written over a horizontal line. There are some small marks below the line, possibly initials or a date.

Sundeep Takwani
Director – Regulation

direct line +44 (0)20 7059 5877
direct fax +44 (0)20 7059 5680
sundeep.takwani@accaglobal.com

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CP 54: Second Consultation on Review of Consumer Protection Code

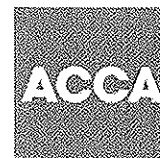
Comments from ACCA
July 2011



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General comments

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

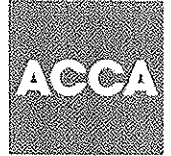
We note that this second consultation paper was published on 28 June 2011, the previous consultation period having ended on 10 January 2011. The Central Bank seeks to introduce the revised Code on 1 January 2012. However, we are disappointed that this second consultation period extends only to 22 July 2011, a period of only 24 days.

ACCA responded to the previous consultation – Consultation Paper CP 47 – on 10 January 2011. Many of our comments within that response are still relevant in respect of the latest draft of the Code.

The draft Code requires information to be provided in 'plain English'. However, the draft Code itself does not always achieve such clarity. (Examples of this are given later in this document.) Additional proposed provisions, following the initial consultation, have significantly increased the length of the draft Code. (See the comment below regarding basic payment accounts.)

Each section of the draft Code appears to include a mixture of specific requirements and broader principles. When redrafting the Code, it would be useful to separate the principles from the other requirements. Where it is not appropriate to move them to the 'General Principles' section of the Code, they should be segregated and highlighted within each section of the Code. (They should be removed where they are already included within the 'General Principles'.) While we recognise the need for clear and specific requirements within the Code, opportunities to express requirements in terms of overriding principles should not be missed, as a clear understanding of principles will make the Code easier to comprehend, and easier to engage with and comply with.

The draft Code is generally over prescriptive, and the tendency to make it so is illustrated by the numerous additions and other changes since the previous draft. We would urge the Central Bank to take a fresh view, and redraft the Code to make it more principles based, thereby making it easier to understand and engage with. For example, there are several additional provisions in respect of tracker interest rates. An attempt has been made to make the Code



comprehensive. But this is at the cost of clarity, and so the objective (consumer protection) is unlikely to be met.

During our second review of this document, we noted that large amounts of text have been moved, with little change, since the previous draft of the revised Code. It is difficult to see how responses to the last consultation, and other enhancements suggested by the Central Bank have been implemented. It is also difficult to determine whether any significant provisions have been removed since the previous draft. In future, it would be a considerable aid to those commenting on a document for the second time if a 'tracked changes' or a mapping document were prepared.

Basic payment account

The draft new provisions relate to the promotion and accessibility of basic payment accounts, rather than consumer protection. While we are in favour of such accounts as part of the strategy for financial inclusion, it is difficult to appreciate why they should be included in the Code, particularly as many of the requirements of these paragraphs are covered more generally elsewhere.

Complaints resolution

There are two references to 'complaints procedure' within the draft Code, but this is not defined. These references (in paragraphs 4.15 (k) and 10.10) should be cross-referenced to the procedure in paragraph 10.9.

Unsolicited contact

Paragraph 3.33 states that 'a regulated entity must have obtained the consent of the personal consumer in a separate document' which sets out 'the times and days for the proposed contact, which must be within the times and days specified in Provision 3.35'. Paragraph 3.35 states that a regulated entity 'may only make a personal visit or telephone call to a personal consumer between 9.00 a.m. and 7.00 p.m.' except where 'the personal consumer requests, in writing, contact at other times or in other circumstances'. Therefore, the words 'which must be within the times



and days specified in Provision 3.35' in paragraph 3.33 are unnecessary and appear contradictory.

Paragraph 3.34 is drafted so as to apply to unsolicited personal visits and telephone calls to consumers who are existing consumers. Should the term 'consumer' be replaced with 'personal consumer'? (It appears that paragraph 3.38 is intended to be the only provision that specifically relates to consumers who are not personal consumers.)

Advertising

The requirements of this section are split into 23 numbered paragraphs without any indication of their relative importance. Some of the paragraphs are fundamental requirements (eg 9.2); others should be assumed to be necessary in order to comply with the fundamental requirements (9.5, 9.10, 9.14, 9.16, etc); and others provide specific examples of how the fundamental requirements may be met (9.6, 9.7, 9.9, 9.11, 9.12, etc).

We strongly recommend categorising the different types of requirement in order to highlight the fundamental principles, and make it easier for regulated entities to comply. This would also emphasise the spirit of the Code, and ensure that it is not ignored by a regulated entity which may otherwise be said to have complied with the detailed requirements of the Code.

Other areas

The comment above, in respect of the advertising provisions, is also relevant to other areas of the Code. Throughout the Code, important underlying principles should be highlighted by separating them from specific examples of how the principles would be expected to be met.

The added paragraph 3.45 implies that the provisions of paragraphs 3.39 to 3.44 do not apply to the operation of a separate client premium account in respect of customers that are not consumers. Is it the intention that these larger customers should not be so protected?

Some of the definitions are not in the correct alphabetical order.



Is a regulated entity required to have a website? In some parts of the draft Code, it is implied that it is essential (eg paragraphs 4.9, 4.40 and 8.2).

Paragraphs 4.3 and 4.4 concern changes to the range of services provided by a regulated entity, including the withdrawal of a product or service. They state the requirement to inform affected consumers, and provide notice. These paragraphs should state that, according to the circumstances, a longer notice period may be required.

Paragraphs 5.11 to 5.14 are all saying that the lender must test the personal consumer's ability to meet repayments and interest in the future, according to best estimates plus an increase of 2% in the interest rate. As currently drafted, the Code is unnecessarily difficult to comprehend.

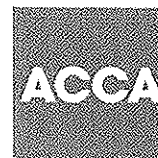
By way of further examples, we recommend the following simplifications to paragraphs 5.18 and 5.19. Paragraph 5.18 is currently drafted as follows:

A **regulated entity** must ensure that any product or service offered or recommended to a **consumer** is suitable to that **consumer**, having regard to the facts disclosed by the **consumer** and other relevant facts about that **consumer** of which the **regulated entity** is aware.

The following additional requirements apply:

- a) where a **regulated entity** offers a selection of product options to the **consumer**, the product options contained in the selection must represent the most suitable from the range available to the **regulated entity**; and
- b) where a **regulated entity** recommends a product to a **consumer**, the recommended product must be the most suitable product for that **consumer**.

We propose the following:



A **regulated entity** must ensure that any product (or products) or service (or services) offered or recommended to a **consumer** is (or are) the most suitable to that **consumer**, having regard to the facts disclosed by the **consumer** and other relevant facts about that **consumer** of which the **regulated entity** is aware.

Paragraph 5.19 is currently drafted as follows:

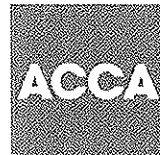
A **regulated entity** must not advise a **consumer** to carry out an **investment product** transaction, or a series of **investment product** transactions, with a frequency or in amounts that, when taken together, are deemed to be excessive and/or detrimental to the **consumer's** best interests.

Where a **consumer** instructs a **regulated entity** to carry out an **investment product** transaction, or series of **investment product** 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 and/or detrimental to the **consumer's** best interests, if the **consumer** wishes to proceed with the transaction(s).

We propose the following:

A **regulated entity** must not advise a **consumer** to carry out an **investment product** transaction, or a series of **investment product** transactions, with a frequency or in amounts that, when taken together, are, in the **regulated entity's** opinion, excessive and/or detrimental to the **consumer's** best interests.

Where a **consumer** instructs a **regulated entity** to carry out such a transaction or series of transactions, the **regulated entity** must make a contemporaneous **record** that it has advised the **consumer** of its opinion.



29 LINCOLN'S INN FIELDS
LONDON WC2A 3EE
UNITED KINGDOM

T +44 (0)20 7059 6000
F +44 (0)20 7059 6050

www.accaglobal.com