IRISH BANKING FEDERATION

IBF RESPONSE TO CONSULTATION PAPER 54:
SECOND REVIEW OF CONSUMER PROTECTION CODE

The Irish Banking Federation (IBF) is the leading representative body for 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 54 - Second Review of Consumer Protection Code (hereafter 'the revised Code' or 'revised CPC') 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.

Furthermore, we welcome the positive improvements to the revised CPC since the initial publication of the proposed revised CPC in CP47.

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 continue to believe some of the Central Banks proposals would inhibit that competition and detail these areas in our submission.

Feedback on the Consultation Paper.
The IBFs comments in relation to the revised Code are set out below in three sections.

1) Areas that could have significant impact on the marketplace;
2) Responses in relation Section 2 Additional/Emerging Issues;
3) Specific comments in relation to the draft revised Code set out in CP54.

We would welcome further discussion with the Central Bank in relation to our submission and in particular the implementation period of the final revised Code.

1) Areas that could have significant impact on the marketplace.

a) Consultation and implementation period

We acknowledge that there is a considerable volume of issues on the Central Bank's regulatory agenda currently. We would point to the timeframe outlined with consultation ending 22 July 2011, the final Code not being published until October 2011 (as we currently understand) and implementation date of 1 January 2012. This leaves little time for Members to plan and make the necessary changes to systems and procedures.

We also acknowledge that the proposals in CP54 enhance the previous CPC however it is only once the final CPC is issued that Members will be able to finalise the development of project plans, implement them and complete the work that needs to be undertaken. Changes to conduct of business rules involve very large 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. These can only be implemented once the final CPC is available

Institutions have a significant number of implementation projects at present including, but not limited to, the new Fitness & Probity requirements, Guidance Notes on the prevention of the use of the financial system for money laundering or terrorist financing, the new Central Bank Minimum Competency Requirements and the Payment Services Directive requirements for 2012 which all require significant resources (IT, training etc.). A number of these changes are required to be implemented by 1 January 2012.

We would request the CBI allow institutions a reasonable period of time following the publication of the final Code to finalise the development of project plans, mobilise staff and complete the work necessary to fully comply with the Code.

Accordingly, we would call for a minimum implementation period of nine months from the effective date of the Code (1 January 2012). However, where an institution identifies a significant IT development issue that will not be able to be resolved in those nine months, Members will contact the CBI to discuss the issue and timescales required.

b) **Implementation of new provisions**

Members appreciate that this revised CPC enhances the previous CPC and contributes further to consumer protection. Whilst we support any further developments to protect consumers, Members are adopting the view that the final CPC will not be applied retrospectively. For example, new consumers will be asked if they require statements to be sent to different addresses. Applying this to existing consumers would create considerable implementation difficulties for Members.

c) Arrears

We welcome the changes made in relation to Chapter 8, and whilst not invited expressly, we would make the following comments, which may help the drafting

process.

Members are concerned that the Central Bank has not taken into account the different nature of unsecured loans compared to secured loans e.g. mortgages. Consumers are more likely to address an arrears situation in regards to their secured facilities (i.e. mortgage) than in regards to unsecured facilities. Members experience demonstrates that it is far more difficult to contact consumers in arrears on unsecured loans than on secured loans. Members would like the CBI to reconsider the three unsolicited communications rule in 8.14 and to allow Members to attempt to contact consumers in a proportionate and not excessive manner until a contact occurs.

Furthermore, in Section 3 of this submission, in the interests of clarity, we have suggested revised wording for provisions 8.2 and 8.6.

Finally, IBF Members do not feel that General Principle 2.2 (acting in the best interest of customers) is being considered by restricting attempts to contact consumers about arrears. The CBI may wish to reflect on this.

Other suggestions and concerns in relation to the Arrears chapter can be found in section three of this submission

d) **Information about Products**

Provision 4.25 should not in our view apply to the "offering" of products over the telephone or electronically (i.e. Direct Channels). In these situations, it will not be possible to provide written information to consumers in advance of offering the product. For example, where consumers are shopping around for insurance products, they will seek a quotation for a premium (offer) over the telephone.

Consideration also needs to be given to the fact that consumers already have the protection provided by the cooling off provisions in the Distance Marketing of Consumer Financial Services Regulations 2004.

e) **Know Your Customer and Suitability**

The proposed dis-application of the exemption of provision 5.27a) (Know the Consumer and Suitability) whereby an individual who is seeking an investment product is not able to undertake it on an execution only basis (if desired) (Rule 5.27 ii) as currently set out would have the following unintended consequences:-

a. <u>Severely limit the ability to conduct online / direct business.</u> The elimination of execution-only investment products will mean that it would be extremely difficult to provide consumers with any online sales solution for any investment products.
b. <u>Restricting consumer's choice.</u> This provision would force a consumer to undertake a full consultation (fact find) regardless of that consumer's level of understanding or desire to undertake such a review. A consumer who is very knowledgeable on and experienced in investing will still be required to carry out a full consultation. Forcing consumers to undertake a full consultation

will result in additional costs which will be passed on to the consumer in the long-run. It would in our view be unfair that someone who neither needs, nor wants this consultation should be forced to undertake it.

c. Not differentiating between investments**.** The provision does not take cognisance of the complexity, value or risk rating of the investment. As such, a €100 monthly investment in a low risk investment product would be treated the same way as €250,000 investment in a high risk investment product.

We would urge the CBI to review these requirements and align the CPC with MiFID that does allow 'execution only' business for non complex business.

We also note that provision 5.27 no longer includes an exemption for current accounts, demand deposit accounts and foreign currency services (i.e. basic banking products and services). This implies that these products can no longer be sold on an execution only basis which is not appropriate given the basic nature of these products. It is doubtful that consumers will want to sit down with their financial advisor for a suitability assessment and receive a statement of suitability, when they simply wish to open a current account, demand deposit account or exchange foreign currency. It is difficult to see the consumer protection objective of this change and we suggest that the existing exemption for basic banking products and services is reinstated. It is also difficult to reconcile this provision with the view that transactional banking is seen as a basic utility required by all for full participation in the economy and society.

Furthermore, whilst not invited expressly, we wish to draw your attention to additional comments on this area in section 3 of this submission.

f) **Unsolicited Contact**

IBF Members respect the rights of consumers to declare they do not want to be contacted by institutions and Members respect those wishes. We also note the rewrite of this section in what is a very complex area, however, Members remain concerned with the proposed amended rules in relation to Unsolicited Contact.

We would contend that a smaller market will need much greater competition. The proposals will impose a blanket ban on contacting personal consumers who are not existing customers which will significantly inhibit the ability to grow business. Also, by restricting contact with non-customers, the ability to undertake market research about the development of possible future products and services will also be severely hampered. We would also bring to the CBI's attention that other industries, e.g. supermarkets, utility companies, are not under similar constraints when contacting customers/non-customers.

In addition, the current system of customer consents is well established across the industry and in our view needs no further amendment. This system was put in place in close collaboration with the Office of the Data Protection Commissioner in 2004.

This regulatory regime is working well and the Central Bank should reconsider the introduction of another potentially conflicting regime in parallel.

The existing process allows financial institutions to obtain verbal consent from customers provided these consents are recorded on a durable medium and regularly updated where possible. We believe that these consents should remain valid for the purposes of the unsolicited calls rules. Under the new rules, we propose that in future, customer consent can be obtained in the following formats:

i) Written consent
ii) Electronic consent given that many products/services are now provided electronically, and
iii) Verbally, by telephone, where this consent is recorded on a durable medium.

Any changes could only reasonably by undertaken with respect to new customers from the date of implementation of the revised Code. Existing customer consents will continue to be updated as per current procedures.

Further comments in relation to this are in sections two and three of this submission.

g) **Advertising**

Members continue to be concerned with the proposed advertising requirements.

We agree with the need for regulated entities to be responsible and transparent in advertising. However, there is a risk that the increasing amounts of mandatory information on advertisements may be counter-productive.

The proposed requirements in Chapter 9 will make it very difficult to advertise effectively, at a time when Advertising will be even more essential in a smaller market. In such a market, we would contend that there is a real need for firms to differentiate themselves and for consumers to be able to differentiate clearly between different offerings. In addition to this, the proposed requirements in provision 9.1, amongst others, would hamper any effective web based banner advertising as the regulatory disclosure would take up the majority of the banner. It is suggested that in this instance the existence of the regulatory disclosure statement in the substantive part of the advertisement on the click through option on the banner should suffice.

Where a lot of detailed information is contained in an advertisement and all information is given equal prominence, there is a real danger that consumers will be unable to absorb all the information or the key information from it. The greater the level of regulatory information that is included in an advertisement, the greater the possibility that consumers will simply ignore it.

We would contend that the current position where warning boxes sit in advertisements is sufficiently clear and transparent to the consumer. Provisions 9.11 and 9.12 would in our view be simply unworkable where mortgages or investment products are concerned. Indeed such provisions would not be workable for particular media, such as radio or TV. In fact, taken as a whole, the proposals will make advertising simply unviable for certain product offerings.

The Consumer Credit Regulations (SI 281 of 2010) allows advertisements to show the information in a clear, concise and prominent way by means of a representative example (Part Two section 7(2)). It does not require such information to be 'alongside' (CPC 9.11) the benefits nor does it require them to be in a font size larger than the normal font (CPC 9.12). We would ask that consideration is given to a consistent approach to such important information.

Other concerns in relation to this chapter can be found in section three below.

h) **CPC and the Consumer Credit Regulations (CCR)**

The CCR came into force on 10 June 2010 and there are consumers with products that have been in existence prior to that date which do not fall within the CCR and thus institutions have to apply CPC to them. We would ask the CBI to reflect this in the application scope (page 5), and ensure that consistency in application of relevant provisions apply across all CCR products.

Further more, under provision 4.34; institutions are required to give 30 days' notice in advance of any change in the interest on a loan. There are consumer loans in existence that do not fall within the CCR rules (greater than €75,000 or less than €75,000 (by exemption)) and have an interest rate that is linked to a reference rate (e.g. Euribor). It would be impossible to provide the 30 days notice of a change of interest rate in these circumstances. SI281 of 2010 ((part 4 section 14) h) states 'the parties may agree in the credit agreement that the information ... is to be given to the consumer periodically where (a) the change in the borrowing rate is caused by a change in the reference rate'. It does not require a notice period and we would strongly suggest that the final CPC adopts a similar approach.

Therefore, we would request the CBI amend the revised CPC to exclude those products from the 30 days notice period, similar to the CCR products.

i) **Errors and Complaints Resolutions (10.2 & 10.3)**

We appreciate the need to resolve errors quickly and efficiently however if the error is related, for example to a systems issue, a six month deadline may be impractical. It may take some time to identify the root cause, and if there is a significant IT change requirement, six months may be too short a time frame.

We strongly urge the CBI to amend these clauses to include '...unless approved by the CBI'.

j) Previously issued Industry Letters

All Members agree that the industry needs one source/rulebook with regard to the area of consumer protection. Members expect that the final CPC, once issued, will have taken all these previously issued industry letters into account.

Unless advised otherwise Members will comply with the final CPC without reference to these previously issued letters.

2) Responses in relation to Section 2: Additional/Emerging Issues

Basic Payment Account

The IBF is currently working with the Department of Finance and other stakeholders on implementing the basic payment account as set out in the Report on a Strategy for Financial Inclusion. At the time of writing the Department of Finance's report on Basic Payment Accounts is the subject of a public consultation. We would contend that it would be premature to include provisions on Basic Payment Accounts in the revised Code while the issue is still under discussion with stakeholders and not yet finalised.

At this stage, we would therefore urge the CBI to remove any references to basic payment accounts from the revised Code. Once discussions and consultations have been concluded and finalised, the IBF will work with the CBI and Department of Finance to develop a new Code of Conduct relating solely to Basic Payment Accounts which can be introduced under S117 of the Central Bank Act 1989.

We will however take this opportunity to make the following comments on the draft provisions:

Firstly, we would request the criteria for opening a basic payment account is based on 'eligibility' rather than 'suitability'. Under provision 3.55 the CBI is requiring institutions to assess the suitability of a basic payment account and if a consumer does not provide certain pieces of information, the institution cannot offer that product. This would appear to contradict the financial inclusion requirements. If eligibility is used, providing the consumer meets certain criteria, they would be able to open the account.

Furthermore, as the basic payment account is specifically targeted at advancing financial inclusion among the unbanked, provision 3.53 requires amendment so that it only applies to those personal consumers looking to open an account who do not already have a bank account or have not had one in the past.

Finally, the definition of a basic payment account as set out in Chapter 12 differs from that included in the Report on a Strategy for Financial Inclusion. The final form and features of the basic payment account have not yet been finalised with some details still under discussion. Our understanding is that a basic payment account will need to be defined under legislation in order to apply the stamp duty exemption. We believe it would be inappropriate and pre-emptive to include a definition under statutory regulation when there is a notable risk that it may differ to the forthcoming legislative definition. This is further reason for removing basic payment accounts from the revised CPC.

Unsolicited Contact

<u>Non Customers</u>

The proposed requirements now prevent us from contacting personal consumers who are not existing customers.

Contacting non-customers is an extremely important business generator and to exclude

a large part of the population from being contacted about products or services on offer from institutions is not a positive development. Unsolicited calling of non-customers is a function of a competitive market place. It would also represent a significant barrier to entry for potential new entrants to the Irish banking market.

Existing Protections

The proposals do not appear to take account of existing protections in this area:

- Protection is afforded to Consumers under the Distance Marketing Directive 2004 (as amended 2005) and the Data Protection Acts 1988 and 2003 which all Members must adhere to.
- Consumers have the protection of the National Directory Database (hereafter the 'Database or 'NDD') 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. The NDD is reinforced by the recent publication by the Office of the Data Protection Commissioner in relation to the new e-privacy directive (section 10) which highlights the importance of consulting the NDD before calling consumers.

Direct Channels

More and more interaction between customer and regulated entity is undertaken through Direct Channels, including internet, e-mail and telephone, be it Customer Relationship Management or transactions to buy and sell financial products.

In relation to provisions 3.32 and 3.35(b) requiring informed consent to be obtained 'in writing', we would contend that Members should be allowed to continue to capture customer consents via its Direct Channels, including telephone and internet, and recording those consents accordingly on their databases.

Contact Timeframes

In our view the revised Code will create further disparities with the Consumer Credit Act (CCA) when it comes to the times in which different products can be the subject of unsolicited contact with a customer; 9am to 9pm Mondays to Saturdays (CCA), 9am to 7pm Mondays to Fridays (CPC). We would contend that the various timeframes be harmonised and that customers could be contacted up to 9pm (from 7pm). In any case, we would contend that our existing consents allow us to contact our customers up to 9pm.

Provision of Credit to SMEs

We do not believe that the scope of the definition in the SME lending code needs to be widened. The SME Code uses the EU Definition (EU Recommendation 2003/361/EC) of an SME ('any entity engaged in an economic activity, irrespective of its legal form'). The bodies listed in this section could all be classed as engaging in an economic activity and thus fall within the Code.

3) Specific comments in relation to the draft CPC set out in CP54

	Provision	Comments
Chapter 3 – Common Rules		
3.7	Where a ***regulated entity*** deals with a ***person*** who is acting for a ***consumer*** under a ***power of attorney***, the ***regulated entity*** must: a) obtain a certified copy of the ***power of attorney***; b) ensure that the ***power of attorney*** allows the ***person*** to act on the ***consumer***'s behalf; and c) operate within the limitations set out in the ***power of attorney***.	Confirmation is required that this only applies to situations where the regulated entity has been made aware of the existence of the power of attorney.
3.16	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***, apart from the loss of any loyalty discount.	The phrase 'loss of any loyalty discount' is unclear and we would request this is clarified in the final CPC.
3.32	A ***regulated entity*** must not, for sales or marketing purposes, make an unsolicited personal visit or telephone call, at any time, to a ***personal consumer*** who is an existing ***consumer*** unless that ***personal consumer*** has given informed consent in	We would recommend that the wording 'or other durable medium', is added after 'in writing' to allow entities to obtain consents from consumers via telephone (which is recorded), e-mail, website or other direct channel (and recorded on a relevant database). We would suggest this approach should be adopted throughout the final CPC.

	writing to being contacted by the ***regulated entity*** by means of a personal visit or telephone call.	
3.34	A ***regulated entity*** may only make an unsolicited personal visit or telephone call to a ***consumer*** who is an existing ***consumer*** if the ***consumer*** holds a product which requires the ***regulated entity*** to maintain contact with the ***consumer*** in relation to that product. In relation to arrears, the limits set out in Provision 8.14 apply.	The proposed wording of rule 3.34 will prevent regulated entities contacting customers for market research purposes. We suggest that the phrase in rule 3.32 "for sales or marketing purposes" also be included in this rule in order to allow calls for market research purposes.
3.35 (b)	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. Monday to Friday (excluding bank holidays and public holidays), except where: a) the purpose of the contact is to protect the ***personal consumer*** from fraud or other illegal activity, or b) the ***personal consumer*** requests, in writing, contact at other times or in other circumstances, or c) the contact is permitted at other times under the Consumer Credit Act 1995.	In our view the revised Code will create further disparities with the Consumer Credit Act (CCA) when it comes to the times in which different products can be the subject of unsolicited contact with a customer; 9am to 9pm Mondays to Saturdays (CCA), 9am to 7pm Mondays to Fridays (CPC). We would contend that the various timeframes be harmonised and that customers could be contacted up to 9pm (from 7pm). In any case, we would contend that our existing consents allow us to contact our customers up to 9pm.
3.36	When making a personal visit or telephone call, the representative of a ***regulated entity*** must immediately and in the following order: a) identify himself or herself by name, and	References to consumer should be 'personal consumer' for consistency purposes.

	the name of the ***regulated entity*** on whose behalf he/she is being contacted; b) inform the ***consumer*** of the purpose of the contact; and c) inform the ***consumer*** that the telephone call is being recorded, if this is the case.	
Chapter 4 – Provision of Information		
4.6	When intending to close, merge or move a branch, a ***credit institution*** must: a) notify the ***Central Bank*** immediately; b) provide at least two months notice to affected ***consumers*** to enable them to make alternative arrangements; c) ensure all business of the branch is properly completed prior to the closure, merger or move; and d) notify the wider community of the closure, merger or move in the local press in advance.	Under c) for some types of business (e.g. mortgages) it may not be possible to complete the business prior to a branch closure. Please amend c) to 'ensure all business of the branch is properly completed, or the consumer advised how continuity of service will be provided.....'
4.25	Before offering, arranging or recommending a product, a ***regulated entity*** must provide information to the ***consumer*** in writing about the main features and restrictions of the product to assist the ***consumer*** in understanding the product.	This rule should not in our view apply to the "offering" of products over the telephone or electronically. In these situations, it will not be possible to provide written information to consumers in advance of offering the product. For examples, where consumers are shopping around for insurance products, they will seek a quotation for a premium (offer) over the telephone. Members are concerned that under the requirements of 4.25, consumers are going to be inundated with unnecessary pre-sale information. Consumers may not be interested in

		buying a product but the code does not allow Members to determine this before they send out the information required in 4.25.
4.27	When a ***regulated entity*** publishes a notice regarding a change in interest rates, the notice must state the old rate and the new rate and the date from which the changes will apply.	Many financial institutions will have numerous products and to include all old and new rates in a notice would not be feasible nor effective communication to customers. We request that this provision notes that tracker rate products are excluded from the obligation to include all old and new rates in a notice.
4.30c)	A ***regulated entity*** must, before it opens a joint account for two or more ***consumers***: a) warn such ***consumers*** of the consequences of opening and operating such a joint account; b) specify the particular operations of the account for which consent is and is not required from all account holders; c) ascertain from the ***consumers*** whether statements are to be issued separately to each of the joint account holders; and d) ascertain from the ***consumers*** any limitations that they wish to impose on the operations of the account.	We believe there is a conflict between provision 4.30 (c) and 6.2. Provision 4.30 For Term and Notice Deposit Accounts states a regulated entity must .....(c) ascertain from the **consumers** whether statements are to be issued separately to each of the joint account holders; Provision 6.2 In relation to a joint account, and when a consumer is a **personal consumer** under this Code, states statements **must be provided** or made available separately to each of the joint account holders in the following circumstances: a) where there are different postal addresses for each joint account holder; or b) where a joint account holder has requested that a separate statement be issued to each account holder. We would contend that this requirement would be impractical for this to apply to non-personal consumers (i.e. SMEs) e.g. in the case of partnerships you could have a very large number of partners. It would be impractical, and inappropriate, for a regulated entity to have to ascertain from each partner if they wanted a copy of the account statement and to ascertain this every time a new partner is appointed in the firm. It should be up to the partnership (as a whole) to determine how it wants to operate its accounts. The partnership agreement will be the overriding document to govern how the partnership works and the regulated entity is not party to this agreement. Overall this is a protection that is appropriate to ***personal consumers*** but disproportionate and highly impractical to operationalise for SME consumers.

		Provision 6.2 is only applicable to "personal consumers" and not all "consumers" as is stated in provision 4.30(c). We would recommend that 4.30 only apply to personal consumers which would bring it into line with provision 6.2.
4.32	Where a ***personal consumer*'s** request or application for credit is turned down by the ***regulated entity***, it must clearly outline in writing to the ***personal consumer*** the reasons why the credit was not approved.	In order to ensure consistency with the Code of Conduct for Business Lending to Small and Medium Enterprises, we would also suggest that the word "request" be removed from this Rule. We agree that Consumers seeking credit facilities require a response. However it is the Consumers choice whether they receive this information verbally or in writing. A verbal response is the most effective method of communicating to some consumers. Imposing the written decline letter adds unnecessarily to the process and in many cases means that the consumer receives correspondence that they do not want. The provision should also allow that where a consumer is introduced through an intermediary channel, that such intermediary is responsible for providing the response to the Consumer.
4.34	A ***regulated entity*** must notify affected ***personal consumers*** in writing 30 days in advance of any change in the interest rate on a loan, except in the case of a tracker interest rate. This notification must include: a) the date from which the new rate applies; b) details of the old and new rate; c) the revised repayment amount; and d) an invitation for the ***personal consumer*** to contact the lender if he/she anticipates difficulties meeting the higher repayments.	Some interest rates are linked to market based rates e.g. Euribor (these would roll in line with instructions received from or on behalf of the consumer and the interest rate would only be set at rollover). The basis of such interest rate changes would be clearly set out in the respective loan documents accepted by the consumer when the loan was negotiated. Accordingly we request that this clause not be applicable to such loans and is harmonised with the CCR.

	In the case of a mortgage where a revised repayment arrangement has been put in place in accordance with the Code of Conduct for Mortgage Arrears, the notification must clearly indicate the revised repayment amount required in Part c) that applies to the original mortgage agreement as well as the revised repayment amount that applies to the revised repayment arrangement. In the case of a change in a tracker interest rate, a ***regulated entity*** must notify the ***personal consumer*** of any change in the tracker interest rate as soon as possible, and no later than 10 ***business days*** after the change has been announced. The notification must include the information contained in this provision.	Where a revised mortgage repayment arrangement has been put in place in accordance with the CCMA this arrangement has been communicated to and agreed with the consumer(s) noted on the facility. It would be confusing to personal consumers to include both the effect on the original repayment and the effect on the revised repayment amount in a communication to the consumer. We recommend that where a consumer is in a revised repayment arrangement, the requirement to provide the effect on the original repayment does not apply. We request the provision is amended to reflect this position. It should be taken into account that before the end of a consumer's repayment arrangement, the consumer will receive a letter noting the end of the repayment arrangement and the new repayment amount (therefore it is not required to provide this confusing information at the time of a rate change). In relation to 4.34 (c), it should be noted that some loans have a fixed repayment schedule. The impact of a change in interest rate will, therefore, be on the number of repayments or the final bullet repayment (if applicable) rather than on the repayment amount. Rule 4.34 (c) does not make sense for these situations.
4.57	Prior to offering, arranging or recommending a ***lifetime mortgage*** to a ***personal consumer,*** a ***regulated entity***	

	must inform the ***personal consumer*** of the consequences of purchasing a ***lifetime mortgage***, and provide the following information to the ***personal consumer*** in writing: a) the circumstances in which the loan will have to be repaid; b) details of the interest rate that will be charged; c) an explanation of the impact of the rolling up of the interest over the duration of the loan; d) an indication of the amount required to repay the loan at maturity; e) the effect on the existing mortgage, if any; and f) at several intervals of five years or less over the duration of the loan, an indication of the likely early redemption costs which would be incurred if the loan was redeemed at those times.	Under d) it will not be possible to provide an indication of the loan at maturity due to a number of varying factors, including how long the individual has remained in the house. We would ask for this requirement to be removed.
4.68	A ***product producer*** of a ***tracker bond*** must produce and issue a document, within three ***business days*** of the start of the ***tracker bond***, to any ***consumer*** to whom it has sold its ***tracker bond*** or to any ***intermediary*** that has sold its ***tracker bond*** setting out: a) the name(s) and address(es) of the ***consumer(s)***; b) the date of investment; c) the amount of the investment;	In CP47, provision 4.67, stated that a "Regulated entity must provide a consumer who has invested in a tracker bond with a document within five business days of the start of the fund: …" Five business days was understood to be a fair and reasonable period of time for a regulated entity to provide the document and no counterargument was raised in the IBF response to the first consultation paper. There are circumstances where the three business day's deadline is not feasible. For example, a regulated entity may not be in a position to confirm strike prices of particular

	d) the date or dates on which the minimum payment is payable; e) disclosure of the make up of the investment, if the make up differs from that shown in the Key Features Document prepared in accordance with Provision 4.66; f) the date the investment will mature; and g) if a ***consumer*** has the right to cancel the ***tracker bond*** within a certain period of time from the sale, the cooling off period of [*Insert number*] days starts from [*insert date: the commencement of the investment date/date of receipt of policy document*]. The intermediary must, within three ***business days*** of receiving this document, provide it to the ***consumer(s)*** who purchased the ***tracker bond***.	trade and provide the document to the consumer within three business days. Therefore, we request that the number of days provided for providing the document to consumers reverts to five business days. This would be in line with a themed Inspection undertaken by the Central Bank in 2010 (Themed Inspection – Review of Tracker Bonds' Key Features Documents). The results of which were communicated to credit institutions in March 2011. In this communication the Central Bank noted "we recognise that there can be issues regarding the provision of this document to consumers within 2 business days and under the Review of the Consumer Protection Code – CP 47, it is proposed to extend the timeframe from 2 business days to 5 business days." We would ask for 'materially' to be inserted in e) after the words 'if the makeup differs'.
4.69	Where a ***regulated entity*** offers a ***consumer*** the facility to borrow funds to invest in a ***tracker bond***, the ***regulated entity*** must give the ***consumer*** an illustration showing: a) the year-by-year and total interest payments the ***consumer*** is likely to have to pay in respect of the funds borrowed to invest in the ***tracker bond***, until the date the product matures; i) for this purpose only the fixed interest rate offered by the lender for the period to	In relation to part (b), Compound Annual Rate (CAR) is only applicable where the return consists of a single payment at the end of the term. This rate does not take into account a situation where the return is comprised of payments made throughout the deposit term in which case the relevant calculation is the Annual Equivalent Rate (AER). Please extend this section to provide for AER.

	the date of the promised payment under the ***tracker bond*** must be used. ii) where the lender does not offer a fixed interest rate over this period, an equivalent open market fixed interest rate should be used for this purpose. b) the ***compound annual rate*** equivalent of the promised payment under the relevant ***tracker bond*** must be shown prominently; and c) the difference between the promised payment under the ***tracker bond*** and the total projected outgoings of the ***consumer*** (i.e. interest payments related to the funds borrowed to invest, any capital repayments related to such borrowings and any capital investment by the ***consumer*** other than the borrowed funds) over the period to the date of promised payment under the ***tracker bond***.	
4.78	In the case of non-life insurance: a) An ***insurance intermediary*** must disclose in general terms to a ***consumer*** that it is paid for the service provided to the ***consumer*** by means of a remuneration arrangement with the ***product producer***. b) An ***insurance intermediary*** must disclose to a ***consumer*** the range of commission earned, either in percentage terms or the actual amount, in respect of each product type.	We would contend that the break-out of commission would not in fact be relevant to the cost for the end user. The consumer will be interested in knowing the premium and will need to be able to make comparisons between cover and the end cost. Disclosing the commissions will not in our view help that situation. In addition, given that product providers provide products across a number of institutions, we would contend there would be legitimate commercial sensitivity regarding the proposal to disclose such commissions.

	c) Prior to the sale of a product, an ***insurance intermediary*** must either inform the ***consumer*** of the amount of remuneration receivable in respect of that sale or that details of remuneration are available on request.	
Chapter 5 – Knowing the Consumer and Suitability		
5.1 b	Personal circumstances including, where relevant: i) age, ii) health, iii) knowledge and experience of financial products, iv) dependents, v) employment status, vi) potential future changes to his/her circumstances.	Part (vi) is vague as there are a vast number of "potential future changes" to a consumer's circumstances. The requirement is unworkable from a practical perspective. Therefore, it is recommended that this point is removed from the final version of the CPC. Please see our response to provision 5.17 below for further comments on this topic.
5.6	Before providing a mortgage to a ***consumer***, a mortgage lender must have had sight of all original supporting documentation evidencing the ***consumer***'s identity and ability to repay. A declaration signed by the ***consumer***, (or his representative), certifying income and/or ability to repay is not sufficient evidence for these purposes.	Mortgage intermediaries are regulated and required to comply with the obligations of the CPC. The previous consultation paper CP47 (provision 5.5) noted that "a lender must have had sight of all original supporting documentation". CP47 also included in provision 5.6: "A ***mortgage intermediary*** must submit a signed declaration to the lender, for each mortgage application, to confirm that it has had sight of all such original documentation listed in Provision 5.5." Provision 5.6 from CP47 has not been included in CP54, meaning that a regulated entity (mortgage intermediary) is not in a position to declare that he/she has viewed the necessary original documentation. We would suggest that mortgage intermediaries should be in a position to confirm sight of

		original documents. Therefore we recommend the reinstatement of provision 5.6 from CP47. In addition, we recommend that the provisions provide that a designated person can certify identity documentation as allowed under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.
5.9 & 5.10	5.9 Before a credit product is offered, arranged or recommended to a ***personal consumer***, a lender must carry out an assessment of affordability to ascertain the ***personal consumer***'s likely ability to repay the debt, over the duration of the agreement, taking into account any known future changes and any reasonably foreseeable changes to the ***personal consumer's*** circumstances at the time the credit was sought. The lender must notify the relevant intermediary of the results of the assessment of affordability if any. 5.10 An affordability assessment must include consideration of: a) the information gathered under parts b) and c) of Provision 5.1, and b) the impact of a known future change and any reasonably foreseeable changes to the ***personal consumer's*** personal circumstances.	In both these provisions a lender must take into account/consider known future changes and any reasonably foreseeable changes to the personal consumer's circumstances. It is unknown what circumstances are considered "reasonably foreseen" or what should be "known future changes" at time of assessment. With the benefit of hindsight it could be argued that any "change" which occurred should have been known. Compliance with such provisions on a continuous basis is impractical and requiring lenders to attempt to comply is both unfair and unreasonable. Please see our response to provision 5.17 below for further comments on this topic.

5.12	Before offering, arranging or recommending a variable interest rate mortgage, a ***regulated entity*** must provide a ***personal consumer*** with figures reflecting the revised instalment amount following a 2% interest rate increase above the variable interest rate offered. Where the lender is offering an ***introductory interest rate***, the revised instalment amounts must reflect an increase of 2% on the variable interest rate to be applied after the introductory period has ended if known at the time of the offer of the ***introductory interest rate*** or the current variable interest rate, if the variable interest rate to be applied after the introductory period has ended is not yet known.	We request that the wording "Before offering, arranging or recommending…" is amended to "Before providing…"
5.17	When assessing the suitability of a product or service for *a* ***consumer***, the ***regulated entity*** must, at a minimum, consider and document whether, on the basis of the information gathered under Provision 5.1: a) the product or service meets that ***consumer's*** needs and objectives; b) the ***consumer:*** i) is able to meet the financial commitment associated with the product on an ongoing basis; ii) is financially able to bear any reasonably forseeable risks attaching to the product or service; iii) in the case of credit products, has the	Re: part (b) (i) and the obligation to consider whether the consumer is able to meet the financial commitment associated with the product on an ongoing basis. In our submission on CP47, the IBF made the reasonable argument that "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." We would like to reiterate this comment and strongly recommend that the wording "on an ongoing basis" be removed from the final CPC. The above should also be considered alongside the proposed Mortgage Credit Definition of "all relevant factors known to the creditor at the time of the application to determine whether or not the credit will be able to be repaid". As an example, a newly married couple in their late 20's who wish to take out a 30 year variable rate mortgage

	ability to repay the debt in the manner required under the credit agreement, on the basis of the outcome of the assessment of affordability, and, c) the product or service is consistent with the ***consumer's*** attitude to risk.	How could a lender ensure that the couple can meet the financial commitment associated with a 30 year variable rate mortgage on an ongoing basis given the following possible changes: a. How many (if any) children will the couple have? b. How likely is it that one of the couple will give up his/her employment to look after the assumed children? c. What rate of salary increase should be applied over the 30 year term? d. What chance of job loss should be applied to the couple? e. Will the assumed children go to college? f. What rate of separation / divorce should a lender assume (10%, 25% etc)? g. How will the lender know which couple will separate / divorce? h. What factor should be built in to deal with accidental death or death by disease (e.g. cancer)? Re: part (b) (ii) - as with provisions 5.9 and 5.10 it will be difficult to foresee the risks attaching to some products, e.g. 30 year mortgages and we would ask for this to be considered in this provision.
5.19	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	The word 'advice' is a defined regulatory term and we would therefore recommend the word 'advised' in the second paragraph of this provision is amended to 'notified'.

	in amounts that, when taken together, are deemed to be 40 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).	
5.24	Where a ***regulated entity*** has provided an oral explanation to the ***consumer*** to assist the ***consumer*** in understanding the product(s) offered or recommended, a ***regulated entity*** must include a record of the detail of such explanation in the statement of suitability.	We would ask for this provision to be amended to reflect where an oral explanation is part of the sale process. Information is provided to consumers over the counter about products which may or may not lead to a meeting where the sale takes place. Full details of the product and an assessment of suitability will take place at that stage.
5.27	Provisions on Knowing the Consumer and Suitability do not apply where: a) the ***consumer*** has specified both the product and the ***product producer*** by name and has not received any assistance from the ***regulated entity*** in the choice of that product and/or ***product producer***; or b) the ***regulated entity*** has established that the ***consumer*** is seeking a term deposit of less than one year or a notice deposit account and has alerted the ***consumer*** to any restrictions on the account. c) where ***consumers*** other than ***personal consumers*** are seeking credit.	We note that rule 5.27 no longer includes an exemption for current accounts, demand deposit accounts and foreign currency services (i.e. basic banking products and services). This implies that these products can no longer be sold on an execution only basis and is not appropriate given the basic nature of these products. It is doubtful that consumers will want to sit down with their financial advisor for a suitability assessment and receive a statement of suitability, when they simply wish to open a current account, demand deposit account or exchange foreign currency. It is difficult to see the consumer protection objective of this change and we suggest that the existing exemption for basic banking products and services is reinstated.

	The above exemption in Provision 5.27 a) does not apply where: i) a ***personal consumer*** is seeking: a. credit amount above €75,000, b. a mortgage, c. a ***home reversion agreement.*** ii) a ***consumer*** is seeking an ***investment product***.	
Chapter 6 - Statements		
6.3 (viii)	6.3 a) A ***credit institution*** must, at least annually, provide or make available statements of transactions on all term and notice deposit accounts with a balance in excess of €20. This statement must include, where applicable: i) the opening balance; ii) all additions; iii) all withdrawals; iv) all ***charges***; v) all interest credited; vi) the closing balance; vii) details of the interest rates applied to the account during the period covered by the statement; and viii) details of the interest rates that are being applied to other similar accounts available to the ***consumer*** from that ***credit institution***; ix) where tax is deducted from interest credited, provide information on the tax	With regards to viii), an increasing number of consumers opt to receive their statement via electronic methods. We would recommend that alternative methods of advising consumers are sufficient such as a link in the statement to the appropriate page on the entity's website or reference to the 'itsyourmoney.ie' website, which all Members feed their published interest rates to for reference purposes. We would also like clarity in this provision that the inclusion of a leaflet with the current published interest rates available would be sufficient, as the information now required to be included on statements could lead to information overload for the consumer. In addition, this provision should not in our view apply to term deposits. These deposits are already subject to provision 4.29 whereby consumers must be provided with 10 days notice of maturity. Consumers then have the opportunity to discuss options with the credit institution.

	deducted or inform ***consumers***	
Chapter 7 – Rebates and Claims Processing		
7.4	Where a premium rebate is due to a ***consumer***, and the value of the rebate is €10 or less, the ***regulated entity*** must offer the ***consumer*** the choice of: a) receiving payment of the rebate; b) receiving a reduction from a renewal premium or other premium currently due to that ***regulated entity***; or c) the ***regulated entity*** making a charitable donation of the rebate amount to a registered charity. In respect of options b) and c), the ***regulated entity*** must maintain a ***record*** of the ***consumer***'s decision.	We would ask for the last line of this provision to be removed as records of any decisions made by the consumer will be kept under other provisions of the CPC.
Chapter 8 - Arrears		
8.2	A ***regulated entity*** must have a dedicated section on its website for ***consumers*** in or concerned about arrears which must include: a) general information to encourage a ***personal consumer*** to deal with arrears; b) relevant contact details of the ***regulated entity*** for dealing with arrears; c) information on the level of ***charges*** to be imposed on ***personal consumers*** in arrears; and	We recommend the amendment of Provision 8.2(c) which prescribes that information should be provided with regard to *'the level of charges to be imposed….'* Whilst a regulated entity can of course provide full particulars of the charges in relation to the arrears that may be applied they would be unable to provide any meaningful information with regard to the likely level of charges which may arise in direct line with consumer behaviour which cannot be predetermined. On this basis we would recommend the amendment of provision 8.2(c) in line with the prescribed wording to Provision 8.6(e) i.e. '*details of any charges in relation to the arrears that may be applied'.*

	d) a link to the Money Advice and Budgeting Service (MABS) website.	
8.4	As soon as an account goes into arrears, a ***regulated entity*** must communicate promptly and clearly with the ***personal consumer*** to establish in the first instance why the arrears have arisen.	Members have raised concerns that, in particular with regards to credit cards, the missing of a payment may not constitute an arrears issue. For example a direct debit set up on a credit card to collect the minimum payment may be delayed but actually gets paid in a few days time. We would suggest that this provision is amended to read 'As soon as an account goes into arrears by more than two payments'. This amendment will allow for those consumers who forget to make a payment (for example under a credit card) to rectify this situation at the next statement date. It should be noted that this provision appears to contradict provision 8.14 with regard to the ability of a regulated entity to contact consumers in arrears (it could take more than three attempts to contact a consumer to ascertain why the arrears have arisen). We would request that the provisions are updated to correct this contradiction.
8.6	Where an account remains in arrears 31 days after the arrears first arose, a ***regulated entity*** must immediately inform the ***personal consumer*** and any guarantor of the loan, in writing, of the status of the account. This information must include the following: a) the date the account fell into arrears; b) the number and total amount of repayments (including partial repayments) missed (this information is not required for credit card accounts); c) the amount of the arrears to date; d) the interest rate applicable to the	Due to the nature of the products involved, to notify a guarantor after potentially one arrear seems excessive. We would recommend that the consumers and guarantor are formally written to once arrears have exceeded three months. We would also recommend alignment with a similar reference in CCMA, provision 22 which allows such communication to issue within 3 working days as opposed to immediately. Entities will be in contact with the consumer prior to this point under 8.3 (seeking to discuss and agree an approach to an arrears position) and therefore the formal notification required under this provision would be more appropriate after three months.

	arrears; e) details of any ***charges*** in relation to the arrears that may be applied; f) the importance of the ***personal consumer*** engaging with the ***regulated entity*** in order to address the situation; g) relevant contact points; h) the consequences of continued non-payment; i) if relevant, any impact of the non-payment on other accounts held by the ***personal consumer*** with that ***regulated entity*** including the potential for off-setting of accounts, where there is a possibility that this may occur under existing terms and conditions; and j) the contact details of the ***personal consumer***'s nearest MABS office and/or the link to the MABS website and a statement to the effect that the involvement of MABS could help the ***personal consumer*** if they are experiencing financial difficulty.	
8.7	Where a ***personal consumer*** has purchased payment protection insurance (PPI) from the ***regulated entity*** in relation to the loan account or credit card account in arrears, the communication required under provisions 8.6 must also advise the ***personal consumer*** of the following: a) that the ***personal consumer*** has	Some entities, who act as intermediaries may not retain or obtain a copy of the policy document and therefore would not be in a position to comply with part c). Please amend to include 'where held'.

	purchased PPI; b) the ***personal consumer***'s policy number; and c) that the ***regulated entity*** will provide the ***personal consumer*** with a copy of the policy on request.	
Chapter 9 - Advertising		
9.11	A ***regulated entity*** must ensure that warnings appear alongside the benefits of the product or service to which they refer. They must not be obscured or disguised in any way by the content, design or format of the ***advertisement***.	Provision 9.11 counteracts the purpose of an advert which is to generate consumer interest, and provide key information on the product or service through the use of effective design. Effective advertising is essential for competition in the industry. We strongly support the current position that warning statements are displayed prominently in the advertisement similar to the Consumer Credit Regulations and request a consistent approach be adopted.
9.12	A ***regulated entity*** must ensure that all warnings required by this Code are prominent i.e. they must be in a box, in bold type and of a font size that is larger than the normal font size used throughout the ***advertisement***. In the case of non-print media, it is sufficient that the warning statements are outlined at the end of the ***advertisement***.	We recommend that an approach consistent with the Consumer Credit Regulations is adopted for all advertisements. See 9.11
9.23	A ***regulated entity*** must ensure that an ***advertisement*** which contains an acronym (AER, EAR, CAR, APR etc.) also includes an explanation of what the	We refer the CBI to our submission under CP47 (10.17): This new provision will lead to wide differences, and possibly definitions, in the 'explanations of the letters in the acronym'. Each institution will devise its own

	letters in the acronym stand for.	explanation 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.
9.52	Where a ***regulated entity*** advertises an interest rate relating to a proportion of the ***tracker bond*** to be placed on deposit, the ***advertisement*** must also clearly state the following: a) whether the rate quoted is fixed or variable, and if fixed, for what period and, where relevant, an indication of the rate that will apply thereafter; b) the relevant ***compound annual rate*** of this deposit over the full term of the ***tracker bond***; and c) whether any tax is payable on the interest earned. Each rate provided to a ***consumer*** under this provision must be of equal font size and prominence.	For split rate tracker bonds, e.g. where 25% of total funds are placed in a one year fixed rate deposit and the remaining 75% of funds are placed in a four year capital bond, it would be impossible to calculate a compound annual rate over the full term of the bond. An annual equivalent rate would be possible and we would request part b) is amended to reflect this.
9.53	Where a ***regulated entity*** advertises a projected return on investment for a ***tracker bond***, the value of that return must be expressed and shown as prominently as the equivalent ***compound annual rate***.	As previously noted under provision 9.52, the appropriate annualised rate may be AER and not CAR. Please include at the end of the provision the wording "the compound annual return where a single payment is made at the end of the term or annual equivalent rate where payments are made throughout the term of the bond."
9.54	Where a ***regulated entity*** advertises a projected return on investment for a	Please refer to comment at 9.53 above.

	tracker bond, the ***advertisement*** must also include the value of the total return of all the combined parts of the ***tracker bond*** for the full term of the ***tracker bond*** and this must be expressed and shown as prominently as the equivalent ***compound annual rate***.	
Chapter 10 – Errors and Complaints Resolution		
10.3	Where an error has not been fully resolved (as outlined in Provision 10.2) within 40 ***business days*** of the date the error was first discovered, a ***regulated entity*** must inform the ***Central Bank*** in writing within five ***business days*** of that deadline.	We would recommend that the words which 'affect consumers' be added to this provision so as to be consistent with provision 10.1
Chapter 11- Records and Compliance		
11.1	A ***regulated entity*** must ensure that all instructions from or on behalf of a ***consumer*** are properly documented and the date of both the receipt and transmission of the instruction is recorded.	We would ask for 'documented' to be amended to 'recorded' as this will be consistent with the rest of the CPC.
11.8	Where the ***Central Bank*** requires a ***regulated entity*** to provide information in respect of the ***regulated entity***'s compliance with this Code, such ***regulated entity*** is required to provide information which is full, fair and accurate in all respects and not misleading and to do so in any period of time or format that may be specified by the ***Central Bank***.	We recommend re-inserting the word 'reasonable' before the phrase 'period of time' as was set out in CP 47 and in the existing Consumer Protection Code.
