Central Bank of Ireland - Consumer Protection Code Review

Safeguarding Ireland - Response to the Discussion Document

MARCH 31, 2023

SAFEGUARDING IRELAND

www.safeguardingireland.org

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Introduction

1. Safeguarding Ireland welcomes the opportunity to make a submission on the first phase of review of the Central Bank of Ireland's (CBI's) Consumer Protection Code 2012, ("the Code"). The Code must rank amongst the most important pieces of Irish regulation, encompassing every user of financial services, and both governing and establishing the tenor of the relationship each consumer/customer has with a regulated firm from childhood to death and even beyond[1]. In preparing this response, Safeguarding Ireland has endeavoured to answer all relevant questions based on its history of engagement with adults who are at risk of harm or in need of additional support and organisations that work with them or advocate on their behalf, the insights of its research[2], its information and awareness raising campaigns, lessons learned from the work of its State Payments Sub-Group and its work on related issues with a wide stakeholder grouping, the National Safeguarding Advisory Committee. As well as analysis and information gathered via the responses it prepares to queries and concerns received and responded to from the public via its safeguardingireland.org

About Safeguarding Ireland

2. Safeguarding Ireland promotes the safeguarding of adults at risk from all forms of abuse by persons, organisations and institutions. It seeks to enhance inter-sectoral collaboration, develop public and professional awareness and education, and undertake research to inform policy, practice, and legislation around safeguarding in the Republic of Ireland. Safeguarding Ireland has a National Safeguarding Advisory Committee comprised of over 35 civil society and representative groups across the health, social and financial sectors[3].
3. In addition, and in response to the challenges facing adults at risk in their use of payment/banking services and the related heightened risk of abuse and harm they can face, Safeguarding Ireland has a dedicated sub-group, 'The State-Payments Group', with the objective of: *'Collectively identifying the safeguarding issues, particularly in relation to financial abuse, that arise in the current arrangements for payments to clients from state agencies, including arrangements of financial institutions in dealing with and dispensing said payments (statutory, administrative or informal arrangements) in order to identify and address, in so far as possible, any opportunities of financial abuse'*. This Group includes representatives of the following organisations: BPFI, IBCB, AIB, MABS, Electric Ireland, Irish Rural Link, the HSE, the ILCU, An Post, the Department of Social Protection, the National Shared Services Office and Sage Advocacy.
4. The State Payments Group is the only cross-sectoral group of its kind in the State with a dedicated focus on the overall payments infrastructure as it relates to adults who may be at risk of harm and financial abuse when they make or receive payments.

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[1] https://hospicefoundation.ie/wp-content/uploads/2022/12/The-Real-Financial-Impact-of-Bereavement-Report-October-2022.pdf

[2] https://www.safeguardingireland.org/resources/

[3] For a full listing see: https://www.safeguardingireland.org/about/

5. While Ireland has ratified the UN Convention on the Rights of Persons with a Disability (UNCRPD)[4], and there is some important sectoral policy[5] currently, there is no clear national policy setting out the obligation on the State, state agencies or organisations to prevent harm or generally to protect or empower adults at risk.
6. In its 2022 report, '*Identifying Risks, Sharing Responsibilities-The Case for a Comprehensive Approach to Safeguarding Vulnerable Adults'*[6], Safeguarding Ireland described and analysed the multi-faceted contextual factors that are relevant to the safeguarding of adults who are at risk from violence, abuse, neglect, exploitation, coercive control, or self-neglect and included in its analysis chapters on, 'Financial Abuse' (Chapter 4), 'Coercive control' (Chapter 6), Data Sharing and Safeguarding Vulnerable Adults' (Chapter 8), 'Realising the potential of the social support infrastructure' (Chapter 10), that are of particular relevance in the context of a revised Code and to the Boards and staff of financial services regulated[7] by the CBI.

Definitions

7. Safeguarding Ireland acknowledges the vast spectrum of vulnerabilities that people may experience. For the purposes of this submission, the definition used of 'vulnerable' is in accordance with the HSE Safeguarding Vulnerable Persons at Risk of Abuse –National Policy and Procedures (2014) p 3. *"An adult may be restricted in capacity to guard himself/herself against harm or exploitation or to report such harm or exploitation. Restriction of capacity may arise as a result of physical or intellectual impairment. Vulnerability to abuse is influenced by both context and individual circumstances*". (Safeguarding Ireland will use the terms 'adult at risk/in need of additional support' throughout this submission, unless it is more appropriate to use the term vulnerable consumer/customer. This issue is considered in further detail in our response to 'Theme 6 - Vulnerability').
8. In the above context, Safeguarding Ireland's approach to formulating responses to this submission is to highlight the many opportunities within a revised Code to reduce and mitigate the additional risks of harm and abuse that some adults are exposed to when engaging with regulated financial services providers/products.
9. Moreover, and given the very significant 'landscape' changes that are currently taking place, there is a vital opportunity to ensure that firms design and deliver products and services that

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[4] Which requires, under Article 12, that: '*States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property'*.

[5] HSE Safeguarding Vulnerable Persons at Risk of Abuse: National Policy & Procedures (2014), Guidance on a Human Rights-based Approach in Health and Social Care Services (HIQA and SI) (2019), National Standards for Adult Safeguarding (HIQA and MHC) (2019) etc.

[6] https://www.safeguardingireland.org/wp-content/uploads/2022/05/6439-Safeguarding-Risks-Resp-Report-FA4_lowres.pdf

[7] Of course, providers of unregulated financial services should also be required to ensure that adults who are at risk of harm or abuse are safeguarded. It is anticipated that the forthcoming '*Code of practice for financial services providers and financial services professionals',* to be issued by the Decision Support Service as an element of the commencement of the Assisted Decision-Making (Capacity) Act (2015) will not distinguish between regulated and unregulated providers.
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facilitate access and empower all consumers/customers in all aspects of the customer journey and at all stages of their lifecycle.   This requires a combination of measures, which Safeguarding Ireland acknowledges fall both within and outside of the Code, to ensure that financial services are safer and that consumers can access and use the financial services they need safely and autonomously.

Overview

10. The Code which itself has been modified and updated via a series of addendums[8], sits within a wider international and national policy landscape for the provision of financial and consumer services, as described in, *inter alia*, the European Union's '2030 Digital Compass'[9], The European Commission's 'New Consumer Agenda' (2020)[10] (containing proposals for a revised Consumer Credit Directive), Directive (EU) 2019/882 (the European Accessibility Act (EAA) (which includes, amongst other areas of relevance, consumer banking services, payment terminals and ATM's,) [11] Ireland's 'Sustainable Finance Roadmap'[12,] the 'Ireland for Finance Strategy'[13], The Report on the Retail Banking Review[14] The Consumer Rights Act (2022)[15], that is evolving rapidly and also within a broader and relatively complex regulatory framework[16] specific to consumers/customers of financial services including, most recently, the Central Bank (Individual Accountability Framework) Act 2023[17].

Other relevant legislation

11. Additionally, there is an essential interplay with other legislation as it applies to consumers who may be at risk of harm and abuse, namely, the Assisted Decision-Making (Capacity) Act 2015 (ADMCA), the Equal Status Acts 2000–2018, and the Data Protection Act 2018 and the Data Sharing and Governance Act 2019, which give effect to the EU General Data Protection

[8] https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/other-codes-of-conduct/unofficial-consolidation-of-the-consumer-protection-code.pdf?sfvrsn=edd0811d_7
[9] https://eufordigital.eu/wp-content/uploads/2021/03/2030-Digital-Compass-the-European-way-for-the-Digital-Decade.pdf

[10] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0696&from=EN

[11] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0882 (Ireland is one of several EU member states which had not transposed the European Accessibility Act into national law by the deadline of 28 June 2022)
[12] https://www.sustainablefinance.ie/wp-content/uploads/2021/10/Irish-SusFinance-Roadmap-FINAL-FINAL-OCTOBER-2021.pdf

[13] https://www.gov.ie/en/publication/8eac2-ireland-for-finance-action-plan-2022/

[14] https://www.gov.ie/en/publication/28cf9-retail-banking-review-november-2022/

[15] https://www.irishstatutebook.ie/eli/2022/act/37/enacted/en/html

[16] Including the Consumer Credit Act, the Consumer Protection Act, the Consumer Protection (Credit Servicing) Acts, the Consumer Insurance Contracts Act, the Investment Intermediaries Act

[17] https://data.oireachtas.ie/ie/oireachtas/act/2023/5/eng/enacted/a0523.pdf

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Regulation (GDPR) and the Law Enforcement Directive (LED). Safeguarding Ireland suggests that, together with the UNCRPD, these acts are also a fundamental component of the '*Foundations of the Irish Consumer Protection Framework'* as set out in *'Figure 3 – Representative Overview of the Irish Consumer Protection Framework'* of the Discussion Document.

Centrality of the Assisted Decision-Making (Capacity) Act 2015

12. Safeguarding Ireland believes that the guiding principles outlined in the ADMCA, must underpin any revision of the Code, as they set out the current legal framework for supporting those who need assistance. Briefly, those principles are as follows –
    - Presumption that consumers at risk of abuse have capacity to make personal financial decisions unless there are reasons to the contrary.
    - Consumers at risk will not be presumed as unable to make a financial decision unless all practicable steps are taken (including having regard to their individual circumstances), without success, to help him or her to do so.
    - Consumers are free to make unwise decisions, provided they are afforded full information of the possible outcomes of the decision, including the consequences of not making the decision.
    - An intervention (which may be an assessment of the person's capacity to make the financial decision) will not be made unless it is necessary to do so having regard to the individual circumstances of the consumer at risk.
    - If an intervention is necessary, it will be proportionate and will minimize the rights, freedom, dignity, integrity, autonomy and financial control over the financial affairs and property of the consumer at risk.
    - The intervention will be proportionate to the significance and urgency of the matter and the subject of the intervention will be limited in duration, in so far as is practicable, after taking into account the particular circumstances of the matter.
    - The Financial Institution will permit, encourage and facilitate, in so far as is practicable, the at-risk consumer to participate, or to improve his or her ability to participate, as fully as possible, in the intervention. It will give effect, in so far as is practicable, to the past and present will and preferences of the at-risk consumer. The Financial Institution will take into account the beliefs and values of the at-risk consumer and any other factors that the at-risk consumer would be likely to consider if he or she were able to do so, in so far as those other factors are reasonably ascertainable. The Financial Institution will consider the views of any person named by the at-risk consumer as a person to be consulted, any decision-making assistant, co-decision-maker, decision-making representative or attorney for the relevant person. It will act at all times in good faith and for the benefit of the at-risk consumer and consider all other circumstances that might be relevant. In addition, the Financial Institution may, consider the views of any person engaged in caring for the at-risk consumer and/or healthcare professionals and will take into consideration the likelihood of the recovery of capacity in respect of the financial matter.
13. The adoption of these principles in full compliance with the Act (and to meet the State's/organisations' obligations under the UNCRPD), together with the adoption of the

related '*Code of Practice for Financial Professionals and Financial Service Providers*' should be transformative for the way in which consumers, and particularly those who may be at risk of harm or in need of additional support, engage with regulated firms.

A Code *for all* Consumers

14. European and national policy, legislation, and regulation are both oriented towards and overwhelmingly articulated in language/terminology that focuses on the ***providers*** of financial services. A core deficit in the Irish landscape, as it is evolving, is that it has become increasingly difficult for any consumer to locate a single source of accessible and comprehensive information on their rights/responsibilities as consumers of financial services[18]. This situation is obviously amplified for a consumer, who may be at risk, under duress, or in need of additional support in accessing a service, exercising their rights, or seeking redress.
15. Whatever the ultimate format and content of the revised Code, Safeguarding Ireland views the CBI as having responsibility for providing within it, or as a complement to it, a key document prepared in plain language, that expressly articulates in simple, accessible, and concise terms, the rights and responsibilities of consumers and what they can expect of their engagement with regulated providers and indeed from the CBI under the revised Code.
16. The finalised Code must be one which makes clear that all providers have a duty of care to consumers, with a higher duty required where a consumer needs additional support, faces a heightened risk of harm or abuse and/or is not positioned to protect themselves.
17. In the UK, the Financial Conduct Authority (FCA) has aimed to ensure, through the introduction of a 'Consumer Duty' that the outcomes firms should achieve for vulnerable consumers should be *'at least as good as those of other consumers'*[19]. The realisation of a similar ambition in Ireland requires that the revised Code and the related regulatory approach, supports and facilitates consumer choice while ensuring that all consumers and, in particular, those at heightened risk of harm or abuse, are empowered in their use of

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[18] https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/brokers-retail-intermediaries/guidance/consumer-protection-code-v4.pdf?sfvrsn=7ad0d11d_6 (The guide is no longer current and does not, in Safeguarding Ireland's view, go far enough in explaining consumer rights and responsibilities under the current Code). The CBI's animated explainer series https://www.centralbank.ie/consumer-hub/explainers/animated-explainer-series perhaps provide a more current and relevant example of what is required.

[19] To achieve this goal the FCA requires firms to:

- understand the needs of their target market/customer base,
- make sure staff have the right skills and capability to recognise and respond to the needs of customers in vulnerable circumstances.
- respond to customer needs throughout product design, flexible customer service provision and communications.
- monitor and assess whether they're meeting and responding to the needs of customers with characteristics of vulnerability and make improvements where this is not happening. https://www.fca.org.uk/firms/treating-vulnerable-consumers-fairly/ensuring-fair-treatment and is looking for MI that 'tracks and gives effective comparisons of outcomes for customers in vulnerable circumstances and other customers'.

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financial services, have access to affordable and life-enhancing financial products, and are protected appropriately.

18. The ADMCA, the revision of the Code, the implementation of the recommendations of the Report on the Review of Retail Banking[20] and the introduction of the 'Senior Executive Accountability Regime' (SEAR), combine to create a unique opportunity to bring necessary focus on the needs of adults who are at risk of harm or abuse or otherwise 'vulnerable' when they use financial services. In delivering fairer and better outcomes for all consumers and acting in consumers' best interests, the CBI and firms must recognise that additional, innovative, and sometimes bespoke regulatory interventions are needed to achieve an appropriate balance between enabling and empowering all consumers and ensuring they are adequately protected from harm and abuse.

Financial Abuse

19. In Safeguarding Ireland's view, abuse and financial abuse are endemic in Irish society, with the current national incidence reports[21][22] reflecting only a fraction of the actual abuse that is ongoing. Where financial abuse occurs, it is often accompanied by other forms of abuse, (physical, psychological etc.,) it is deliberate, targeted and often part of a pattern of coercive control designed to undermine individual confidence and autonomy. A financial services firm (regulated or otherwise) can facilitate this abuse through poor product design, poor process, deficits in the training of staff, and a culture that does not recognise the reality that there are events and circumstances that give rise to vulnerabilities that are exploited by malign actors.
20. There are risks and challenges in all aspects of the 'customer journey'. Ranging from lack of choice and access, to difficulties with the key step of 'onboarding', to ongoing difficulties in understanding terms, conditions and fees, a lack of clarity as to where to turn for help in cases of suspected/actual abuse, what help to expect, as well as fear and uncertainty about the impact and outcomes of disclosing either a 'vulnerability', or a case of suspected or actual abuse[23]. There are increasing difficulties with reducing firm/product choice and

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[20] Including proposals for legislation on 'access to cash' and plans for a new 'Payment Strategy'.

[21] https://www.hse.ie/eng/services/news/media/pressrel/hse-national-safeguarding-office-report-2021-published-ahead-of-world-elder-abuse-awareness-day.html The current prevalence rates for persons over the age of 65 years is at a level of 22- 25%, for those over the age of 80 years, the level of abuse is at yet a higher level. There is a high level of financial abuse perpetrated on persons whose capacity to make financial decisions is at issue. See also Sage Advocacy Annual Report 2021 at page 4 where issues of finance are a dominant issue for many of its clients. https://www.sageadvocacy.ie/media/2351/sage-advocacy-annual-report-fs 2021.pdf

[22] Financial abuse was identified as the most common form of abuse reported in relation to older people in the 2010 Irish prevalence study by the National Centre for the Protection of Older People (NCPOP UCD) - https://www.safeguardingireland.org/wp content/uploads/2020/02/National-Prevalence-Study-_FullReport2010.pdf and https://www.safeguardingireland.org/wp-content/uploads/2018/10/NCPOP-Older Adult-Financial-Exploitation-Measure-2014.pdf

[23] The absence, in Ireland, of Adult Safeguarding legislation compounds all of these issues. While recognising that retail banks have well developed processes, a person experiencing financial abuse may have several accounts with multiple regulated firms and be experiencing several types of abuse. When abuse/suspected abuse is discovered or disclosed to a

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availability and a resulting reliance by many on 'trusted' third parties (who may be the perpetrators of abuse) to facilitate their access to digital services they are unable to navigate without assistance.

21. Firms can cause harm intentionally both where they exploit consumer vulnerability for profit and also where they fail to adequately protect consumers in vulnerable circumstances from foreseeable harms.

Rethinking the Consumer Lifecycle

22. Against this background, Safeguarding Ireland views the 'consumer lifecycle' as described in 'Figure 1' of the Discussion Document, as being both overly simplistic and somewhat out-dated in the context of the CBI's 'modernising' ambition. In practice, early years engagement as 'consumers' may well be with an unregulated entity via the purchase or trading of 'tokens' for use in online games, moving on then to a payment app, even before opening a 'savings account'.
23. A significant number are likely to habitually avail of Buy Now Pay Later (BNPL) offerings for both day-to-day expenditure and larger purchases.
24. Instead of a personal loan for a car, some consumers may instead choose a 'mobility subscription service' combining car hire, insurance, tax, maintenance etc., into one monthly payment.
25. Through the subsequent course of the 'lifecycle' it is probable that a significant proportion of consumers will experience financial difficulties (for multiple reasons -illness, disability, relationship difficulties, bereavement, changes in the economic environment etc.) and related temporary or long-run difficulties in making payments on products falling under the Code[24].
26. 'Economic scarring[25]', has a lasting individual impact also, and can change the ways in which individuals interact with firms and products, and can have a lasting adverse impact on the nature of the relationship between a regulated firm and its customers, while also leaving some credit-excluded, unable to save or invest in a pension, or make plans for their future.
27. A sizeable proportion may not have fully paid off their mortgages on retirement[26]. Those accessing a mortgage will be older[27].

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regulated firm, a good practice approach would require, not just reporting but also data sharing across multiple firms and other agencies, to stop the abuse and to assist in the prosecution of the abuser. Again, guidance on data sharing in such cases in Ireland is lacking.

[24] At peak (2013), almost 13% of Irish PDH mortgages were in arrears.

[25] IMF Working Paper European Department 'Economic Scarring': Channels and Policy Implications Prepared by Nujin Suphaphiphat and Yu Shi. https://www.imf.org/en/Publications/WP/Issues/2022/12/09/Economic-Scarring-Channels-and-Policy-Implications-526841

[26] https://www.irishtimes.com/business/personal-finance/more-than-a-quarter-expect-to-continue-paying-mortgage-in-retirement-1.4704488

[27] https://www.cso.ie/en/releasesandpublications/fp/fp-cropp/characteristicsofresidentialpropertypurchasers2010-2021/ageofpurchasers/#:~:text=41%20for%20sole%20purchaser%20without,for%20joint%20purchaser%20without%20children

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28. With average life expectancy now at almost 83 years (and the highest amongst the EU27)[28], the 'lifecycle' does not stop at 'pension', and an aging population needs access to affordable financial products and services that optimise their quality of life during this phase.
29. In tandem, and throughout the lifecycle, there may be various points where many consumers will be, or may become, 'vulnerable' in different ways (illness, disability, cognitive decline, income shocks, bereavement etc.) and such vulnerabilities may have a 'cascading effect' into other aspects of their lives resulting in multiple vulnerabilities. Safeguarding Ireland suggests that the innovation and responsiveness necessary to meet the diverse needs of consumers and to ensure that they are adequately protected will only be achieved if this 'lifecycle' is revised and reframed as an aspect of revising the Code.

Redress

30. It is unclear at this juncture, what a customer experiencing risk, harm, and in need of additional support can expect when they engage to validate their rights through the key remediation routes – the complaints process, the Financial and Pension Services Ombudsman (FSPO)[29][30] and the CBI as Regulator, or the extent to which successful complaints result in the achievement of 'better outcomes' for 'vulnerable' customers in similar circumstances.
31. On a related point and noting the very protracted timelines for some remediation options, Safeguarding Ireland suggests that complaint handling and investigations are accelerated and prioritised where a consumer is 'older' old, has a life-limiting illness, is on a low income, has a complex health condition, and/ or has a mental health issue and these issues are made known to the firm or the FSPO.
32. Finally, the Discussion Document states, '*The Code has served consumers well'*, Safeguarding Ireland asks the CBI to consider whether this holds true for ***all*** consumers and whether it has been sufficiently robust in protecting those most at risk of harm or abuse.

Broad Theme A – Availability and Choice

Q.1 What are your views on availability and choice of financial services and products for consumers?

33. The current dynamic of significant change in the availability and choice of financial services and products, as well as in the entities that provide such products (banks, neo-banks (Revolut, N26, Bunq), non-bank entities, credit unions, An Post, Big Tech (Google, Amazon,

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[28] https://www.gov.ie/en/publication/fdc2a-health-in-ireland-key-trends-2022/

[29] Websites of main financial services providers in the UK as well as the UK's FSO, for example, https://www.financial-ombudsman.org.uk/accessibility/additional-support, provide guidance for consumers on supports provided to 'vulnerable consumers' when making a complaint, moreover there is a clear link between FSO findings in cases where the consumer was vulnerable and actions required of industry.

[30] In its recent submission on the Review of the Civil Legal Aid Scheme, Safeguarding Ireland suggested that, where a person is being informed of his/her right to appeal a decision of a body (for example in the case of appealing a decision of a financial institution to the Financial and Pension Services Ombudsman), there should be a further note to say that *'you may be entitled to obtain advice/legal representation from the Legal Aid Board depending on your financial situation.'*

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Apple, PayPal, etc.), FinTechs (Klarna, Humm)) is not unique to the Irish market[31]. Notwithstanding that Ireland is, *'considered a forerunner in the EU on the integration of digital technologies'*[32] the level and pace of change arguably have greater ramifications in a country that currently lacks adult safeguarding legislation and related statutory obligations, which further lacks a current financial inclusion strategy and, despite work over recent years to achieve changed culture[33], still has high levels of lack of trust in banking and financial services[34][35].

34. The CBI, in reviewing the Code should reflect on these factors, which combine to create an environment, where many consumers and, in particular, those who may be at a heightened risk of harm and abuse, face diminishing, rather than enhanced, levels of choice and availability when it comes to managing their own money and deciding which products or services, they will use[36].
35. It is acknowledged that Irish and EU consumers have a right to a 'Basic Payment Account'[37],(BPA) but there is no available evidence that its provision has been, as intended, a 'gateway' to other financial services. Moreover, as the number of firms operating in the Irish market and required to provide the BPA declines, and as Fin Tech evolves and new providers emerge, its limited ('Basic') nature, means it may no longer match the needs and expectations of the target group, who may migrate to other 'free/freemium' payment accounts, where possible. In addition, without related policy measures to facilitate access to credit and encourage savings, BPA's are unlikely to have the desired effect on financial inclusion[38].
36. Historically, and in particular, prior to the enactment of the ADMCA, many adults experiencing any difficulty in making decisions, were denied a right to decision-making in their own property and financial affairs, and consequently experienced extreme exclusion/lack of agency and exposure to abuse as others took control of their money or

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31 https://www.capgemini.com/wp-content/uploads/2022/03/Top-Trends-in-Retail-Banking_2022-1.pdf

32 See: Digital Economy and Society Index (DESI) 2022 https://ireland.representation.ec.europa.eu/strategy-and-priorities/key-eu-policies-ireland/europe-fit-digital-age_en#irelands-digital-ranking

33 https://www.irishbankingcultureboard.ie/ https://www.centralbank.ie/news-media/press-releases/speech-derville-rowland-changing-individual-behaviour-and-culture-in-financial-services-09-march-2022

34 https://www.irishbankingcultureboard.ie/wp-content/uploads/2022/07/2022-Public-Trust-in-Banking-Survey.pdf

35 According to the 2022 Edelman Trust Barometer - Trust in Financial Services survey https://www.edelman.com/sites/g/files/aatuss191/files/2022-03/2022%20Edelman%20Trust%20Barometer_Trust%20in%20Financial%20Services.pdf - Ireland ranks amongst those countries where a significant cohort distrust financial services.

36 See also, Safeguarding Ireland's submission to the Retail Banking Review https://www.gov.ie/pdf/?file=https://assets.gov.ie/244471/87a042bb-cc3a-4e6d-8b4a-8e3bc64709b9.pdf#page=null

37 The European Union issued a Payment Accounts Directive in 2014 requiring all member states to make available payment accounts with basic features. A payment account is: '*an account held in the name of one or more payment service users which is used for the execution of payment transactions'.*

38 'Should Basic Payment Accounts be extended?' http://oro.open.ac.uk/58023/3/58023.pdf

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were otherwise nominated to act on their behalf. This is set to change, and Safeguarding Ireland's view is that the ADMCA must be transformative for the way in which all consumers and in particular 'relevant' persons consume financial services. However, its ambition will be severely undermined if the market fails to respond by providing appropriate and accessible services and products and have processes in place to enable consumers to manage their financial affairs.

37. Safeguarding Ireland believes that Fin Tech and other innovations in financial services[39] have significant potential to support 'safeguarding by design', de-risk financial services, facilitate greater access, empower consumers, create efficiencies, and reduce costs for consumers in vulnerable circumstances/at risk or in need of additional support. However, currently, and without a dedicated policy/regulatory focus, it is possible that the opportunity to provide both needed choice and services that better cater to the needs of adults who may be at risk of harm or abuse may be missed.
38. By way of illustrative example, Safeguarding Ireland highlights the absence in Ireland of a uniformly recognised and accessible form of photographic identification which satisfies Anti-Money Laundering/ Countering the Financing of Terrorism (AML/CFT) compliance requirements. While Safeguarding Ireland understands that retail banks work to accommodate customers that lack/no longer have a passport or driving licence, a preliminary review of the onboarding process of the main digital banks suggests that none have any specific measures in place to work with such customers. Indicating that some of those consumers most often denied agency over their own financial affairs may continue to be excluded.
39. Sage Advocacy[40] in its 2020 report *'Managing Finances Supporting Adults Who May Be Vulnerable'* has identified the following needs which it describes as, '*to a greater or lesser extent, common to all adults who may be vulnerable to financial abuse, depending on the individual's own circumstances and decision-making capacity'.*
    - To be enabled to control their own money to the greatest extent possible (empowerment need)
    - To have ease of access to their own money (accessibility need)
    - To be able to use their own finances for their personal benefit in order to enrich their lives and reach their full potential (social and comfort need)
    - To have their money readily and openly identifiable as their own (accountability need)
    - To have their money kept safe (safeguarding need)
40. Safeguarding Ireland suggests that 'availability and choice of financial services and products' in the Irish market is assessed, not just in terms of the number or type of entities providing services to the population generally, but also in light of these criteria, and the extent to which incumbents and others offer services and products that meet these important support needs at an affordable cost.

[39] https://www.ucd.ie/research/impact/casestudies/protectingolderadultsagainstfinancialexploitation/

[40] https://www.sageadvocacy.ie/media/2424/managing-finances-march-2023.pdf

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Q.2 How important are new providers and new delivery channels to serving consumers' financial needs?

41. As outlined above, new delivery channels are, potentially, very important in serving the needs of consumers who may need additional support or are at risk of harm and abuse. The importance of 'new providers' to this cohort is currently difficult to judge. While Safeguarding Ireland has significant experience of working with individual retail banks, credit unions etc., and their representative bodies (the BPFI, the Irish Banking Culture Board, the ILCU etc.) it has not had similar levels of engagement with neo, or digital-only banks, or regulated firms in non-bank/payments sectors. The CBI may have access to demographic data on account holders across the market, but Safeguarding Ireland's perception is that currently, new providers and new delivery channels are not yet as attractive or as accessible to people who need additional support[41].
42. While knowledge, understanding and expertise in supporting customers with additional support needs or at risk of harm and abuse, has grown significantly across the Irish retail banking sector over the past several years (co-ordinated by the BPFI, (supported also by initiatives undertaken by the IBCB) and via the establishment of dedicated 'vulnerable customer units' in main retail banks), it is not evident that the same level of investment has occurred in other areas of consumer finance or that new providers are situated (or willing) to offer similar levels of support. Having conducted a preliminary review of the websites and related policies of some of the main digital-only providers it is very unclear, how a customer at risk of harm or abuse or identified as 'vulnerable' can access support or how, and under what authority, some entities are using customer data to identify 'vulnerable' customers.

Q.3 In implementing its consumer protection mandate, how should the Central Bank reflect the importance of competition in its regulatory approach?

43. Safeguarding Ireland is not positioned to comment on how the Central Bank should reflect the importance of competition in its regulatory approach to the implementation of the consumer protection mandate. However, in the context of adult safeguarding, we note that 'a level regulatory playing field' is desirable so that any consumer choosing to avail of a product or service can be assured that they will have appropriate protections, particularly when they are at heightened risk of harm or abuse. We note ''Recommendation 7 of the 'Report on the Retail Banking Review', *viz.*

> *'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. In advance of changes that may ultimately be made to the Consumer Protection Code, the Review Team recommends that all providers of retail banking products and services implement this recommendation on a voluntary basis'.*

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[41] For example, in comparison to Ulster Bank, KBC had a significantly lower percentage of customers classified/identified as 'vulnerable' see: https://www.kildarestreet.com/committees/?id=2022-10-19a.586&s=kbc . There are many possible reasons for this, which would be worthy of further analysis, but contributory factors are likely to include both an aging customer base and differences in business model.

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44. Safeguarding Ireland suggests that within the proposed 'customer charters', banks are required to specify how they will support customers in need of additional support and provide detail on their policies to safeguard against the financial abuse of adults who may be at risk of harm or abuse. The charters should also set out the detailed support arrangements provided for in the ADMCA to enable Bank personnel to recognise the legal concept of supported decision-making. Safeguarding Ireland would further suggest that this recommendation extends to neo/non-banks, credit unions and An Post/the post-office network and, in the context, of this submission, to ***all*** firms regulated via the Code.
45. The preparation of such customer charters and the creation of the related internal infrastructure to ensure commitments are delivered should not add to costs or create perceptions of additional 'regulatory burden'. Rather, it should create efficiencies by making it much easier for all customers to understand what standard of service is being offered to them, what additional supports they can expect if/when 'vulnerable'/ at risk and at what cost and encourage greater competition between providers based on these important 'consumer-centric' metrics. Moreover, such an approach would both reduce the number of complaints, the related costs of investigation and redress and the reputational damage to firms, sectors and markets.

Broad Theme B – Firms Acting in Consumers' Best Interests

Q.4 Do you agree that the Central Bank should develop guidance on what it means for a firm to act in the best interests of its customers?

46. Safeguarding Ireland recognises that the term 'best interests', is one which is rooted within the international discourse on consumer protection/financial regulation and already embedded in the 'OECD principles' and appears unlikely to change as part of this consultation. However, with regard to adults who may be a heightened risk of harm or abuse, a patronising, subjective and often self-interested interpretation of 'best interests' has been used to explain, excuse and perpetuate many forms of harm and abuse. Safeguarding Ireland believes that Ireland should lead the way in moving from this outmoded concept to one which emphasises the notion of a duty to provide a financial service taking account of customer circumstances.
47. In this section we note 'best interests' is variously described as being 'at the very core of', 'at the heart of,' 'at the centre', etc. The FCA, by contrast, has been explicit with its 'Consumer Duty', stating that, *'It will set higher and clearer standards of consumer protection across financial services and require firms to put their customers' needs **first**[42]'*.
48. While the development of guidance may be useful for firms and for consumers, what may be more important for firms and regulators is guidance on ***how*** to 'balance their shareholders' interests with the interests of their customers'. Our view is that firms, in *'maintaining both perspectives in equilibrium – by ensuring that business models and practices are centred on customers' interests while being sustainably profitable',* will struggle, and will always be

[42] https://www.fca.org.uk/news/press-releases/fca-consumer-duty-major-shift-financial-services

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weighted towards shareholders in the absence of rules or more concrete direction on the prioritisation of a duty of care to consumers.

Q.5 Does the suggested outline of 'customer best interest' guidance capture the essence of the obligation to act in customers' best interests? What other guidance would you suggest?

49. Safeguarding Ireland suggests that the situation of adults at risk of harm or abuse/or otherwise in need of additional support and their capacity to realise their own (self-determined) 'best interests' could be greatly enhanced by ensuring both as part of authorisation and thereafter, that regulated firms are required to comply with other relevant legislation as outlined (paragraph 11) to ensure that the 'holistic requirement' is achieved.
50. The threshold for 'information provided' remains too high i.e., '*how an ordinary, time-constrained consumer would reasonably have understood it'.* It fails to recognise that an 'ordinary' consumer's ability to engage with, or understand information, is not static and may change episodically (e.g., due to mental health difficulties), over time (cognitive decline) or as a result of life circumstances (financial difficulty, bereavement etc.) or even, for some, over the course of a given day. Moreover, a sizeable proportion of the population has an 'average reading age' described as 'at or below level 1 on a five-level literacy scale'. At this level a person may be unable to understand basic written information.[43]
51. Safeguarding Ireland also highlights responsibilities firms will have under the forthcoming '*Code of Practice for Financial Professionals and Financial Service Providers'*, which, we anticipate, will require firms *to 'provide appropriate supports to a relevant person to maximise their capacity to make the decision in question. This may include providing information relevant to the decision in an accessible format and taking account of the circumstances of the relevant person'.* (Source Decision Support Service, Draft Code of Practice for Financial Professionals and Financial Service Providers' 2022, p15). This requirement is relevant to other key themes in the Discussion Document i.e., 'Pricing', 'Informing Effectively', 'Vulnerability' and 'Financial Literacy'.
52. We suggest that the '*culture, strategy, and approach of the firm should centralise the interests of customers'* be amended as follows, '*the culture, strategy and approach of the firm should centralise the* ***best*** *interests of customers* ***and recognise that customers/consumers may need additional support or face a heightened risk of harm or abuse at various points across the lifecycle'.***
53. Safeguarding Ireland notes that as a component of the introduction of the 'Consumer Duty' the FCA has required firms to appoint a 'Consumer Duty Champion'[44]' (ideally an Independent Non-Executive Director (NED)), to support the Chair and CEO in raising the Consumer Duty regularly in all relevant discussions, as well as challenging the firm's governing body/management on how it is embedding the Duty and focusing on consumer

[43] https://www.nala.ie/literacy-and-numeracy-in-ireland/

[44] https://www.fca.org.uk/publication/finalised-guidance/fg22-5.pdf (Chapter 10)

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outcomes[45]). An analogous requirement, given the CBI's objectives, might be to have a 'Consumers' Champion', which would further embed the goal that, *'Treating consumers fairly should be an integral part of the good governance and conduct within all firms.'*

Theme 1 – Innovation and Disruption

Q.6 Do you agree with our proposed approach to enhancing our Innovation Hub?

54. Safeguarding Ireland suggests that the CBI's proposed enhancement of its 'Innovation Hub' is a necessary but insufficient step in ensuring that the level and type of innovation needed to ensure that the needs of consumers who have been excluded or under-served by Irish financial services providers are addressed. While recognising that the question is posed in the context of the CBI's review of the Code, it is evident from a review of the major Irish policy initiatives (outlined at paragraph 10 above) that the needs of consumers who have been excluded or who are at risk of harm or abuse have not featured in the Irish innovation 'ecosystem'.
55. This contrasts with the focus in other jurisdictions[46] where there has been a deliberate and proactive approach by regulators, policymakers, and representative bodies to involving and including civil society in a structured way in the piloting of innovative solutions and approaches to responding to unmet need or better catering for underserved populations.
56. Good practice approaches to innovation projects usually involve working with consumers to understand the problem ('discovery'), co-creating solutions with them ('alpha') and trialling at increasing scale ('beta'), before going live. Safeguarding Ireland therefore suggests that the CBI's proposal that, '*it would be useful to enhance the Hub so that it becomes an active focal point for productive exchange between innovators and the financial regulatory system. On the basis that innovation brings many potential consumer benefits and that the Central Bank has a deep bank of knowledge, insight and experience into the functioning of the financial system and its regulation, there is an opportunity for us to enhance the positive impact that we could have in this area',* could be further enhanced by broadening out the engagement to include 'vulnerable' consumers, relevant civil society organisations (including, for example, members of Safeguarding Irelands National Safeguarding Advisory Committee/the State Payments Group[47]), as well as academics with an ongoing research interest in FinTech and related innovation[48].

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46 See examples at Appendix 1.

[47] With some frequency the State Payments Group identifies challenges/opportunities facing adults in safely making and receiving payments/managing their money (e.g., safe and trusted third-party oversight for the management of a payment account, potential to digitalise aspects of the Patients Private Property account, potential for 'deduction at source' for payments for nursing home care or other community supports) but lacks opportunities to share this information with the FinTech/innovation community. It is also recognised that without a policy or regulatory impetus, commercial entities may have little interest in/appetite for innovating to address these issues.

[48] *'Other regulators, such as, Malaysia (Digital Finance Innovation Hub) and Thailand (OJK Infinity), have set up innovation hubs with players beyond the financial sector that not only provide regulatory clarity but also enable collaboration among service providers, including financial institutions, fintech start-ups, and academics.*

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57. While acknowledging that it is not a stated objective, there is no evidence that the Innovation Hub, or any other policy or regulatory intervention related to innovation, has yet generated necessary responsiveness to fulfilling the needs of adults who are excluded, in need of additional support, or at risk of harm or abuse in their use of financial services[49].
58. Finally, the 'Innovation Hub' does not exist in a vacuum, and it is important that related policy development is likewise inclusive of a more diverse stakeholder grouping.

Examples of relevant past projects across each FCA Sandbox cohort 2016-2022

- Amplified Global Limited Amplified Global uses AI-based technology to assess intelligibility, and help companies communicate more simply with their customers, so their customers can understand and act on what they have read. Amplified will test how simplified terms and regulated notices from lenders can improve comprehension, and lead to improved consumer outcomes.
- Fair4All Finance Fair4All Finance is working with organisations to pilot the No interest Loan Scheme (NILS) to customers in vulnerable circumstances. It provides an option to customers who have a need but are unable to access or afford existing forms of credit, and who can afford to repay the capital of the loan.
- The Investing and Saving Alliance TISA's federated Digital ID project - Enabling easy access to all digital services by creating a single, reusable, secure Digital ID that meets all relevant regulatory requirements (KYC and AML) and is positioned to consumers, as the prime means for securely identifying themselves to UK Financial Services.
- HUB Financial Solutions - A low cost automated, initial, and ongoing advice service developed for people approaching and in retirement with modest pension savings.
- Open Banking Implementation Entity A payment method enabling consumers to securely and conveniently make multiple payments of varying amounts based on rules and parameters the consumer establishes.
- Post Office An app which builds on the development of digital identities for the GOV.UK Verify service, allowing users to create a single digital identity to give them access to both government services and financial services products. The test will aim to show that it gives institutions a high degree of assurance that new customers are who they say they are, and that it removes the burden for users to provide evidence of identity each time they want to access a new product or service.
- Quo Money - An app-based service that aims to promote money management skills among vulnerable consumers. It uses Open Banking to generate a personalised financial plan and prompts the consumer to adhere to it.

Figure 1: Examples of relevant innovation – FCA Sandbox 2016-2022

Q.7 What more should be done to support innovation while ensuring consumers' best interests are protected?

59. While not falling within the ambit of the Code, or indeed the control of the CBI, it is evident that Ireland is very much behind other countries in innovating in response to the needs of a

https://documents1.worldbank.org/curated/en/912001605241080935/pdf/Global-Experiences-from-Regulatory-Sandboxes.pdf

[49] It is noted, in the World Banks' study (cited above), that some regulatory sandboxes have a 'financial inclusion' objective – which is in some cases aligned with national financial inclusion strategies.

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diverse consumer base. As outlined above, partnerships, dialogue, and sharing of diverse experience and perspectives are all central to ensuring that innovation matches and meets the real needs of all consumers. There is currently no structured forum for such engagement.

60. The absence in Ireland of funding for independent research or a related national centre of expertise undermines the goal of ensuring innovation supports the goal of protecting consumers' best interests[50].

61. It is also important that civil society/consumer advocacy groups have the necessary expertise to independently challenge policymakers and regulators on all aspects of consumer protection, including innovation, and, in the case of those providing advocacy support to individual consumers, the expertise to identify potential risks or harms as new/innovative products are introduced and consumed. Currently, there is a potentially dangerous 'expertise gap' emerging between firms/innovators and civil society organisations, with few, if any, civil society organisations in the State positioned to fully keep pace with the development (positive and negative) of financial services innovation/Fin Tech and related regulatory issues/impacts on adults who may be at risk of harm or abuse.
62. Artificial Intelligence (AI) and machine learning have significant potential to reduce risk but there is also a need for so-called 'Human-in-the-loop' (HITL) approaches that combine AI and human intelligence in the development, design and delivery of new processes, products and services. Such approaches must also involve consumers in need of additional support or at risk of harm and abuse in their use of financial services i.e., 'experts by experience'.

Q.8 How can regulators ensure that neither firms currently in the market, nor new entrants, have unfair advantages which could be a barrier to fair competition?

63. The provision of additional support to those consumers who need it could, perhaps, be perceived (by some firms) as an unfair 'disadvantage' and it is obvious that the demographic of some incumbent firms' customer/client base will necessarily require a greater level of responsiveness. It is therefore important that new entrants are required both to equitably facilitate access and provide similar levels of support to consumers who need such support or otherwise face a heightened risk of harm or abuse. (As previously outlined, it is not evident that some online-only banks can facilitate the on-boarding of all customers. This initial barrier to access and the lack of an obvious regulatory impetus to overcome it, could be viewed as providing a *de facto* 'advantage' to such firms).
64. Providing both a physical and a digital infrastructure in addition to an infrastructure to support both cash and online services for consumers may create an additional overhead for certain firms. Yet many consumers both need and value face-to-face support and the opportunity to transact offline, using cash. This is especially true as new digital offerings have yet to adequately cater to the diverse and nuanced needs of all consumers and some

[50] See for example: https://smartdatafoundry.com/
and relevant recent research https://smartdatafoundry.com/news/older-workers-later-lives-report
https://cms.smartdatafoundry.com/wp-content/uploads/2022/06/Guiding-Practitioners-for-Managing-Fair-AI.pdf
https://smartdatafoundry.com/news/leading-edge-synthetic-data-for-fca-psr-app-fraud-techsprint

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consumers have neither the desire nor the ability to utilise online-only offerings not sufficiently attenuated to their needs[51].

65. Obstructive processes, administrative 'sludge', complex communications, jargon and fee structure can combine to create a landscape where it is possible for some firms to 'cherry-pick' their customers, focusing on only one market segment to the exclusion[52] and detriment of other consumers who have a need for, and a right to, accessible financial services.
66. A further important distinction is between new entrants (FinTechs) that use digital technology to challenge or partner with incumbent financial service providers with specific financial solutions and 'BigTech' companies that leverage data and network advantages gained in nonfinancial service provision to enter the financial sector[53].
67. There can be a 'lag' between the point at which a new entrant enters the market and gains market share and the point at which regulation 'catches up' (BNPL is an example). There is significant potential for harm to occur during that period, moreover, the scope always exists for a customer to be the victim of financial and related abuses while using an unregulated product and, in the absence of Adult Safeguarding legislation, there is no explicit requirement for a provider to take action to stop such harm[54].
68. With regard to 'BigTech', it is noted that many significant firms are registered with the Central Bank and the Code is applicable (at least in part) to them.
69. Regulatory constraints in addressing harms that may occur outside the perimeter are common to other jurisdictions, and again Safeguarding Ireland suggest that co-operative work with other regulators, especially the DPC is needed. Safeguarding Ireland again emphasise the importance of compliance with other relevant legislation in minimising the potential for harm by firms outside the perimeter.
70. Against this background, it could be argued that incumbents, and in particular retail banks, are at an 'unfair disadvantage' compared to many new entrants and the question perhaps

[51] It is possible that 'Synch' by adding an additional instant mobile payments layer to the offerings provided by its shareholder banks, may offer a fuller solution for consumers with 'hybrid' needs.

[52] 'Confusion exclusion', is a term sometimes used to describe self-exclusion, when customers find it too complex to use a product or service.

[53] https://www.esma.europa.eu/sites/default/files/trv_2020_1-bigtech_implications_for_the_financial_sector.pdf
BigTechs are described as '*entering the market with distinct advantages such as having a strong financial position, access to low-cost capital, an established global user base and the technological expertise and data to tailor their offerings to customer preferences. They therefore have the potential to rapidly gain a large market share in various financial services'.*

[54] The Non-Fatal Offences Against The Person Act 1997, Criminal Justice (Theft and Fraud Offences) Act 2001, (while there are similarities and overlaps between fraud and financial abuse – some literature suggests that a key differentiating factor is that fraud is perpetrated by strangers while, in cases of financial abuse, the perpetrators are often "trusted others" i.e., relatives and close friends. (See: FRAUD VS. FINANCIAL ABUSE: THE ETIOLOGY OF TWO TYPES OF ELDER FINANCIAL EXPLOITATION, *The Gerontologist*, Volume 55, Issue Suppl_2, November 2015, Pages 497–498, https://doi.org/10.1093/geront/gnv215.05, https://www.napsa-now.org/wp-content/uploads/2012/06/Fraud-versus-financial-abuse-and-the-influence-of-social-relationships.pdf), The Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012, and the Domestic Violence Act 2018, can be helpful, however they lack a 'safeguarding lens'. https://www.safeguardingireland.org/wp-content/uploads/2021/06/PTRC-WEAAD-TCD-June-2021.pdf Likewise, a 'shared fraud database' would assist but must also include possible financial abuse., factoring in the 'social' dimension of such abuse. https://www.independent.ie/business/irish/banks-warn-that-implementation-of-fraud-database-may-be-delayed-41461546.html

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needs to be framed differently, i.e., *'how can regulators ensure that existing and new entrants, regardless of business model, provide a uniformly high level of access, safety, and support to all consumers?'*. Safeguarding Ireland, suggests that, as part of the authorisation process ensuring all players comply fully with the UNCRPD, the European Accessibility Act, Irish equality legislation, the ADMCA and the GDPR would be a significant step in both promoting best interests and in reducing unfair advantages/disadvantages.

71. As previously highlighted, the requirement for ***all*** regulated firms (not just banks) to publish a 'customer charter' would provide greater transparency and would assist in the achievement of this aim.

Theme 2 – Digitalisation

Q.9 Do you agree with our analysis of the benefits, challenges and risks around digitalisation in the area of financial services? What are the key issues for you?

72. While in agreement with the high-level analysis of the benefits, challenges and risks in the Discussion Document, Safeguarding Ireland would caution that the list is far from exhaustive and suggest that such is the potential impact of digitalisation on the financial lives of consumers that the issue merits further examination as a discrete component of the Code Review (see for example: https://www.centralbank.ie/docs/default-source/publications/discussion-papers/discussion-paper-7/discussion-paper-7-digitalisation-and-consumer-protection-code.pdf (DP7**)** and the related stakeholder responses to that consultation process).
73. Digitalisation cannot be viewed in isolation from debates about the decline in 'access to cash' which, by definition, increasingly requires that consumers have access to a bank account as well as the ability to understand and use related technologies autonomously and safely.
74. Safeguarding Ireland's view is that digitalisation has the potential to deliver very significant benefits for adults who have been previously excluded or denied agency over their financial affairs. However, there are also risks, not least, that without a policy or regulatory focus and a safeguarding lens being applied, patterns of financial exclusion will continue.
75. A key concern for adults in need of additional support or at risk of harm or abuse with regard to Big Tech and Big Data in particular, relates to the respective roles and responsibilities of main regulators and in particular, the Offices of the Data Protection Commission and the CBI. DP7 noted that *'while there is a close link between data protection and personal privacy rules and many of the issues discussed in this Paper, data protection legislation is the responsibility of the Data Protection Commissioner and, consequently, is outside the scope of this Discussion Paper'*. This point is reiterated in the current Discussion Paper, *'The Central Bank is not the regulator for the gathering, retention or use of personal data, but the availability of Big Data does raise questions of how to secure the best interests of consumers when financial services firms are using such data.* However, it is clear from responses to DP7 that stakeholders wanted to see greater alignment between CBI and the Office of the Data Protection Commissioner as financial services and personal data become further entwined.
76. Furthermore, it is noted that other regulators, (i.e., the Broadcasting Authority of Ireland (BAI), Competition and Consumer Protection Commission (CCPC), Commission for

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Communications Regulation (ComReg) and the Data Protection Commission (DPC), in welcoming the publication of the National Digital Strategy highlighted the fact that *'Regulation in the digital environment transcends traditional sectoral regulation'*[55] .

77. A 'key issue' for Safeguarding Ireland (and adults at risk of harm or abuse) is therefore, to better understand which regulator is ultimately responsible for consumer protection and empowerment in the era of digital finance (while noting that all have a safeguarding responsibility). Aligned to this, Safeguarding Ireland would wish to see greater harmonisation of approach between regulators to streamline and simplify the process for any consumer seeking redress or remedy.
78. On a related point, Safeguarding Ireland notes the proliferation of 'advice' on money/financial matters on Irish/international social media sites. Given that increasingly, 'reliable' and 'independent/impartial' content on money and personal finance is behind 'pay-walls' there is a risk that consumers at risk of harm and abuse are exposed to very poor 'advice', or deliberate and targeted misinformation about regulators/regulation and regulated firms /products or the merits of unregulated products such as 'crypto'. The recent establishment of a Working Group to develop a National Counter Disinformation Strategy is a potentially important development.
79. The CBI may need to consider how, if at all, it can address this issue, whether Section 4 of the current Code needs to be revisited and what else it can do to delineate and improve understanding about the difference between 'guidance'/'guidance services' and regulated 'advice'.
80. In its submission to the CBI's Consumer Outlook Report (2022), Safeguarding Ireland highlighted weaknesses in the design of, and dependence on, underlying technologies, (e.g., the use of smartphones and apps to deliver financial services), that can give rise to opportunities for abusers to coercively control. Such weaknesses emerge because there can be insufficient consideration of the diversity of the user base in product design. As a result, so-called 'unhappy paths[56]' are not fully explored as part of the design of the customer journey. We further noted that it is important that firms are aware that a lack of technical confidence can be weaponised as part of an abusive relationship. This risk is compounded by low levels of awareness or understanding of coercive control generally[57] which apply to both consumers and providers/those designing digitalised financial products.

Q.10 How do you think the personalisation and individual-targeting of ads can be made compatible with the requirement for firms to act in the best interests of customers?

81. Personalisation and targeting of ads can only be compatible with the requirement for firms to act in the 'best interests of customers' if that ***is*** the primary driver of such advertising.

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[55] https://dataprotection.ie/en/news-media/latest-news/regulators-welcome-national-digital-strategy

[56] https://www.ibm.com/blogs/policy/wp-content/uploads/2020/05/CoerciveControlResistantDesign.pdf

[57] https://www.safeguardingireland.org/wp-content/uploads/2021/05/Coercive-Control-presentation-FINAL.pdf

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However, once again there are complexities involved for consumers in understanding what is permissible, how their data is being used and where to seek redress.[58].

82. Although sometimes referred to as 'surveillance advertising' there is significant scope for personalisation and targeted advertising (ethical Ad Tech) to benefit consumers and in particular those that may be at risk of harm or abuse, by reducing 'transaction costs', encouraging proactivity in financial management/planning, simplifying product choice/assisting in determining which products and services will provide added-value and 'cutting-through' the amount of information they would be otherwise required to consume and analyse in order to choose between products/services
83. There is also however the risk of 'missing out' on potentially valuable products and services based on past engagement or inaccurate 'inferred'[59] preferences, digital exclusion or due to the marketing/advertising approach or relative buying powers of different firms. There are also risks related to digital market manipulation that exploits consumer weaknesses[60].
84. If profit-maximisation is/continues to be, a primary driver for regulated/unregulated firms, Safeguarding Ireland can expect to see a continued mismatch between consumers and products/services that genuinely meet their best interests and exploitation of consumer vulnerabilities through practices such as 'predatory profiling'. 'Out of Control' describes an *'AdTech industry fuelled by collecting as much data as possible in order to combine, analyse and use it to influence behaviour. The cost of this systemic oversharing and overcollection seems to be that personal data is being broadcast at every turn, leaving consumers with little transparency or insight into what data is being collected, how it is used, and very little or no control over their personal data'*.
85. As previously highlighted, limiting the potential harms that can be caused by such practices may require increased cooperation between the CBI and other regulators, i.e., the CCPC, the ASAI and the DPC, as well as the application of other regulatory and legislative tools to

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[58] See https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662913/IPOL_STU(2021)662913_EN.pdf This report notes that '*The self-regulatory procedure under the ASAI Code provides quicker relief than the procedure under the CPA, with the CCPC, and this dual system could be considered a 'best practice'* . (However, with regard to 'Financial services and Products' section 13 of the ASAI Code states: '*The Central Bank of Ireland has primary and statutory responsibility for the regulation of advertising for Financial Services and Products, and their requirements are set out in the Consumer Protection Code 2012. All marketing communications are, however, also subject to the rules of the ASAI Code and the ASAI will, where appropriate, examine complaints submitted that refer, in general or in particular, to the provisions of the ASAI Code. If, however, the ASAI considers that because of the particular provisions of the Central Bank Code or the substance of the complaint that the matter should more properly be dealt with by the Central Bank, complainants will be advised accordingly*).
See also, a review undertaken by the Norwegian Consumer Council (NCC), https://storage02.forbrukerradet.no/media/2020/01/2020-01-14-out-of-control-final-version.pdf Both studies, demonstrate the complexity of the issues involved.

[59] Such inferred data may include: income, health status, risk profile, responsiveness to ads, consumer loyalty, political ideology, behavioural bias, hobbies. OECD, '*Personalised Pricing in the Digital Era Background Note by the Secretariat* 28, November 2018 https://www.oecd.org/competition/personalised-pricing-in-the-digital-era.htm

[60] https://www.theguardian.com/money/2022/jan/29/buy-now-pay-later-grocery-schemes-are-a-debt-trap-for-struggling-families (BNPL providers used Facebook advertising for grocery shopping targeting low-income households during the cost-of-living crisis).

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achieve positive change. Once again, from the consumer protection perspective, the goal should be to ensure that all consumers, and in particular those who face heightened risk of harm or abuse, are protected.

Theme 3 – Unregulated Activities

Q.11 The Code requires regulated firms to provide a statement indicating that they are 'regulated by the Central Bank'. Do you think this is useful for consumers?

86. This statement is important and useful for consumers and obviously assists consumers in distinguishing between firms with differing regulatory statuses[61]. However, there are 3 areas where the value of this statement in consumer protection terms could be enhanced.
87. First, and as outlined previously (paragraph 15), Safeguarding Ireland believes that a consumer guide to the Code is essential so that consumers can readily locate their rights when engaging with a firm regulated under the Code and appreciate in meaningful terms what that statement means for them.
88. Second, the CBI may need to be clearer in describing to consumers, in plain terms, both the extent and limitations its own regulatory powers. The CBI could be stronger in describing in terms that can be readily understood by consumers how its prudential approach serves to protect consumers as well as its enforcement powers under the administrative sanctions' regime.
89. With regard to the protection of 'vulnerable customers' as defined under the current Code[62], Safeguarding Ireland notes that the issue seems to get very limited regulatory focus and it would be beneficial to see, perhaps by way of a 'themed inspection', and in advance of the publication of the revised Code, how firms have responded to date. (See below under 'Theme 6 Vulnerability').
90. Safeguarding Ireland notes, as a positive development, the specific inclusion of *'whether any loss or detriment has affected or may affect vulnerable persons'* under section 48 ('Considerations relevant to imposition of sanctions') of the Central Bank (Individual Accountability Framework) Act, 2023. However, Safeguarding Ireland is disappointed that this important feature of the Act receives no attention in the draft Regulations or Guidance, and will make a separate submission to CP143[63] on this point.
91. Third, the CBI, in common with other regulators, is challenged with dealing promptly and effectively with unauthorised firms[64]. While it is evident that publishing notices with regard to unauthorised firms is an ongoing activity for the CBI, it is not clear whether the list it publishes is exhaustive – i.e. whether the CBI is effective in identifying all (or a high

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[61] https://www.centralbank.ie/consumer-hub/explainers/animated-explainer-series/explainer-what-does-the-phrase-regulated-by-the-central-bank-of-ireland-mean. The content of this 'explainer' is useful but we suggest does not go far enough in explaining what the term means, in practice, for consumers.

[62] https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/brokers-retail-intermediaries/guidance/updated-2012-code-guidance-document.pdf?sfvrsn=28d0d11d_8 (p15).

[63] https://www.centralbank.ie/docs/default-source/publications/consultation-papers/cp153/cp153---enhanced-governance-performance-and-accountability-in-financial-services.pdf?sfvrsn=142a991d_2

[64] https://www.centralbank.ie/regulation/how-we-regulate/authorisation/unauthorised-firms/search-unauthorised-firms

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percentage of) the relevant unauthorised activity, it is further not clear whether many consumers are affected by such scams, what the profile of such consumers is or what the record of prosecution is.

92. For the statement 'regulated by the Central Bank' to have meaning, there must be harsh sanctions for those firms/individuals who fraudulently purport to be authorised and those that clone the details of authorised and regulated firms. In this regard, we wonder how often consumers do, in fact, check the relevant registers or contact the CBI to enquire as to the regulatory status of firms and what powers the CBI has or approach it adopts in 'stopping the harm' over and above publishing notices. This point is of particular relevance to Safeguarding Ireland in the context that its focus is on adults who may be more at risk to harm or abuse.

Q.12 How can the difference between regulated and unregulated activities be made clearer for consumers?

93. If the term 'regulated by the Central Bank of Ireland' provides a level of assurance to consumers, the converse is also true – i.e., that an activity that is not, or is not required to be, regulated does not carry the same level of assurance/protection. While this status does not immediately signal heightened risk, it is nonetheless important for consumers to understand the term and be readily able to identify activities that are regulated and those that are not. It is likely that many consumers would not be able to readily discern the difference if, for example, asked to choose between items from a list (without the regulatory banner). In this context, the CBI together with the CCPC, (as part of the latter's education remit) should possibly play a greater role in providing and disseminating information on the types of services/products that are ***not*** regulated[65]. This is particularly the case where an unregulated service/or product is associated with higher risk of harm or seeks to target consumers who may be vulnerable to harm or abuse.

Q.13 Should there be additional obligations on regulated firms when they undertake unregulated activities?

94. Safeguarding Ireland's view is that this is essential. A consumer may have engaged with confidence and trust with a regulated firm for many years and may not fully appreciate the potential for increased risk when that firm engages in an unregulated activity. In effect in such cases, firms may be 'leveraging' their regulated status to confer an illusion of status and standing to unregulated activities (the so called 'halo-effect'). Safeguarding Ireland's view is that regulated firms should adopt and demonstrate a uniform approach to the achievement of consumers' best interests regardless of the regulatory status of the activity. Again, full compliance with other relevant legislation would support the achievement of this objective.

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[65] See for example: https://www.centralbank.ie/news-media/press-releases/central-bank-warning-on-investing-in-crypto-assets-22-march-2022 and https://www.centralbank.ie/news-media/press-releases/central-bank-warning-on-investing-in-crypto-assets-22-march-2022

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Theme 4 – Pricing Matters

Q.14 What can firms do to improve transparency of pricing for consumers?

95. Issues of access, availability, value and pricing should not be considered separately. As already proposed, the requirement for all providers, to have a 'customer charter' setting out service standards would improve transparency and assist consumers to better understand the standard of service they will receive relative to the price.

96. While recognising that the functionality is only accessible online and may therefore exclude some cohorts, the CCPC's 'price comparison tools' are a useful aid in improving price transparency. Consideration could be given to further simplifying the information i.e., providing it in plain language, adding additional information on service standards and broadening the range of products, to include other products covered by the Code, to provide a single, fully independent and non-commercial 'meta-site' in order to improve pricing transparency for consumers on a fuller range of activities covered by the Code.

Q.15 In relation to pricing, are there examples of firms using unfair practices to take advantage of customer vulnerabilities?

97. Safeguarding Ireland is not aware of any specific unfair pricing practices used by firms to take advantage of customer vulnerabilities. Practices such as, for example, providing 'online only' discounts for insurance renewal, would appear to be unfair to consumers lacking digital capability. However, and as already suggested, an inspection by the CBI on the overall approach of regulated firms in supporting 'vulnerable customers' in line with the definition in the current Code would provide a basis for better understanding how vulnerable cohorts are supported by firms and whether they are adversely impacted by 'unfair practices' related to pricing.

Theme 5 – Informing Effectively

Q.16 How can regulation improve the effectiveness of information disclosure to consumers?

98. Safeguarding Ireland is in agreement with the CBI that, '*When firms are providing information to consumers, to enable them make informed choices, the obligation should be less about 'providing information' and more about 'seeking to support understanding' by the consumer of the financial product or service'*. This approach is compatible with Principle 2 'Support the relevant person to make decisions' of the ADMCA, i.e., '*Support the relevant person as much as possible to make their own decision on the issue in question before considering them unable to make this decision at the time the decision needs to be made*.'
99. Safeguarding Ireland therefore points out that, in complying with their legal obligations under the ADMCA, firms will improve the effectiveness of information disclosure for all consumers.
100. While recognising that information disclosures may vary in content across firms and products, a further goal should be to harmonise and standardise disclosures to the greatest degree possible across regulated firms and to adopt a common and accessible approach to

the production of information based on the principles of 'universal design', such as the Fairer Finance 'Clear and Simple Mark' or the 'plain numbers mark'[66] [67][68].

Q.17 How can firms better support consumers' understanding – can technology play a role?

101. There is a strong emphasis on financial education/financial literacy in European policy and in aspects of Irish policy, however given increased complexity it is likely to be insufficient on its own. The CBI refer to firms' control over the 'choice architecture' in the Discussion Paper and Safeguarding Ireland suggests that investment in 'nudging for good' may be particularly beneficial for some consumers[69] but needs to be underpinned by more research into the behaviours of consumers who may be 'vulnerable'[70]. Designing information and other supports based on a deeper understanding of consumer behaviours, rather than traditional risk factors or broad socio-demographic characteristics, has been shown to give rise to a 'second order benefit', or a universal benefit for all consumers, not just those who are 'vulnerable'[71.]

102. Technology has a very significant role to play in enhancing consumers' understanding and AI may assist firms and consumers to identify risks and facilitate many consumers in making better choices/facilitate improved outcomes. There are obvious roles for AI in personalisation of information and in determining which aspects of information disclosure some segments struggle to understand, as well as generating information, graphics and other material that will demonstrably improve individual understanding.

103. However, given its relative 'newness', at present and without full confidence that AI deployment is unbiased and ethical and (as of yet), a regulatory track-record of ensuring that is the case, Safeguarding Ireland is of the view that there must be limitations on the extent to which technology is relied upon to improve consumer understanding. The current 'wave'

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[66] The plain numbers approach 'doubles the number of customers who understand what the organisation is communicating', https://plainnumbers.org.uk/

[67] https://www.fairerfinance.com/business/ribbons-awards/fairer-finance-clear-simple-mark

[68] https://www.fairerfinance.com/insights/blog/the-fairer-finance-guide-to-clear-design

[69] 'Do Nudges Reduce Disparities? Choice Architecture Compensates for Low Consumer Knowledge', https://journals.sagepub.com/doi/10.1177/0022242921993186

[70] "Behavioural Economics and Vulnerable Consumers": A Summary of Evidence, Written by Dr. Pete Lunn and Dr. Sean Lyons, Economic and Social Research Institute (ESRI) for the Communications Consumer Panel (2010) https://www.communicationsconsumerpanel.org.uk/Behavioural%20Economics%20and%20Vulnerable%20Consumers%20final%20report%20correct%20date.pdf

[71] For example, Capital One UK, has 5 principles it originally developed for customers with mental health difficulties and now applies to all of its customers, they are 'Confidence and trust', 'Accessible information', 'Clear choices', 'Easy journey',' Specialised support', stating that, '*If everything we do follows these five principles, we're making the experience better (or simpler) for all of our customers.*
https://www.moneyadvicetrust.org/media/documents/100_01466_VULNERABILITY_HANDBOOK_EXTERNAL_015.pdf

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of AI has been built on existing data which, in Ireland and elsewhere, may exclude many people or provide only a very limited insight to their needs and behaviours as consumers and is therefore inherently biased.

Q.18 Does the way in which firms approach disclosure in respect of mortgage products need enhancing? If so, how? - taking account of the wide variety of features of mortgage products, and borrowers' different circumstances and needs.

104. Safeguarding Ireland does not have a view on disclosure in relation to mortgage products generally. However, it notes that some related products (equity release/home reversion) are specifically designed for older consumers who may be financially vulnerable and also, potentially, under duress, or may, at a later stage, have adverse consequences in relation to applications under the Nursing Home Support Scheme. These factors need to be taken into account by providers in the development, sale and marketing of the products as well as in direct engagement with consumers. [72].

Theme 6 – Vulnerability

Q.19 Given that vulnerability should be considered more as a spectrum of risk than a binary distinction, how should firms' duty to act in their customers' best interests reflect this?

105. The OECD's intention in respect of vulnerability is described in 'footnote 66' of the Discussion Document, i.e., *'The revised principle 6 will be renamed "Equitable and Fair Treatment of Consumers including those who may be Vulnerable" and the text will be expanded to include: "Special attention should be paid to the treatment of consumers who may be experiencing vulnerability or financial hardship. Approaches may take into account that consumer vulnerability can take different forms and be applicable in different circumstances, and may be due to a combination of personal characteristics, economic situations and market conditions."*

106. While, as previously noted, Safeguarding Ireland understands the language contained within the OECD framework is already embedded in consumer protection frameworks internationally, terminology and definitional clarity across policy domains/sectors /institutions/regulators are a challenge. The term 'vulnerable' can be viewed as stigmatising[73]. 'Labelling' can also be problematic, particularly when it is reinforced by biases in the use of data and analysis. Many consumers who may be exposed to heightened risk or experience poorer outcomes do not, and should not be required to, self-identify as 'vulnerable' and are thus unlikely to let a firm know they are 'vulnerable' in order to access additional support. Some Irish banks are already using other terminology such as 'customers in need of additional support', suggesting greater proactivity and responsiveness than merely paying 'special attention' to consumers experiencing

[72] https://www.safeguardingireland.org/wp-content/uploads/2021/06/Equity-Release-Schemes-FINAL.pdf

[73] *Mazars*, Phelan, A., O'Donnell, D. and Stokes, D. (2020) 'Evidence review to inform development of a national policy on *adult safeguarding* in the health and social care sector. Department of Health (July 2020).

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vulnerability etc. Although perhaps inferred by the use of the term 'markets', the proposed revised OECD principle, should explicitly recognise that vulnerability can also arise from poorly designed products or services and weak processes and a failure to comply with other relevant legislation. (It follows that consumer resilience is enhanced and the need for 'additional support' declines when firms actively consider the potential for harm and detriment from product inception and throughout the 'customer journey', over the entirety of the 'lifecycle', and this focus is a core component of firms' culture).

107. The CBI has recognised that, *'Vulnerable consumers are more likely to suffer detriment or harm'.* In recognising 'vulnerability' there must always be equal recognition of the additional risk of harm and abuse it gives rise to, consequently 'additional supports' are required to improve consumer resilience in the context of risk[74].

108. Safeguarding Ireland agrees that vulnerability is not 'binary'. 'Vulnerability theory'[75]/vulnerability analysis[76] propose that while vulnerability is universal, some people are more/less resilient or more/less likely to experience harm than others, requiring a more responsive State and more 'positive' equality.

109. Aligned with this, there is also a range of ways in which vulnerability manifests itself when consumers engage with financial services. The following 'vulnerabilities' (together with ways in which firms and markets can address them), have been proposed in a 'taxonomy of vulnerability'[77] and many have been referred to in other responses to this submission.

- information vulnerability (asymmetries and overload),
- pressure vulnerability (making decisions under pressure),
- supply vulnerability (lack of choice for some, even when there are many buyers and sellers),
- redress vulnerability (greater difficulties in securing redress), and
- impact vulnerability – (the relative 'cost' of detriment is greater for groups on lower incomes).

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[74] Safeguarding Ireland's approach is to consider the factors (one or multiple) that give rise to additional challenges or risks in using financial services including: Changes in decision-making capacity as a result of, for example, an intellectual disability, dementia, an acquired brain injury; Mental health difficulties; An inability to communicate effectively; Lack of family and community or social supports; Inability to access financial services that meet their needs(including mobility challenges and digital exclusion);Frailty associated with the ageing process; Abusive practices, including cases where a third party has taken control of a person's finances..

[75] Fineman, M.A., 2008. *The vulnerable subject: Anchoring equality in the human condition. Yale JL & Feminism, 20, p.1.* https://heinonline.org/HOL/LandingPage?handle=hein.journals/yjfem20&div=4&id=&page=

[76] Gordon-Bouvier, E., 2021. *The vulnerable subject: Anchoring equality in the human condition (Martha Fineman).* In Leading Works in Law and Social Justice (pp. 226-239). Routledge. https://www.taylorfrancis.com/chapters/edit/10.4324/9780429287572-16/vulnerable-subject-ellen-gordon-bouvier
Adopting such approaches means that *the 'first question to be considered is whether institutional, not individual, functioning is inadequate'.*

[77] Cartwright, P., 2015. *Understanding and protecting vulnerable financial consumers.* Journal of Consumer Policy*,* 38*, pp.119-138.* https://nottingham-repository.worktribe.com/index.php/preview/753234/Vulnerable%20Consumers%20JCP%20special%20Edition.pdf

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110. Safeguarding Ireland suggests that these aspects of vulnerability are addressed as firms understand their duty/obligation to work to better support consumers and mitigate the risks to which they are exposed. Safeguarding Ireland recommends that there should not be a separate section in the Revised Consumer Protection Code under a standalone heading of 'Vulnerability' but rather the issue of support or, where relevant, additional support be a required theme that runs throughout all aspects of the Code[78].

Q.20 What other specific measures might be adopted to protect consumers in vulnerable circumstances while respecting their privacy and autonomy?

111. The protection and empowerment of vulnerable consumers requires a wholistic approach as reflected throughout this response. It requires compliance with other legislation, co-operation between regulators, (which will now include interaction with the new Regulator – the Director of the Decision Support Service), changes in national policy, innovation, changed culture and a more inclusive approach to the development and design of digital products and services, etc. There is an urgent need for guidance from the DPC on important aspects of data protection including data sharing[79].

112. At the level of the individual firm, Safeguarding Ireland has repeatedly highlighted the beneficial impact of the development of expertise within retail banks via their dedicated 'vulnerable consumer' units and suggest that all firms are required to similarly invest in the development of expertise and the provision of a readily accessible support centre for consumers who may be at risk or in need additional support.

113. Safeguarding Ireland suggests that all staff should have mandatory training on issues of decision-making capacity and exploitation of at-risk customers. Including:

- How to recognise an at-risk consumer
- Reducing risk/developing resilience
- Recognising and responding to exploitation and abuse
- The procedure to be followed if there are concerns about an at-risk consumer.
- Process in relation to data sharing where there are concerns about an at-risk consumer.
- The role of independent advocates.
- Compliance with obligations under the ADMCA.

These features could be integrated into a revised format for the Minimum Competency Requirements. Given the relationship between digitalisation and financial services, we suggest that entities providing services to a regulated firm, via outsourcing are also required to have similar training.

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[78] Guidance on the current Code places particular emphasis on the 'Knowing the Consumer process'-*'We consider that identification of a vulnerability should be an inherent part of the Knowing the Consumer process, during which regulated entities should consider whether there is any evidence of consumer vulnerability,* (p15). The proposed non-binary, non-static approach to vulnerability requires that it is embedded in organisational culture and considered and supported throughout the lifecycle and the customer journey.

79 https://ico.org.uk/for-organisations/guide-to-data-protection/ico-codes-of-practice/data-sharing-a-code-of-practice/executive-summary/

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Theme 7 – Financial Literacy

Q.21 What can the responsible authorities do to improve financial education?

114. The Discussion Paper notes that '*Financial literacy can be described as peoples' ability to process finance-related material and make informed decisions about financial planning, wealth accumulation, pensions and debt'* and notes the CBI's objectives in supporting the development of education with others (i.e., the CCPC, the Department of Finance's FinTech Steering Group). While agreeing that financial literacy is important, there is a balance to be achieved between empowering consumers to understand financial information and concepts and overly 'responsibilising' them for the achievement of better outcomes. (There are risks too in 'de-responsibilisation'[80]). Safeguarding Ireland's work, and its responses to this paper, show that for many consumers there are risks of harm or abuse that can only be partly mitigated through education and, in the first, instance require greater proactivity and thoughtfulness on behalf of firms in the design and development of their products and processes and by the CBI and other regulators in simplifying and harmonising the regulatory approach with integrated safeguarding standards.

115. Recent UK research[81], on the experiences of vulnerable consumers carried out as part of the 'Financial Lives'[82] project provides illustrative examples of the kinds of harms that can occur and give rise to poor outcomes and it is clear that in many cases the consumer's experience would not have been enhanced by greater levels of financial literacy/education.

116. Financial literacy plays an important role also in protecting consumers from fraud, however the literature suggests that is 'financial knowledge' and not prudential management that has the greater impact and, importantly, that an individual's subjective sense of well-being can have an important impact on their capacity to 'pay attention' to the possibility of fraud or abuse[83].

117. Safeguarding Ireland also notes that Digital Financial Literacy (DFL) defined as *'acquiring the knowledge, skills, confidence and competencies to safely use digitally delivered financial products and services, to make informed financial decisions'*[84], (encompassing many areas already referred to in this response), includes knowledge and understanding of digital financial products and services, awareness of digital financial risks, and knowledge of consumer rights and redress procedures is increasingly important for all consumers.

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[80] https://www.tandfonline.com/doi/abs/10.1080/10253866.2020.1781099?role=button&needAccess=true&journalCode=gcmc20

[81] https://www.fca.org.uk/publication/research/case-studies-financial-lives-experiences-vulnerable-consumers.pdf

[82] https://www.fca.org.uk/publications/research/financial-lives

[83] Engels, C. and Kumar, K. and Philip, D. (2020) 'Financial literacy and fraud detection.', The European journal of Finance., 26 (4-5). pp. 420-442. https://dro.dur.ac.uk/28644/1/28644.pdf?DDD2+cwxv81+kswl88

[84] https://www.afi-global.org/publications/digital-financial-literacy/

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118. Any educational initiative addressed to consumers who are 'vulnerable', must be informed by their experiences[85] and Safeguarding Ireland highlights the need for 'co-creation' and collaboration, in the design, development and delivery of relevant educational content and pedagogical approaches. This point, is highlighted in the literature on DFL which highlights the need to mobilise and achieve synergies with civil society and NGO's and using their data, expertise, knowledge and outreach channels to reach 'the last mile and most vulnerable segments'[86].

119. Safeguarding Ireland draws attention to its approach to its own information and awareness raising campaigns on a variety of issues, including financial abuse[87], and the importance of co-operation and collaboration with stakeholders in improving awareness and disseminating key messages to groups and individuals who may be hard to reach through formal education or 'new' channels.

Q.22 How can consumers be empowered to better protect their own interests when dealing with financial matters?

120. In responding to this question, Safeguarding Ireland emphasises again the importance of compliance with other relevant legislation, particularly the ADMCA, as a key means of empowering consumers to better protect their own interests. The ADMCA, and the related support arrangements, recognise the primacy of the assumption of capacity while also acknowledging the role of the various decision support arrangements in further enhancing and supporting decision-making. Its primary focus is empowering the individual/consumer to exercise choice and thus better protect their own interests. Previously, the legal framework either forced a complete denial of individual agency through wardship, or resulted in often unsafe work-arounds and dependencies on a range of third parties[88]. The ADMCA '*endorses the recognition of all persons as the holders of rights, with the entitlement to be at the centre of the decisions that affect them*[89]*'*. This requires significant cultural change across a range of regulated domains, including financial services.

121. By putting in place an infrastructure that reflects their new obligations under the Act (training, policies, improved processes, implementation of the 'Code of Practice', development or adaptation of products and technologies etc.), and working proactively to

[85] 'Supporting Capacity to Manage Money', https://decisionsupportservice.ie/sites/default/files/2021-11/admca-personal-and-professional-reflections.pdf

[86] Op. cit p 9

[87] https://www.safeguardingireland.org/videos/

[88] The 'Discussion Document refers to 'a trusted contact person';9 (p57) and while noting the importance of independent advocates and advocacy where warranted, without further insight into what is proposed Safeguarding Ireland has some concerns that this could serve, in practice, to undermine some aspects of the ADMCA.

[89] https://decisionsupportservice.ie/sites/default/files/2021-11/admca-personal-and-professional-reflections.pdf (p xii)

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achieve positive change, firms will succeed in greatly empowering consumers to better protect their own interests.

Theme 8 – Climate Matters

Q.23 How should the financial system best fulfil its role in supporting the transition to a climate neutral economy?

Q.24 How will climate change impact on availability, choice and pricing for financial products and services?

Q.25 Does the impact of climate change require additional specific consumer protections?

122. Safeguarding Ireland has no response on Theme 8 ‘Climate Matters’.

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Appendix 1

Examples of collaboration and innovation in the development of products and services to better empower and protect consumers at risk of harm or abuse using fintech.

UK FCA Sandbox

https://www.fca.org.uk/publication/research-and-data/regulatory-sandbox-lessons-learned-report.pdf (p10) extract below.

Increasing access and improving experiences for vulnerable consumers

4.16 The sandbox has enabled a variety of tests from firms with innovative business models that look to address the needs of more vulnerable consumers who may be particularly at risk of financial exclusion. The House of Lords Select Committee on Financial Inclusion published a report in March 2017 which cited the FCA sandbox as a positive way of encouraging fintech solutions to aspects of financial exclusion.

4.17 One test developed an innovative way to help consumers on benefits feel more empowered. This test enabled users to receive and make faster payments for key services such as rent, council tax, gas, and electricity. Sandbox firms have been supported by government bodies to give customers a better overview of their budget through a mobile app, and to use the same app to receive benefit payments, and pay for core services.

4.18 We have also supported propositions seeking to help consumers prioritise and reduce high-cost credit. One firm tested a mobile application using behavioural techniques to encourage consumers to set aside small amounts of money in a savings account. This would be used to repay high cost credit obligations quicker and therefore reduce the number of customers going into arrears on outstanding debt. The use of technology to help users prioritise and better manage debt is an area of specific interest, particularly in light of recent changes in the debt management sector.

4.19 We have also seen tests that demonstrated the provision of more consistent advice to those consumers who are struggling with unmanageable debt. One test looked to promote more consistent outcomes for consumers receiving face-to-face debt advice. It sought to test whether consistency could be improved by using technology to help the adviser determine the most appropriate next steps for their clients, whilst taking into account their individual circumstances.

4.20 One firm trialled an innovative form of disclosure that sought to improve engagement in key features of various banking products at point of sale in-branch. The firm provided the salient points using videos displayed on a tablet and followed up with full terms and conditions via email after the sale. In this test, consumers were still given the option of receiving information in paper form in-branch. Some consumers may not always have access to, or engage effectively with, solely digital propositions so we continue to encourage future applicants to consider how they might provide services to consumers to maximise engagement.

4.21 We see strong consumer benefits for those propositions that meet the needs of vulnerable consumers who are at particular risk of financial exclusion. The success of pilots in this area is encouraging so we welcome applications to the sandbox which include propositions that directly seek to address public and social policy issues".

Examples of relevant past projects across each FCA Sandbox cohort 2016-2022

- **Amplified Global Limited** Amplified Global uses AI-based technology to assess intelligibility, and help companies communicate more simply with their customers, so their customers can understand and

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act on what they have read. Amplified will test how simplified terms and regulated notices from lenders can improve comprehension, and lead to improved consumer outcomes.

- **Fair4All Finance** **Fair4All** Finance is working with organisations to pilot the No interest Loan Scheme (NILS) to customers in vulnerable circumstances. It provides an option to customers who have a need but are unable to access or afford existing forms of credit, and who can afford to repay the capital of the loan.
- **The Investing and Saving Alliance** TISA's federated Digital ID project - Enabling easy access to all digital services by creating a single, reusable, secure Digital ID that meets all relevant regulatory requirements (KYC and AML) and is positioned to consumers, as the prime means for securely identifying themselves to UK Financial Services.
- **HUB Financial Solutions** - A low cost automated, initial, and ongoing advice service developed for people approaching and in retirement with modest pension savings.
- **Open Banking Implementation Entity** A payment method enabling consumers to securely and conveniently make multiple payments of varying amounts based on rules and parameters the consumer establishes.
- **Post Office** An app which builds on the development of digital identities for the GOV.UK Verify service, allowing users to create a single digital identity to give them access to both government services and financial services products. The test will aim to show that it gives institutions a high degree of assurance that new customers are who they say they are, and that it removes the burden for users to provide evidence of identity each time they want to access a new product or service
- **Quo Money -** An app-based service that aims to promote money management skills among vulnerable consumers. It uses Open Banking to generate a personalised financial plan and prompts the consumer to adhere to it.

Nesta UK- Example 'Open Up 2020'

Nesta was originally funded by a £250 million endowment from the UK National Lottery. Nesta is an innovation agency for social good. 'Open Up 2020' was run by Nesta Challenges and backed by the Open Banking Implementation Entity as part of the UK's open banking agenda.

'Open Up 2020' provided funding for innovative products and apps that use open banking to help people better manage their money through more transparent, accessible, and fair products.

This includes:

- personal current account comparison that supports 'unbundling' and easy switching to a different account provider
- helping people use an overdraft provider that is not their bank and avoid expensive, unexpected fees ('unbundling' of overdrafts from personal current accounts)
- automated/'robo' financial management to help build savings buffers and manage debt.
- widening access to affordable credit including alternative lending options and innovations in credit scoring
- boosting earnings on savings, including high balance sweeping so people earn interest on their credit balance
- micro-payments towards savings.

The 'Open Up 2020' challenge had a special focus on ground-breaking apps and products that serve those who are financially excluded.

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Smart Data Foundry

https://smartdatafoundry.com/news/introducing-smart-data-foundry

Smart Data Foundry brings together companies, public bodies, charities, and universities with a common goal – to use data in a safe way people can trust to deliver economic, social, and environmental benefits for everyone.

It received initial funding of £23m from the UK Government through the UK Research and Innovation's (UKRI) flagship Strength in Places Fund.

A current mission is to *'ensure that Open Finance is built inclusively, benefiting all in society and that those using it are protected from harm'*.

Recent reports Older Workers, Later Lives

NatWest Group (NWG) supplied Smart Data Foundry with aggregated transaction data from the current accounts for approximately 1.2 million UK customers from 1 January 2019. These accounts represent a de-identified, randomised and broadly representative sample from the bank's UK accounts on which the above report is based.

Money Advice Trust UK

The Money Advice Trust is a national charity, helping people across the UK to tackle their debts and manage their money with confidence. It has a variety of partnerships across the UK banking sector - UK Finance, British Business Bank, Barclays Bank, HSBC, Lloyds Banking Group, Santander, Royal Bank of Scotland Group and works to improve the design and delivery of financial and other essential services for customers who may be vulnerable.

'We want to see firms being more proactive in anticipating the needs of vulnerable consumers, for example by considering vulnerability at all stages of the product and service design process or designing inclusive products and services that meet the needs of all consumers. Financial Conduct Authority (FCA)'.

See more:

https://www.moneyadvicetrust.org/media/documents/Inclusive_Design_in_Essential_Services_-_A_practical_guide_for_firms_and_suppliers.pdf

Money and Mental Health Policy Institute

Money and Mental Health has the commitment of a generous core funding grant from its Chair, Martin Lewis, until 2025. In addition to this core funding, in 2018, Money and Mental Health has been granted funding through the Inclusive Economy Partnership, bringing together business, civil society and government to help address major societal challenges facing those on low to middle incomes.

Relevant guidance and research publications:

http://www.moneyandmentalhealth.org/wp-content/uploads/2016/06/Banks-and-current-account-providers-Best-practice-checklist-1.pdf

https://www.moneyandmentalhealth.org/wp-content/uploads/2018/12/Access-to-cash-policy-note.pdf

Payment Services Regulator (PSR) Panel's Digital Payments Initiative report.

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The PSR Panel, led by Dr Ruth Wandhöfer, (the PSR Panel Chair) was tasked to understand potential barriers to the take-up of digital payments and identify potential solutions. This review was commissioned in response to the UK's Access to Cash Working Group's recommendation for further work to enable digital payments.

https://www.psr.org.uk/media/x3tjjuj1/psr-panel-dpi-report-may22.pdf

UK/ United States examples of apps and other supports.
https://businessdisabilityforum.org.uk/disability-smart-stories-2020/natwest/

https://www.kalgera.com/press/kalgera-launches-vulnerability-platform/

https://www.withpurple.com/about-able

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