

Consumer Protection Code and the Digitalisation of
Financial Services

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1. Introduction

Banking & Payments Federation Ireland (BPI) represents over seventy domestic and international institutions. We welcome the opportunity to respond to the Central Bank of Ireland (CBI) discussion paper on the Consumer Protection Code and the Digitalisation of Financial Services.

Customer research and feedback has informed us that consumers want to be able to avail of financial services and communicate with their financial services provider at a time and place which is convenient to them. In order to meet customer's expectations financial services providers need to be instant, accessible and proactive in their interactions with customers. The implementation of digital strategies underpinned by technological advances is a critical tool to being able to service customers in line with their expectations. In addition, we believe that it is important that regulation takes cognisance of such technological developments to ensure that customers are not disadvantaged by engaging through digital means.

Indeed, the increasing movement of customers and services online has provided a strong impetus for enhanced use of modern Fintech applications by Irish financial services providers. This applies to both consumer related activities and internal operations whether through in-house use or engagement with a Fintech company. Examples of application usage includes new customer 'onboarding', customer experience, enhanced internal IT usage, cyber security, risk management, blockchain etc. Additionally, we would highlight that providers in Ireland are renewing and changing the application of Fintech developments on an ongoing basis in order to ensure that they are using the most suitable and appropriate technologies available.

All digital application processes and improvements are carried out in line with EU and domestic regulation and legislation and the CBI's Consumer Protection Code (CPC). In this regard, we welcome this Discussion Paper and the opportunity to respond.

We also support the direction of the recent European Banking Authority consultation on the EBA's Approach to Fintech which highlights a number of areas for further analysis in 2017/2018 including; authorisation and registration regimes and sandboxing/innovation approaches, prudential risks and opportunities for credit institutions, payments institutions and e-money institutions, the impact of Fintech on business models, consumer protection and retail conduct of business issues, the impact of Fintech on resolution and the impact of Fintech on AML/CFT. BPI is feeding directly into this

consultation process. We would highlight the benefits of alignment of approach to be taken by CBI and that at EU level with respect to a number of issues outlined in this discussion paper.

The CBI Discussion Paper is a comprehensive review of digital trends and how they will impact financial services and consumers and we commend the approach to this topic. We would further suggest that both consumers and the financial regulatory system in Ireland would benefit from continuing engagement with industry and consumers to test that any changes in proposed legislation would not unduly limit innovation or restrict speed to market (vs. European peers), thereby limiting choice, customer utility and undermining the competitive standing of the Irish Financial System vs. European peers.

The Paper includes a comprehensive review of new digital trends and the potential implications (benefits and risks) to consumers. However, we believe that the Paper is unjustifiably weighted towards the Risks rather than the Benefits of Digitalisation. In our view, this approach risks skewing any potential regulation / legislation in a direction that would negatively affect digitally active segments/early adopters in the financial services market. Specifically, in Section 3, the Risks highlighted are often generic in nature, and are not linked to the particular aspect of the customer journey under discussion e.g. A risk highlighted under **Access** is that *“Security and fraud risks for consumers if there are inadequate systems in place to protect against possible breaches of digital infrastructure and systems”*. This may be a generic risk, but we believe that it does not increase the risk of customer experiencing Financial Exclusion.

It is our contention that legislative changes with regards to financial services need to adequately provide for different comfort levels with technology amongst segments, thereby ensuring that the industry can offer products & services that cater to the needs of identified cohorts including ‘early adopters’, ‘laggards’ and ‘vulnerable customers’ (amongst others). Any legislative change that does not adequately cater to differing segments risks causing detriment to Irish Consumers from a customer journey / experience perspective.

We are continuing to monitor the evolution of financial services globally and the changes in regulatory oversight models in tandem with this. We believe that there are opportunities to consider the benefits of a more flexible model particularly with the use of ‘Innovation Hubs’ to investigate and explore the risk and benefits of new initiatives. In this regard we welcome the recent publication of the draft legislative proposal reviewing the **European System of Financial Supervision** which in support of the benefits offered by digitalisation enhances the mandate of the European Supervisory Authorities to establish a Committee on Financial Innovation and take account of issues related to innovation and

technological development while carrying out their tasks and to give them a stronger role in coordination of national technological innovation instruments and tools such as innovation hubs or sandboxes.

Lastly, to note that BPF members would wish that the financial services sector in Ireland develops into a strong competitive and stable Fintech environment and it is therefore vital that in the development of regulation and legislation going forward that a balance is achieved between allowing progress and innovation and consumer protection. **Specifically**, the Regulatory framework and rules should not impede development of consumer centric solutions by financial institutions as demanded by consumers. It is also very important in this regard that when regulating activities in Ireland the principle of “same services, same risks, same rules” applies. This will ensure a level-playing field, fair competition and maximum protection for consumers across the spectrum of market players from incumbents to incoming fintechs.

We have set out our responses to the questions in the Paper on the following pages and welcome the opportunity to discuss any aspect of our submission with CBI representatives during the next phase of the consultation process.

2. Responses to the discussion paper questions

Q1 Are there examples of other relevant types of innovation in retail financial services, which are not already covered in this Discussion Paper? If so, please provide details.

The paper covers a wide variety of innovations in retail financial services and highlight a number of initiatives the Irish banking sector is currently considering including:

- e-Identification
- Biometrics
- Application Programme Interfaces
- Robo-Advice
- RegTech
- 'Big Data' Analytics
- Distributed Ledger Technology/smart contracts
- Artificial Intelligence
- Cloud Computing
- Robotics
- Voice technologies

Q2. Considering the Irish market, what innovations are more likely than others to develop and/or have the greatest impact on consumers? Please provide reasons for your answer.

The speed of change in the market is vast and difficult to predict. However, one particular innovation that is of strong interest to banks is E-Identification. This has been recognised as a particular area where further exploration could deliver huge benefits and efficiencies from an 'Anti money laundering (AML) /'Know your customer' (KYC) perspective. We plan to explore this area further and investigate the potential benefits for consumers and firms. In addition, Blockchain technology is particularly innovative and collaboration and experimentation between member banks in this area is already underway. However, as this technology is still in the development phase it may take a significant length of time before any consumer related applications emerge.

More generally, it is important to note that all Irish banks are investing heavily in digital and technology research and some have set up exploratory laboratories to facilitate this work in Ireland. In this regard, members are collaborating actively with a variety of Fintech companies through formal and informal channels to broaden customer offering/in-house applications and efficiency. In a recent consultation response to the European Commission on Fintech, the Central Bank may be interested to learn of a recommendation by BPFII of the development of

a “Technology Watch” initiative to monitor future technologies and potential use, opportunities and vulnerabilities for the sector.

Q3 Please outline any other potential benefits or risks for consumers that have not been captured in this section?

We believe that the Central Bank of Ireland’s assessment of the potential benefits of technological innovation for the benefit consumers is accurate. Specifically, we see benefits in reduced cost, increased convenience and accessibility, enhanced choice and above all the provision of tailored products and services. ‘Big Data’ analytics will have a strong role to play in the realisation of the benefits digitalisation of financial services has to offer to Retail Financial Services. Use of ‘Big Data’ can also play a strong role in risk management whether credit underwriting, fraud risk management, KYC, AML, product governance and compliance with regulation. These developments will ultimately lead to a stronger consumer protection framework in retail financial services.

However, we disagree with the statement by the Central Bank that optimising business outcomes rather than consumer needs may be the priority for firms in designing the digital journey. In our view, the digital strategy of financial services providers are driven by consumer demand for enhanced and quicker services online in the first instance and in compliment to parallel processes to optimise back-office operations including security, IT infrastructure, compliance, Security Risk Reduction etc. Digitalisation also provides customers with ‘out of standard hours’ access to their financial services.

As examples, we include responses to a number of the risks included in the paper which provides further insights on the matters raised including:

Access: *“Use of digital only consumer data to assess creditworthiness may reduce the accuracy of credit assessments and increase financial exclusion”*. Digital credit assessments will be underpinned by appropriate credit policies and decision making regardless of the customer engagement channel. Additionally most traditional firms, offer a wide variety of products and services across multiple channels, to ensure that customers are not financially excluded. A key point to note here however is that the emerging Fintechs are primarily digitally enabled only, and therefore this could be a greater risk for them.

Information: *“Use of social media advertising to inappropriately target consumers who do not fully understand the risks involved with certain products and services, particularly investment products”*. Appropriate controls stemming from the key information requirements already included in CPC 2012 ensures that the customer is informed and made aware of key information and that they are not inappropriately targeted. However, we recognise that in the broader digital world, this could be a greater challenge.

Suitability: *“Increased consumer indebtedness due to the ease of access to and convenience of online credit”*. In our view, this is not an accurate reflection of good practice already in

place. Firms will have appropriate credit policies, procedures and mechanisms in place irrespective of channel of engagement, therefore digitalisation, should not in itself, increase the risk of consumer indebtedness. Furthermore, firms will also have specific eligibility rules and criteria in place to ensure that where face to face engagement is deemed most appropriate that such customers can only engage by reference to a branch/business unit to discuss their requirements e.g. applications for credit above a certain threshold amount, customers in arrears etc.

It is important to note also that Digital channels can offer great opportunities for regulated entities to bring innovative new products to market on a piloted and phased basis, in a controlled manner. However, on the other hand it is also important to bear in mind that the digital world is less impacted by geographic boundaries and customers in Ireland may be availing of financial services offered by firms in other European countries. In such cases, enhanced coordination at EU level on digitalisation of financial services is imperative in addition to the exchange of information between supervisors.

Q4 Considering the Irish market, what benefits and risks do you think are most likely to materialise and/or have the greatest impact on consumers? Please provide reasons for your answer.

Strong benefits for consumers are likely to arise from the use of data analytics/'Big Data' where firms will be able to tailor products/services for different consumer segments, and offer a better customer experience. As highlighted in our response to Question 3, the use of 'Big Data' can also play a strong role in risk management whether through credit underwriting, fraud risk management, KYC, AML, product governance and compliance with regulation.

In our view, fraudulent activity is one of the most prominent risks for consumers in Ireland and this may be exacerbated by the entrance of new providers and new services. However, existing and new Regulation including the Payment Services Directive 2 (PSD2) and the General Data Protection Regulation (GDPR) contains obligations to mitigate this risk. A recent development is the launch of an innovative website **FraudSMART.ie** with the support of members. This new website serves as a one-stop shop fraud information website for businesses and consumers alike, including case studies, top tips, advice and fraud alerts to those who want to prevent and protect themselves against fraudsters.

The critical risk here is that the industry becomes regulated on the basis of an 'un-level playing field', resulting in divergent consumer protection requirements. Customers should be offered the same level of protection, regardless of the financial services provider they engage with. Therefore it is vital that new services are regulated under the same rules and provisions in order to garner trust among the consumers and the sector at large. There would also be a benefit from the provision of training and awareness in relation to new innovative services to all ages, in particular the elderly and vulnerable.

As behaviours shift towards digital channels consumers become more susceptible to the Risks of malicious software (Malware) phishing, and fraud through the use of “Open Networks”. While at all times banks will do their utmost to protect consumers at all points throughout the customer journey we believe that there is also an onus on the consumer to ensure they have sufficient antivirus software to protect them from Malware. Additionally, in relation to Phishing and the use of Open Networks, customers need to ensure that they take appropriate steps to protect their security credentials.

When revising CPC, consideration should be given to defining clear boundaries between the banks obligations and the consumers’ obligations with regards to protecting consumers from Malware when utilising digital channels, Phishing and the use of “Open Networks”.

Q5 If you have observed detriment caused to a consumer(s) as a result of digitalisation/financial innovation, please provide details and evidence of same.

We are not aware of detriment caused to consumers as a result of digitalisation.

Q6 With reference to the potential risks and benefits for consumers in the area of access, do you consider consumers to be adequately protected in a more digitally-enabled financial services environment? Where possible, please provide examples and/or evidence to support your answer.

We believe that consumers are adequately protected in a more digitally-enabled financial services environment due to the wide range of regulations and requirements already in place. Members would agree with the European Parliament in its estimation that “*Fintech can lead to considerable benefits, such as faster, cheaper, more tailor-made, more inclusive, more resilient and more transparent and better financial services for consumers and businesses*”.

We set out below responses to a number of the risks included in the paper which provides further insights on the matters raised including:

Instant and/or over-simplified access to certain financial products and services may result in poor consumer decision-making and potential financial detriment. – We would suggest that today’s consumer demands are indeed instantaneous however we would not agree with the term “over-simplified access”. Access to financial products will still undergo the appropriate assessment whether in a digital environment or face-to-face.

When firms are transitioning to a new digital service or delivery channel they may automatically transfer consumers to the new digital service/ delivery channel without allowing them to “opt-in” or “opt-out” of the new digital service depending on their preferences. This would be a matter of business strategy and would also depend on the commitments the bank had to its customers and regulatory obligations.

Use of digital only consumer data to assess creditworthiness may reduce the accuracy of credit assessments and increase financial exclusion. This risk can be eliminated through the use of full and complete data along with application of appropriate credit assessment policies and procedures, as currently happens.

Reduced access to financial products and services. An appropriate channel mix can mitigate this risk for traditional firms. This may be more difficult for Fintech firms.

Increased difficulty for firms to identify vulnerable consumers. In our view, digitalisation and in particular the use of 'Big Data' analytics will assist firms in identifying vulnerable consumers at an earlier stage. Moreover, CPC Chapter 3 requires that a regulated entity must ensure that the consumer is provided with such reasonable arrangements and/or assistance that may be necessary to facilitate him or her in his or her dealings with the regulated entity.

Data and digital services could also support customers by providing analytics around their spending habits and potentially improving their money management capability.

Uncertainty or lack of awareness of the regulatory status of a provider where the consumer accesses financial products and services from other jurisdictions online. It is imperative that consumers understand their rights when accessing financial services from other jurisdictions and in this regard members welcome the discussions at the Joint Committee of the ESAs on cross-border supervision of retail financial services. We would also support the development of a harmonised and effective framework for cooperation and exchange of information between home and host competent authorities for banking products without the creation of any new 'barriers to entry' for market participants.

We believe that this risk is particularly evident in the review of PSD II which intends to allow third parties access to banking infrastructure on behalf of customers. BPFI believes and has communicated to the European Commission and other stakeholders at EU level that all third-party providers must only have access based on a dedicated interface to ensure access is carried in a secure transparent manner and in line with security objectives rather than the currently widely-used practice of "screen-scraping", which in our view is detrimental to consumer protection.

Q7. How could the consumer protections in the Code relating to access be enhanced? Please outline the reasons for your proposed enhancements.

Consumer behaviour is changing as evidenced by the findings in the recently published BPFI Payments Monitor.¹ Key highlights include an increased value of contactless payments to almost €0.7 billion in Q2 2017, with one in four card payments now contactless. Overall, usage of contactless payments has increased 137% since 2016 while card payments in general increased by 21.8%. Cheque payments decreased, and ATM usage increased slightly while

¹ [BPFI Payments Monitor Quarter 2 2017](#)

digital banking increased 19.4%. Therefore, firms are looking to re-engineer their business model to meet changing customer behaviours and expectations. Consumer choice, simplicity and facilitation during an online process is key and in a digital environment, a smooth access path to financial services is vital to minimise dropouts.

As a result the findings of the Payment Monitor research would indicate that consumers are not having any great difficulty with access thereby suggesting that there is no need for further enhancement in this area.

Q8. With reference to the potential risks and benefits for consumers in the area of provision of information, do you consider consumers to be adequately protected in a more digitally-enabled financial services environment? Where possible, please provide examples and/or evidence to support your answer.

In our view the requirements in CPC in relation to provision of information will not be an obstacle in a digital world. A noted advantage of the digital customer journey is that customers can conduct their business at their own pace and take appropriate time to review information.

In particular, members would highlight CPC 4.3 and the requirement to ensure the security of information communicated electronically and references across Chapter 4 to the Directive on Distance Marketing of Consumer Financial Services. However, it is essential that firms understand what their obligations are when using non-paper methods of communication and how they might meet them. This is particularly important given the growing use of non-paper based formats of disclosure of information. The term “durable medium” is referenced across European Legislation and in CPC. We believe it is important that the industry is provided with clarity so that new innovative technology and media can be used to meet the obligation to disclose information in a durable medium. Additionally, we would request that the Central Bank give consideration to issuing guidance to support the industry in their interpretation of the term. We understand that the Financial Conduct Authority (FCA) in the UK have issued guidance on this topic earlier this year.²

One option to ensure key information is presented and understood by customers in a digital environment, is for consideration to be given to adopting the framework for the provision of information by telephone used in the Distance Marketing Regulations, to a wider form of customer communications channels (for example smartphone, tablet, chat platform or social media interaction). In such circumstances, where the customer agrees, it could be possible to provide a smaller subset of information to customers at the time a contract is entered into, with an obligation on financial services providers to provide more detailed substantive information/contract terms in a durable medium after the entry of contract. The right of cancellation contained in the Distance Marketing Regulations could also be included here.

² [FCA Guidance - Durable Medium](#)

As previously, we set out below responses to a number of the risks included in the paper which provides further insights on the matters raised including:

Reduced consumer awareness and understanding of the complexity of the underlying technologies and systems involved in the provision of financial products and services such as the use of algorithms in the provision of robo-advice. Customers must be provided with full and complete information, to enable them to understand the product being provided, regardless of channel engagement. Equally, firms need to balance this requirement with the provision of technical information which is not necessary. They also need to ensure that, the provision of information does not create any increased security /operational risks. In addition, the new General Data Protection Regulation will require firms to provide more detailed information to personal customers regarding how personal data is processed (including in relation to automated decisions).

“Information asymmetries” for consumers if computer-based rules appear “non-transparent and somewhat arbitrary, notably because consumers may not be aware of the factors that led to the decision (e.g. non-approval of credit application because of automatic credit scoring based on consumer data).” In our view, well designed systems should provide as much clarity as possible for the consumer.

Q9 How could the consumer protections in the Code relating to the provision of information be enhanced? Please outline the reasons for your proposed enhancements.

In our view, the firm should be in a position to communicate with their customers in the most appropriate way. Customers expect their financial providers to contact them and provide information as and how they choose. Moreover, when customers are engaging “Digitally”, they expect to be provided with information and documentation “Digitally”, as the channel of their choice. As a result, the phrase “on paper or another durable medium” should be clarified with the interpretation of durable medium incorporating both physical and digital communication channels that maintain access for future reference as per the current definition. It is worth noting the provision of CPC 5.6 which requires the consumer to submit original copies of documentation. In this regard, we would consider that the Code should incorporate both physical and digital proofs in an appropriate form to ensure that information requirements are aligned with changing consumer behaviours.

Additionally it should be possible to adapt the way in which key regulatory information requirements required under CPC 2012 are displayed to the specific type of digital device e.g. mobile, tablet etc. This can be achieved whilst at all times ensuring that the customer is provided with the key regulatory information e.g. Information requirements being displayed in Plain English in a “click-through”/accordion means.

We also note that consumers have a preference for contacting their financial services providers at times that suit them. For some consumers contact can take place outside the hours that are set out in CPC 3.43 and they expect the firm to respond. It may be appropriate

to include a review of this aspect of the Code in order to align with changing customer behaviours and to facilitate a more efficient consent process.

Furthermore, we would consider that the rules regarding telephone contact as outlined above in Question 8 should be broadened to include all forms of digital contact to ensure there is clarity on customer engagement as new forms of customer interactions evolve.

Q. 10 With reference to the potential risks and benefits for consumers in the area of suitability, do you consider consumers to be adequately protected in a more digitally-enabled financial services environment? Where possible, please provide examples and/or evidence to support your answer.

We believe that consumers are adequately protected in a more digitally-enabled financial services environment. In particular, members believe that 'Big Data' analytics will have a strong role to play in development of suitability assessments, KYC procedures, credit underwriting, fraud risk management and product governance.

We would also point out that Digitalising Consumer Services, reduces variability in quality and engagement, and therefore increases predictability in compliance, which invariably contributes to good customer outcomes.

Q11 How could the consumer protections in the Code relating to suitability be enhanced? Please outline the reasons for your proposed enhancements.

The existing consumer protection framework related to suitability of financial services is already more extensive than that of other jurisdictions. As a result, we do not see the need for any further requirements at this time.

Q.12 With reference to the potential risks and benefits for consumers in the area of complaints, do you consider consumers to be adequately protected in a more digitally-enabled financial services environment? Where possible, please provide examples and/or evidence to support your answer.

For regulated firms, there is a robust and accessible complaints framework in place which provides positive customer outcomes and redress where breaches are identified regardless of the channel used in the interaction. This framework should be extended to all firms operating in the financial sector to ensure adequate protection for consumers. However, in relation to consumer interaction with Fintech firms, particularly where there are increasing providers of online financial services that also operate cross border and in case of complaints, it is perhaps unclear for the consumer who the key contact point is in case of a problem and who is ultimately liable for any financial loss.

Q13 How could the consumer protections in the Code relating to complaints be enhanced? Please outline the reasons for your proposed enhancements.

In our view, the existing consumer protection framework related to complaints is robust and comprehensive. Consumers can make a complaint to the financial services firm initially through the existing regulated process and where necessary, utilise the Financial Services Ombudsman scheme. There is also an option to avail of cross border redress within the regulated financial sector and no further amendments would be required for regulated firms. There may however, be an opportunity to provide greater protection for consumers by extending the application of the dispute resolution schemes to those currently outside the scope of the existing processes.

Q14 With reference to the potential risks and benefits for consumers in the area of claims handling, do you consider consumers to be adequately protected in a more digitally-enabled financial services environment? Where possible, please provide examples and/or evidence to support your answer.

Not applicable

Q15 How could the consumer protections in the Code relating to claims handling be enhanced? Please outline the reasons for your proposed enhancements.

Not Applicable

Q16 With reference to the potential risks and benefits for consumers in the area of record keeping, do you consider consumers to be adequately protected in a more digitally-enabled financial services environment? Where possible, please provide examples and/or evidence to support your answer.

Members believe that the requirements on record keeping are largely adequate in view of the ongoing transition to the digital world with the exception of the issue highlighted in response to question 17. Additional requirements arising from technologies such as Cloud, may require clarity on the location/jurisdiction within which the data resides, however this should be covered under other codes legislation e.g. GDPR. We also note that the EU Commission is consulting widely on the requirements for Cloud Service Providers and the storage of data. The output from this consultation should inform any developments in this area of the Code.

Q17 How could the consumer protections in the Code relating to recordkeeping be enhanced? Please outline the reasons for your proposed enhancements.

Members would strongly agree with the need to clarify how the definition of “durable medium” reflects both physical and digital communication channels

Q18 Are there other areas of the Code, where the current protections should be enhanced or amended to address risks arising from digitalisation? If so, please: a. set out the protections that you consider should be enhanced and why; b. outline how those protections could be enhanced, including the reasons for your proposals.

We have no proposals for any enhanced protections at this time.

Q19 Are there other ‘new risks’ to consumer protection associated with technology/innovation where additional specific requirements are needed in the Code (arising from actual or potential consumer detriment), for example, cybersecurity risks?

Cybersecurity risks are on the agenda of all Bank boards and constitute a top priority in the context of customer protection, fraud prevention and reputation risk. Investment in this area has been a constant for many years within banks and will remain so for the future. As a result, we do not believe additional specific requirements should be included in the Code but rather the principles based approach should continue to apply.

Q20 Given responsibility for the protection of consumers’ lies with regulated firms, how should the Code put greater obligations on firms to use innovative technologies in a positive way, to improve services and better protect consumers’ best interests? Please provide specific suggestions of how this could be achieved.

We believe that the consumer protection framework should enable innovation in a safe and controlled environment and support the development of customer centric solutions. Where additional requirements / obligations were to be introduced in the Irish market they may be seen as barriers to entry and result in reduced competition in the financial services market. They may also lead to less investment by firms in new and beneficial solutions for consumers and the industry.

Q21 Should a principle be included in the Code that requires firms to design digital journeys in a manner that support consumers’ decision-making and delivers good outcomes for consumers?

We believe that this principle is already enshrined in CPC 2012, our Product Oversight and Governance Procedures, the requirements of European Legislation as well as the strategy of each individual firm.

Q22 Are there any impediments in the Code that currently prevent firms from adopting technologies which may be beneficial to consumers? If so, please elaborate to explain how the Code could be amended to facilitate access to such benefits, without diluting existing consumer protections.

As highlighted in the recent BPFi response to the European Commission's Fintech Consultation, interpretative guidance relating to financial services legislation in a digital environment would be helpful for members in order to ensure they are adopting technology in the spirit of the legislation. It is also helpful for institutions considering adoption/investment in a certain technology e.g; Distributed Ledger Technology to know and understand any regulatory/compliance boundaries/expectations in advance.

In our view, the Code in itself does not impede firms from adopting technologies beneficial to consumers. However, the use of terms such as durable medium, written statements, original documents, restrictions on communications and the requirement to include warnings in bold and in a box are all examples of terminology used within the Code which are founded in an analog world and may not be as relevant in a digital context. Failure to adapt the text of the legislation for new technology and digital user experience may impact the adoption of new technology in Financial Services, thereby impacting customer utility and the competitive positioning of the sector.

Q23 In the context of the development of consumer protection policy related to innovative technologies, should the Central Bank be more innovative in its approach to stakeholder engagement? If so, what approaches should be considered and why?

We believe that the Central Bank should be more innovative in its approach to stakeholder engagement in this area. We note the recent launch of industry sandbox developments in Singapore with the joint initiative between the Monetary Authority of Singapore and other stakeholders including IFC, a member of the World Bank Group and the ASEAN Banking Association.³

We would also draw the Central Bank's attention to the approach taken in jurisdictions including Australia and the UK in this area. These developments involving 'Innovation Hubs' provide a platform for controlled experimentation by incumbents and new players alike and possibly resulting in new and innovative products/services/technologies that will have a

³ <http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/IFC-and-Monetary-Authority-of-Singapore-Collaborate-to-Advance-FinTech-Innovation-in-Asia.aspx>

positive result for consumers. In a lot of these initiatives, the National Competent Authority participates as an 'Observer' with a view to gaining an early understanding of the benefits and risks of these innovations. In our view it is vital to maintain a flexible and adaptable framework which can continue to evolve as new initiatives emerge.

Members would also highlight the potential for the development of a "Technology Watch" initiative to monitor future technologies and potential use opportunities / vulnerabilities in the Irish/EU market.

The execution/delivery of solutions to enable/comply with legislation and regulation can take time. Projects are often complex and require detailed planning and may extend over multiple years from beginning to delivery. It is therefore very important that clarity is provided on "what good looks like" and that changes are very limited once resources have been committed. Ongoing open regulatory engagement can assist with this in order to achieve the best possible outcomes.

3. Additional comments

We set out some feedback below in relation to aspects of the Code where we have identified challenges from a digitalisation perspective including:

- **Provision 5.1** – A regulated entity must gather and record sufficient information **from the consumer** prior to offering, recommending, arranging or providing a product or service appropriate to that consumer. As the use of ‘Big Data’ emerges, the need to obtain information in relation to the credit decision directly from the customer will reduce as the information required will potentially be available from other sources. While it is considered that an element of the information required will always be provided by the customer, the majority of the information listed in 5.1 will be obtained through alternative means.
- **Provision 5.6** – Prior to providing a mortgage to a personal consumer, a mortgage lender must have sight of **all original** supporting documents evidencing the personal consumer’s identity and ability to repay. Currently the majority of documents available from consumers to evidence their ability pay are provided in electronic format e.g. e-statements, payslips etc. In this regard, we would consider that the Code should take these e-documents into account.

There is also the potential to consider adopting industry standard solutions for customer identification, electronic signatures and digital mailboxes. Interesting models which could be used as inspiration include NemID and BankID in relation to electronic signatures in Denmark and Sweden respectively and eBoks in Denmark relating to a digital mailbox solution.

4. Conclusion

The Banking Industry welcomes the publication of this discussion paper and the opportunity to provide a detailed response. While we would not consider that CPC poses any significant issues in relation to the application of technology, there are some elements of the Code which we consider can perhaps hinder digital advancements for the benefit of consumers.

We strongly advocate that whilst Digitalisation has inherent Risks, the benefits and potential rewards for the customer are considerable. Innovation and Technology is something which can achieve good customer outcomes in a secure environment, with appropriate controls. The regulatory landscape, including the recently introduced '***Guidelines on product oversight and governance arrangements for retail banking products***⁴ in addition to CPC 2012, and other European Developments provide an appropriate framework to achieve this.

We also believe that it is vital to facilitate a wide range of investigation and exploration in this area to ensure that Firms are investing in the best outcomes for their organisation and for their customers. In our view, any limits on this type of exploration would be to the detriment of consumers and the financial services sector in the long run.

⁴ [EBA Guidelines, effective 3 January 2017](#)