financial services union

STRONGER TOGETHER

STRONGER CONSUMER PROTECTION

To keep pace with rapid changes in financial services, the review of the **Central Bank's Consumer Protection Code** must rebalance the Code to make it consumer centric and strengthen protections for consumers and introduce stronger enforcement.

Submission by the Financial Services Union to the
Consultation process on the Central Bank's Consumer Protection Code

March 2023

Foreword

The Governor of the Central Bank's heavy emphasis on consumer protection is very welcome. The revision of the Consumer Protection Code is of huge importance because it sets out binding rules that must, at all times, be complied with by financial service providers. It does however require significant change to reflect the rhetoric of the CBI on consumer protection. There is wide agreement that weaknesses in regulation contributed to the financial crisis of 2008, and the Consumer Protection Code is part of a range of stronger regulations designed to prevent another crisis. The imposition and enforcement of binding rules is essential to counterbalance the unfair advantage that financial service providers have in terms of resources, information and expertise compared to the average citizen who needs their services.

To keep pace with rapid changes in financial services, the Central Bank's Consumer Protection Code must greatly strengthen protections for consumers and introduce stronger enforcement.

Financial transactions can be made at the touch of a button on a mobile device or home computer, yet they can have far-reaching consequences for people if they borrow money at high cost. Many retailers are now offering credit or insurance products in addition to goods. The large number of providers and services available makes comparison and decision-making challenging for anyone seeking financial services. Surveys show that Irish people have a low level of trust in financial service providers and in financial services delivered through new technology. A recent survey showed Irish people had a poor understanding of financial matters. A stronger Code is a necessary step to raise public confidence in financial services.

A complete digitization of financial services will lead to tick box compliance where consumers will have no interaction with another human being when making financial decisions and will have to confirm understandings in order to buy the product even though they may not understand.

The banking review undertaken by the Department of Finance coupled together with the Banking report published by the Dail Committee on Finance and Public Expenditure and the Taoiseach outline many areas where the code should be updated and changed. The rapid change taking place in the sector makes the overhaul of the current consumer code an imperative and places a real focus on the Regulator to ensure that proper oversight and enforcement is in place to ensure the consumer is protected and the sector is adequately regulated.

Context

In March 2021, the Director General of Financial Conduct at the Central Bank of Ireland outlined a range of priorities for the Central Bank, including updating the Consumer Protection Code, the "cornerstone" of the Central Bank's consumer protection framework. The intention of the planned substantial update is to address the rapid change and emerging risks across financial services with the aim to continue to deliver strong protections for consumers. Public consultation on the Central Bank's proposals was expected in 2021 but only appeared in late 2022 with a closing date set of 31st March 2023.

The projected date of first quarter 2024 for the updating of the code needs to be shortened. It should be possible to update the Code by the end of September 2023.

We have now received the reports of the Banking review undertaken by the Department of Finance and the banking report published by the Oireachtas Committee on Finance, Public Expenditure, and the Taoiseach. **It is the view of the Financial Services Union there are many recommendations included in both of these reports which should be enacted without delay.**

The Financial Services Union is the leading trade union representing staff in the financial services sector. Our members work in banks, fintech companies, the life assurance sector and specialist support firms located in the Republic of Ireland, Northern Ireland and Great Britain. Our members share common values: a commitment to decency, fairness and respect in our workplaces.

The Financial Services Union is issuing these proposals on the Consumer Protection Code ("the Code") as a contribution to the public debate on the future direction of regulation. Rooted in our values, we unambiguously support strong and fair regulation of financial services in the interests of consumers and for the long-term sustainability of the industry and the economy.

Lack of Trust in Ireland's Financial Services Sector

Across the world, financial services remain the second least trusted sector of the economy (Edelman Trust Barometer survey 2023).

The public trust in banks in a survey carried out by Edelman in 2022 on behalf of the Irish Banking Culture Board also highlights a significant level of distrust in the retail banks.

Given the low level of trust in financial services, is it essential that the Consumer Protection Code is comprehensive with respect to both new financial service technologies, and new companies entering into the financial services market.

Consumer Protection

The heart of the Consumer Protection Code is the protection of all consumers, which is done through ensuring people have enough information to make informed choices and through protecting vulnerable consumers by providing them with assistance when making decisions about their finances.

A number of linked themes arise in relation to consumer protection:

- Literacy, numeracy and financial literacy as problems for consumers
- The need to include and protect those who are currently financially excluded.
- The challenge of identifying and protecting all vulnerable consumers
- The need to ensure consumers can access in-person bank branches.
- The need to ensure clarity for consumers on whether services are regulated.
- The need to apply the Code to more small businesses
- The need for the Code to cover the growing range of digital/online services.
- The need to ensure access to cash for people.

Financial Literacy

According to Professor Philip Lane, former Central Bank Governor and current member of the European Central Bank's Executive Board, "a vast empirical literature shows that consumers tend to make poor financial choices, taking on too much debt, misunderstanding investment risk and choosing financial products that do not match their needs". When faced with increasingly complex financial decisions, "a growing body of academic literature shows that, among the general population, the level of financial knowledge, skills and ability to consider such complexities is low". The way in which firms present information or market products often play on consumer biases and can lead to decisions that are not in a consumer's best interests. "Empirical research also suggests that firms can choose to market the salient features of products that appeal to consumer biases, while shrouding the less favourable aspects that could alter a consumer's choice to purchase that product".

The OECD Adult Skills Survey of 6,000 adults found that about 1 in 6 of Irish adults (17.9%) may be unable to understand basic written information and 1 in 4 (25%) may have problems doing simple math calculations. Two in every five adults (42%) have difficulty using technology to accomplish tasks. Those most affected are older people who had less opportunity to access formal education, but migrants and people in economically marginalised communities are also at risk. Unsurprisingly, this reality has a major implication for financial literacy.

Following the global economic crash in 2008, the OECD identified that financial illiteracy worsened the effect of the crisis. It found that most consumers were ill-equipped to handle increasing financial responsibilities, not least due to the growing complexity of financial products. While they determined that measures to improve financial literacy should not replace consumer protection regulation, nonetheless they found that improved household financial literacy is essential to the functioning of the economy. Over a decade later, it is debatable whether financial literacy has greatly improved, yet financial products continue to become more complex.

The research carried out by Behaviour and Attitudes on behalf of the Department of Finance in 2022 showed when asked the question "If the inflation rate is 2% and the interest rate you get on your savings is 1%, will your savings have more, less or the same amount of buying power in a year's time? "

Over a third of adults were not able to answer the financial literacy test correctly

The existing Code goes some way to promoting Plain English and requires clear warnings in the form of notices that must be given to consumers. However, given the worrying levels of basic literacy in Ireland, the Financial Services Union recommends that **the warning notices in the Code should be reviewed by a literacy specialist to make them more accessible to the general public.** For example, this warning is a requirement of the Code but is probably unintelligible to one in six adults in Ireland today:

Warning: If you do not meet the repayments on your credit agreement, your account will go into arrears. This may affect your credit rating, which may limit your ability to access credit in the future.

Several terms are potentially obscure, such as "credit agreement", "arrears", "credit rating" and "to access credit". A Plain English version of the warning might use words such as "your loan", "debt", and that failure to repay a loan "may mean that others will not lend you money in future".

The Code recognises that "key information" around financial services are those that are most likely to guide consumer decisions. The future Code should require that this information is in Plain English. **The Code should require the use of standard templates for key information by all regulated entities** when they present key information to consumers. For example, a standard template for a loan should include fees, interest rates, potential penalties and a worked example of a repayment over a period of time.

Financial Exclusion

Financial services are essential for modern life. Anyone with a bank account, a credit card, a mortgage, insurance or an investment (like a pension) is a consumer of financial services. That should be everyone in society, but many people are still excluded from financial services.

Of particular concern is the fact that someone excluded from mainstream financial services may be more likely to turn to higher-cost alternatives. This highlights the need for the Code to be rigorously enforced, as some of the most vulnerable consumers are likely to be using higher-cost and riskier financial services.

The OECD has raised a number of concerns about the privacy of consumer information held by financial services providers, including the risk that vulnerable consumers will generate a negative credit rating due to the accumulation of automatic refusals or other data generated by algorithms which may skew their data unfavourably. **The future Code should require all regulated entities to provide Plain English messages about how consumer personal data will be used.**

Vulnerable Consumers

The existing Code recognises that some consumers are "vulnerable" and it requires regulated entities to provide reasonable arrangements or assistance as required. This extremely important provision needs to be substantially strengthened, not least due to the ageing population and the greater number of elderly people who may be at risk.

Currently, the Code defines a vulnerable consumer as someone who can make his/her own decision but who may require assistance (for example, due to sensory impairment) or else is a person who has limited capacity to make decisions (for example, persons with intellectual disabilities or mental health difficulties).

Each financial institution should be required to have their phone number in a prominent position on the front page of their website.

The future Code should clearly define different types of "assistance" a vulnerable consumer may require, and it should distinguish clearly between physical assistance to access information, such as a person's need for information in a different format or in simpler language, as opposed to a person's need for assistance with making a decision related to their finances. In particular, regulated entities should be required to provide whatever physical assistance is needed, so that consumers do not have to rely on third parties' involvement in what can be a confidential process. The Central Bank should also review the availability of assistance from the National Advocacy Service (NAS) to assist people with disabilities to access financial services.

The definition of "mental health difficulties" in the Code is problematic. It is neither realistic nor appropriate for customers to share personal information such as a mental health diagnosis with financial service providers, yet there are several hundred thousand people in Ireland suffering from common illnesses like depression or anxiety disorder at any one time. For example, the CSO reports that 5% of all adults (15+) suffer from moderate to severe depression. While many people with mental illness will be quite capable of making financial decisions, some will be impaired by their illness.

Similarly, while recognising that many older people are perfectly capable of making their own decisions without any assistance, it is nonetheless a fact that the proportion of older people – including very elderly people – in Ireland is increasing, which has implications for financial service provision. As people live longer, there will be an increase in the number of people suffering from disorders such as dementia. Symptoms of dementia include short term memory loss, getting stuck for words, failure to recognise familiar people and difficulty concentrating. It is estimated by the Alzheimer Association of Ireland that 64,000 people in Ireland currently suffer from dementia and that total will more than double by 2050. Even mild symptoms of dementia may pose serious issues for someone's ability to manage their finances. However, legal researchers argue that steps should be taken to ensure people can retain as much decision-making autonomy for as long as possible.

The requirement in the individual accountability act to " act in the consumers interest " needs to be underpinned by training for all staff with most importantly protected time for staff to undertake such training.

A linked issue is the financial abuse of older people, meaning acts intended to deprive a person of his/her assets or funds. **The future Code needs to be cognisant of the issue of financial abuse, not least where older people may be also experiencing symptoms of dementia.**

Estimates of the frequency of elder abuse in Ireland vary with over 16,000 cases of elder abuse where reported to the HSE over the five years from 2016 to 2020 according to sage advocacy. However, creating an operational definition of financial abuse "has been a major impediment for both researchers and legal experts.

The Irish Banking Culture Board note that with approximately 30,000 deaths annually in Ireland, banks deal with large numbers of bereaved relatives on an annual basis. Research finds that most people dealing with bereavement find dealing with banks to be a source of stress and anxiety. This represents yet another category of vulnerable consumer not covered by the existing Code.

In summary, there may be a significant gap between the intent of the current Code and practice when it comes to defining and identifying vulnerable persons. Under the current code, the onus appears to be on consumers to self-identify as vulnerable or to be identified as such by third party individuals accompanying them, and regulated entities only have extra responsibilities where a person has been identified as "vulnerable". **The future Code should impose a duty on regulated entities to take steps to offer assistance where there is a reasonable basis to believe a person may be vulnerable.** This includes training for staff on the issues they should be looking out for in customers in this report.

In addition, **the future Code should require regulated entities to alert authorities if they have any suspicion that a person may be a victim of financial abuse** in a similar way to the reporting of other transactions. Specifically, the Code should require the completion of a Suspicious Transaction and Order Report or its equivalent whenever financial abuse is suspected.

In-Person Branch Services

As part of the re-structuring of banks in particular, there has been a rapid decrease in the availability of local bank branches. Bank of Ireland and AIB have closed hundreds of branches over the last couple of years. The Ulster Bank withdrawal from Ireland will result in a further loss of 63 branches from the end of March 2023 with KBC Bank to close its 16 hubs at the end of April 2023.

Even when bank branches remain open, the range of services they provide has diminished. For example, many bank branches are now cashless and do not provide over-the-counter services. Instead, they provide advice and self-service through ATMs.

Bank branches are still valuable to customers, even those who mostly use digital channels.

Research carried out by Behaviour and Attitudes for the Department of Finance found that of their survey respondents almost half (47%) live within five kilometres from their main bank branch and almost 1 in 4 have to travel more than ten kilometres to get to a branch of their main bank.

37% of those with a current account with a traditional retail bank visit a branch at least once a month, with 15% visiting a branch at least once a week. Among those aged 55-64 years, 44% visit a branch at least monthly, with this proportion rising to 49% among those aged 65 years or older. The main drivers of branch visits are to lodge/withdraw cash and financial/product advice.

The research also discovered that while most of the population has adapted to a more digital banking experience, those aged 55 years and older continue to rely more strongly on branches. For this age group, branches are the main form of contact with their main bank.

The existing Code requires banks to inform the Central Bank of any planned closure of branches and it requires a two-month notification period to consumers alongside notice to the wider community. **The new Code should have stronger provisions to protect consumers from branch closures, including longer notice periods and a defined notice period of not less than twelve months for informing the wider community**. This is in line with the lead in times for Ulster Bank and KBC branch closure programme. In addition, after the cessation of services in the location a period of time, six months, should be used to engage with consumers on improving digital literacy of the community prior to full closure.

In addition, **the revised Code should very clearly limit the ability of banks and other high street financial service providers to reduce access to in-person, over the counter services,** including providing the Central Bank with the option of refusing to allow regulated entities to close branches as a condition of retaining their banking licences.

The FSU supports the additional measures proposed by the Banking review including the requirement on the banks " to submit robust, board approved, assessments to the

Central Bank when they are planning to significantly alter the services provided through branches or when planning to close a branch. These assessments should examine the impact on customers, the suitability of alternative service provision arrangements, and the plans for migrating customers to them, especially at-risk customers. Such assessments, excluding commercially sensitive information, should be published by the relevant bank" **prior** to the implementation process.

- Require ex-post assessments by banks, to include a survey of impacted customers, nine to 15 months after the change or closure and a requirement to rectify material issues.

- Increase the minimum notice period required to four months (currently one) for significant banking service changes (e.g. going cashless) and to six months (currently two) for branch closures and credit institutions leaving the market.

- Require, in the revised Consumer Protection Code, all providers of retail banking products and services to set out and publish customer charters, incorporating service standards.

Unregulated Services

One in six of Irish consumers (17%) has purchased at least one financial product or service elsewhere in the EU. For the European Commission this is "low", however it potentially represents a large number of transactions that are not covered by the Code. Consumers need clarity on whether financial services are regulated, and this is particularly important for services offered online.

While the European Commission is seeking to expand the European Single Market for financial services, it is important that regulation keeps pace. As such, **the revised Code should very clearly indicate the extent to which it covers other EU countries' financial services offered in Ireland.**

With Brexit, access to British financial services is likely to be constrained. **The revised Code should very clearly indicate the extent to which it covers financial services offered to Irish consumers from firms in Northern Ireland or Great Britain.**

Protecting Small Businesses

The Consumer Protection Code serves personal consumers, some small incorporated bodies and unincorporated bodies such as clubs and charities. Incorporated bodies (or group of bodies) with a turnover of over €3 million are not included.

The €3 million limit seems arbitrary and should not be fixed in the future Code. This disadvantages small businesses that are seeking to grow, but which do not yet benefit from advantages of scale such as the capacity to employ accountants. The standard

European Union definition of a "micro" enterprise is one with a turnover of less than €2 million and a "small" enterprise is one with a turnover of less than €10 million. The scope of the future Code should be expanded to benefit a greater proportion of small businesses, not least small enterprises with social purposes. For example, it is now common for GP practices to merge together into medical centres. This could create an incorporated body with a turnover over €3 million, yet clearly not a commercial enterprise in the traditional sense. Excluding them from the protection of the Code is unfair.

The future Code should specify a turnover above €3 million, and this threshold should be open to change over time as the economy develops. There should be no limit to the application of the Code to registered charities.

Digital Services

The increasing availability of financial services online, including via mobile devices, has the potential to increase choice and competition, but it equally brings about greater risks in terms of non-adherence to regulation and misleading, if not deceptive, behaviour by some firms as well as the potential misuse of consumer's personal data. There is also a risk of consumer ignorance of the risks involved in some new products, such as cryptocurrencies, which are classified as "very high risk, speculative investments" in the UK. As an example of how this can be responded to, the OECD has published a compendium of effective financial regulation for the digital era. **The revised Code should have clear regulations around the use of consumer data by digital/online services, and around the presentation of clear information on products and services being offered via the internet or mobile devices.**

In particular, there is a well-known problem that a large majority of people simply click "Agree" when it comes to legal agreements presented on a mobile device or website, which are often in very small text size. This lack of scrutiny can make consumers highly vulnerable. **The future Code should outlaw practices that encourage consumers to simply agree as a response to avoid reading lengthy agreements. Instead, presenting online consumers with simple summaries of agreements in Plain English should be mandatory.**

Accompanying the revised Code, the Central Bank should ensure that consumers have access to a sufficient range of supports to assist them to plan and manage their personal finances, including educational supports and online calculators. The Competition and Consumer Protection Commission (CCPC) provides a range of supports, including educational programmes, sponsorship of a television programme, online tools, etc. MABS also assisted a large number of consumers dealing with personal debt. More analysis is needed, which should be led by the Central Bank, to see whether the availability of consumer supports is sufficient and whether those with the greatest need for support about financial services are getting access to it.

Enforcement

The potential for success of the future Code of Consumer Protection depends greatly on the extent to which it is enforced.

However, while the provisions of the Code are mandatory and the current Code notes the power of the Central Bank to administer sanctions, there is a lack of regular reporting to show the extent to which the Code is being enforced. Enforcement statistics, including enforcement of the Code, should become part of the regular statistical output of the Central Bank.

When it comes to Ireland, the relative absence of enforcement suggests that there is significant room for increased enforcement activity

By way of example for what the Central Bank might publish, the Consumer Protection List published by the CCPC provides a more detailed overview of its enforcement actions and the list also has the result of "naming and shaming" individuals and firms for breaches of the rules.

The revised Code of Consumer Protection should be accompanied with a clear indication of the resources being made available to ensure its enforcement, including the successful imposition of penalties on those firms and individuals who break the rules. As part of this, it could be more clearly outlined how the Central Bank is co-operating with other regulators such as the CCPC and the FSPO to ensure that any information they have about breaches in the Code are followed up by the Central Bank.

Access to cash

In July 2022 AIB announced that it was to cease the provision of ATM services in 70 of its branch network. The public outcry was immediate and the response from the Taoiseach and other politicians was clear. This was a step too far and needed to be reversed. It only took a couple of days for AIB to reflect on its actions and change course. This u turn has started a public debate about access to cash that has resulted in the banking review recommendation that **" a legislative framework should be put in place to manage any further decline in cash infrastructure in a fail, transparent and equitable manner.** They further recommend that the framework should be on a legislative basis which would include set criteria for the provision of cash services. These recommendations should be enacted and enforcement protocols put in place to ensure the enactment and adherence to the criteria.

Recommendations

1. Warning notices in the future Code should be reviewed by a literacy specialist to make them more accessible to the general public.
2. The future Code should require the use of standard templates for key information by all regulated entities.
3. The future Code should require all regulated entities to provide Plain English messages about how consumer personal data will be used.

4. The future Code should clearly define different types of “assistance” a vulnerable consumer may require, and it should distinguish clearly between physical assistance to access information.
5. The future Code needs to be cognisant of the issue of financial abuse, not least where older people may be also experiencing symptoms of dementia.
6. The future Code should impose a duty on regulated entities to take steps to offer assistance where there is a reasonable basis to believe a person may be vulnerable.
7. The future Code should require regulated entities to alert authorities if they have any suspicion that a person may be a victim of financial abuse.
8. The future Code should have stronger provisions to protect consumers from branch closures, including longer notice periods and a defined notice period of not less than six months for informing the wider community.
9. The revised Code should very clearly limit the ability of banks and other high street financial service providers to reduce access to in-person, over the counter services.
10. The future code should require the banks to submit robust, board approved, assessments to the Central Bank when they are planning to significantly alter the services provided through branches or when planning to close a branch.
11. The future code should require ex-post assessments by banks, to include a survey of impacted customers, nine to 15 months after the change or closure and a requirement to rectify material issues.
12. The future code should Increase the minimum notice period required to four months (currently one) for significant banking service changes (e.g. going cashless) and to twelve months (currently two) for branch closures and credit institutions leaving the market.
13. The future code should require all providers of retail banking products and services to set out and publish customer charters, incorporating service standards.
14. The future Code should very clearly indicate the extent to which it covers other EU countries’ financial services offered in Ireland.
15. The future Code should very clearly indicate the extent to which it covers financial services offered to Irish consumers from firms in Northern Ireland or Great Britain.
16. The scope of the future Code should be expanded to benefit a greater proportion of small businesses.
17. There should be no limit to the application of the Code to registered charities.
18. The future Code should have clear regulations around the use of consumer data by digital/online services, and around the presentation of clear information on products and services being offered via the internet or mobile devices.
19. The future Code should outlaw practices that encourage consumers to simply agree as a response to avoid reading lengthy agreements. Instead, presenting online consumers with simple summaries of agreements in Plain English should be mandatory.
20. The future Code of Consumer Protection should be accompanied with a clear indication of the resources being made available to ensure its enforcement, including the successful imposition of penalties on those firms and individuals who break the rules.

21. The future Code should acknowledge and provide provision and enforcement structures to account for any new legislative framework to manage any further decline in cash infrastructure.
22. The future Code should allow for branches to remain open for at least 6 months after services cease in order to support improving customers digital literacy.

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