MABS Consideration of the Central Bank of Ireland's Discussion Paper 7 - Digitalisation and Consumer Protection Code

October 2017

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ABOUT MABS

The Money Advice and Budgeting Service (MABS), was established in 1992 to help people on a low income to cope with debts and take control of their own finances. It is a free, confidential and independent service. It currently comprises 51 MABS Services, located in over 60 offices nationwide, from which the face-to-face support provided by MABS staff is available. MABS also operates a National Helpline (0761 07 2000). MABS National Development supports the network of MABS with complex casework, community education/financial inclusion, learning & development, project implementation etc. MABS is funded and supported by the Citizens Information Board.

MABS primary goal is to enable people to avoid debt problems relating to day-to-day living expenses and to work with its clients with the aim of supporting them to attain, or return to, a position of financial self-reliance.

MABS CLIENT PROFILE

In 2016, there were 19,866 new clients in MABS and the MABS National Helpline dealt with almost 21,000 callers. There were almost 10,488 new clients in the first half of 2017 and over 12,000 callers to the MABS National Helpline during the same period. Since 2013, over 1,000 Debt Relief Notices (DRN's), processed with the support of MABS, have been approved. The Dedicated Mortgage Arrears (DMA) MABS Service has supported over 4,200 clients over the course of 2016 and 2017. This service has now been subsumed under the broader 'ABHAILE'[1] Programme which provides a full range of professional supports to eligible borrowers in late-stage mortgage arrears.

The demographic profile of MABS clients has remained relatively stable over many years but the numbers of mortgaged clients has steadily increased since the recession began. A change has also recently started to occur in the percentage of MABS clients that are waged/self-employed. In Q1, 2017, that figure stood at 44.5%, with the remainder of the client group reliant on social welfare. By comparison, in Q1 2016 the figures were 38% (waged/self-employed), with 62% on social welfare. MABS clients are heavily concentrated in the 41-65 year age bracket, but the number of clients aged '65+' has been growing gradually for the last number of years.

[1] https://www.mabs.ie/en/abhaile/

2 GENERAL OBSERVATIONS

MABS EXPERIENCE OF THE EXISTING CODE

Having extensively engaged with the Consumer Protection Code ('the Code') over very many years, and thus appreciating the important role it plays in protecting consumers of financial services, MABS welcomes the opportunity to make this submission, on Discussion Paper 7 - Digitalisation and Consumer Protection Code ('The Discussion Paper'). The Citizens Information Board and MABS National Development also welcomed the opportunity to engage directly with the Central Bank at its recent stakeholder consultation event

The Discussion Paper is to be welcomed as it brings together, in a comprehensive and accessible format, the major themes of potential concern to Irish consumers and producers of digitalised financial services.

It is important to note that MABS current expertise in consumer protection has been achieved through the day-to-day application of the Code in complex casework and has been supplemented greatly by work with other relevant bodies with relevant expertise such as FLAC and Community Law and Mediation. In a sense, MABS continues to be on an 'accelerated' learning curve as new trends and issues emerge, which simply cannot be anticipated until clients experience difficulty and start to present to MABS with 'hard' cases. In the case of digitalisation, we would prefer to see fewer 'hard cases' and much less future-fall-out from deficits in compliance with the regulatory regime.

THE NEED TO RECONSIDER THE APPROACH TO CONSUMER PROTECTION

This submission is prepared as the 'Tracker Review' is evolving and must therefore be considered in the context of an apparent need to reassess the existing consumer protection regime in its entirety.

Regulation is important, but on its own it is likely to be insufficient. In MABS experience fundamental cultural change is also required in the manner in which essential financial products and services are offered to all Irish consumers. Furthermore, it is vital that there is wider investment made in 'gearing-up' consumers to be alert to potential detriment and in equipping MABS, and other similar organisations, to protect consumers and in particular those that are most vulnerable, from future potential detriment. We note the approach adopted by the Federal Reserve which as has established a multidisciplinary working group that is engaged in a 360-degree analysis of fin tech innovation[2].

[2] https://www.philadelphiafed.org/-/media/research-and-data/publications/working-papers/2017/wp17-17.pdf

APPROACH TO THE SUBMISSION

MABS continues to support people who experience financial and other types of exclusion, as a consequence of social, physical and / or economic circumstances and who therefore may be faced with particular challenges arising from the digitalisation of vital services. In preparing this submission MABS National Development has taken as its starting point the following two objectives as highlighted in the Discussion Paper (p4.) viz.

The objective of this Discussion Paper is to generate discussion and stimulate debate on:

1 … how the Code addresses emerging risks from digitalisation; and

2. to determine if the existing protections need to be enhanced or adapted in specific areas.

The following observations are therefore made by way of contribution to the broad objectives of stimulating 'discussion and debate', before moving, in later parts of the submission, to consideration of the specific questions asked in the Discussion Paper.

THE DISCUSSION PAPER IS AN IMPORTANT MILESTONE

The publication of the Discussion Paper marks an important milestone on a journey towards what, MABS anticipate, will become a much more all-encompassing digitalisation of financial services in Ireland. It should be noted that in contributing observations at this point, MABS is attempting to look into the future in trying to anticipate the impact of potentially very welcome disruptive innovations[3] that have yet to make an appreciable impact on the MABS client group.

Therefore, our observations are largely confined, at this point, to those that can be made based on past experience of 1) The Consumer Protection Code and 2) innovation in financial services and the associated costs and benefits as they have applied to the MABS client group. The submission is also supplemented, as relevant, with reference to relevant research from other jurisdictions where digitalisation is more advanced as an aspect of mainstream financial services and where, consequently, there is a deeper research base on the relevant issues and the associated impacts on low income consumers.

[3] Defined by Christensenin his 1995 article *Disruptive Technologies: Catching the Wave* as 'a process by which a product or service takes root initially in simple applications at the bottom of a market and then relentlessly moves up market, eventually displacing established competitors'.

THE ROLE OF THE CENTRAL BANK OF IRELAND (CBI)

The role of the CBI is referred to throughout the paper as one of 'Gatekeeper'. With particular reference to innovation in financial services and in recognition of the developmental potential of such services, it is recognised that Central Banks can be both 'Gatekeepers of Growth'[4] and 'Guardians of Finance'[5]. With respect to digitalisation of financial services, a balance therefore needs to be achieved by the CBI between the impetus to find a regulatory regime that enables necessary social and economic development, and the need to ensure that consumers are adequately protected against potential consumer detriment.

For this reason, we would observe that it is essential that as 'Gatekeeper' the CBI has, at its disposal, the requisite professional expertise and resources to monitor what may be an explosion in new and complex 'financial services' offerings.

NEED TO MONITOR THE CONSUMER PROTECTION LANDSCAPE ANNUALLY

Furthermore, we would suggest that such is the importance of this issue to Irish consumers and Irish society more widely, that the CBI conducts repeat consultations on an annual basis over the next 3-5 years. This would enable organisations, such as MABS, to monitor impacts and risks of consumer detriment as the landscape for digitalised financial services evolves. The advent of 'PSD2', for example, means that there is potential for new and, as yet, unanticipated financial services to emerge in the Irish market over coming months. The impact (positive and negative) will only become apparent in the months and years to follow.

DEFINITION OF VULNERABLE CONSUMER TO BE RECONSIDERED

Underpinning both the Code and the Discussion Paper is an understanding of the definitions applicable to each section.

Under, the Consumer Protection Code 2012, ('the Code') the Central Bank defines a 'vulnerable consumer' as:

…a natural person who:

[4] Maxfield, S..Gatekeepers of Growth: The International Political Economy of Central Banking in Developing Countries. Princeton: Princeton University Press, 1998. Project MUSE,

[5] Barth, J.R., Caprio, G. and Levine, R., 2012. *Guardians of Finance: Making regulators work for us*. Mit Press.

a. has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example, hearing impaired or visually impaired persons); and/or
b. has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties)".

MABS would wish to see this definition extended to include a reference to people who are living on a low income/in poverty. This is because people who live on low incomes are, in MABS experience:

1) Often excluded from mainstream financial services.
2) Often forced, for this reason, to make sub-optimal choices when accessing financial services and;
3) sometimes do not have the time or resources necessary to weigh-up financial decisions due to the financial pressures they face in meeting day-to-day living expenditures.

The 'immediacy' of digitalised financial services has the potential to exacerbate all of these issues. The '*National Safeguarding Committee* [6]', of which MABS is a member, cites within its strategy a definition of 'vulnerability' as follows:

'the diminished capacity of an individual or group to anticipate, cope with, resist and recover from the impact of a natural or man-made hazard. The concept is relative and dynamic. Vulnerability is most often associated with poverty but it can also arise when people are isolated, insecure and defenceless in the face of risk, shock or stress. People differ in their exposure to risk as a result of their social group, gender, ethnic or other identity, age and other factors.7

MABS would ask that the CBI consider taking account of this broader definition of vulnerability within the Code, encompassing wording on 'poverty' to take account of the very specific risks facing such consumers in a digitalised economy.

MABS applies the following definition of poverty to its ongoing work with banks and other financial institutions and this definition of poverty has been incorporated, to positive effect, in existing operational protocols between MABS and major creditors since 2009.

6 *safeguardingcommittee.ie/*

7 International Federation of Red Cross and Red Crescent Societies

'People are living in poverty if their income and resources (material, cultural and social) are so inadequate as to preclude them from having a standard of living which is regarded as acceptable by Irish society generally. As a result of inadequate income and resources people may be excluded and marginalised from participating in activities which are considered the norm for other people in society'[8]

In this context, we wish to also highlight, as we did in our 2011 submission to the Central Bank of Ireland's Consultation on the Review of the Consumer Protection Code (CP47) (p3) that:

…'it is very important to strike a balance between protecting vulnerable consumers while also affording vulnerable consumers an opportunity to avail of products which are suitable to their needs. We would not wish that such protections would serve to financially exclude vulnerable consumers on a prima facie basis[9]*.*

POTENTIAL TO ESTABLISH AND MONITOR RELEVANT KPI'S

As part of MABS' mission statement, it has a particular focus on facilitating access to affordable credit for its target group. Driven by higher levels of financial exclusion over the course of the recession, this focus has evolved, more recently, to include the broader area of access to financial services including affordable payments' systems. Therefore, for MABS, one key indicator of the efficacy of digitalised financial services is the extent to which people on low incomes can access more affordable financial services enabled by digitalisation - free of consumer detriment.

In MABS view, the roll-out of digitalised financial services, and the associated CBI consumer protection regime, could be enhanced via benchmarking against relevant objective consumer research on this and other relevant KPI's, thus enabling the CBI to monitor the effectiveness of its consumer protection remit in this regard.

RISK OF PROLIFERATION

Digitalisation will undoubtedly create more options, more products, and more routes of access. In MABS experience when suitably regulated, competition in financial services is, in general, positive. 'Proliferation' in contrast, in MABS view, is usually not so positive and often precedes a market 'shake-out' with widespread potential for consumer harm. As such, reference in the discussion paper to *'accelerating pace*' and '*scale, nature and speed of new and emerging technologies'*, (p12), suggest

[8] http://www.socialinclusion.ie/documents/NAPinclusionReportPDF.pdf (p20)
[9] https://www.centralbank.ie/docs/default-source/publications/Consultation-Papers/cp47/cp47-submission-from-mabs-national-development-limited.pdf?sfvrsn=2

the potential for very rapid expansion of digitalised consumer financial services, necessitating a commensurate cautious and vigilant regulatory approach.

EXPERTISE IS LIMITED AND WIDER INVESTMENT IN 'CAPACITY BUILDING'& RESEARCH IS REQUIRED

In addition, it seems essential that MABS and other similar consumer/ civil society organisations will need to continuously develop their internal capacity to understand new products and new providers with new business models and the associated potential for consumer gain and detriment with respect to the target groups they support. The difficulty is, that at this point in the evolution of digitalised financial services, deep expertise in this area (in Ireland at least) is mainly confined to those with a commercial interest in '*reg-tech'* and *'fin-tech'* . There is little corresponding expertise in these fields across civil society more generally. This 'expertise gap' is a risk. In MABS experience, this deficit will need to somehow be overcome to level the playing-field and enable objective and independent advice on new products to be freely available to the public and to low-income and otherwise marginalised groups. .

For example, the 'Discussion Paper' states that, *'according to 2016 research, 78% of Irish consumers 'manage their money or make payments using a mobile device.''*' (p13). While MABS does not have equivalent research on its client-base, day-to day experience of MABS client work suggests that while many MABS clients have mobile devices, a relatively high proportion remain unbanked, prefer to operate in cash and rely on both the credit union and the post office for payments. A fuller understanding of the reticence of some cohorts to embrace financial technology needs to be achieved; particularly if organisations like MABS are to assist in 'bridging the gap' where there are demonstrable benefits achievable.

THE CHALLENGE OF COMPLEXITY

While, as aforementioned, the Discussion Paper is accessible, the complexity involved in the emerging market is underpinned by the extensive list of (largely unfamiliar) acronyms set out at page 3; indicating to us that both the consumer and the consumer advocate, may face a steep learning curve in fully comprehending the evolving world of digitalised financial services. Elements of fin-tech's emergent vocabulary are becoming more common-place, nonetheless, it will become increasingly necessary for consumer advocates to appreciate the practical import for consumers of '*distributed ledgers… blockchain…robotic processes automation (RPA)*' (p16), as they relate to the coherence and integrity of new financial products and services. As MABS has found with other financial services and products, it is only through understanding the basic 'building blocks' of a product that one comes to appreciate the potential for consumer detriment and consumer gain.

We note the observation in the Discussion Paper that the principles in the existing Code are, '*in keeping with a technology-neutral stance, meaning that the same principles of regulation apply equally to digital and other traditional delivery environments'* and again, in the context of the innate sophistication of new models, we highlight the need for constant and careful monitoring to ensure that the Code is, in fact, sufficiently robust to deal with future complexity.

LOW-INCOME CONSUMERS HAVE DIFFERENT NEEDS AND PREFERENCES

Further, in MABS experience the needs and preferences of low-income or otherwise vulnerable groups are not usually to the forefront in the development and design of many new financial services and products and an inherent difficulty emerges when products designed for 'mainstream' consumers are subsequently not suitably tailored when offered to low-income groups where there is a future risk of an income shock. The detriment in global financial markets caused by the mass securitisation of sub-prime loans is a case in point.

At the same time, we believe that innovative digitalised financial products, designed with the particular needs of vulnerable consumers in mind offer significant potential for the social and economic development of these otherwise potentially marginalised groups.

In this respect, it is worth highlighting some of the recent innovations (including a mix of government, incumbent and start-up projects) emerging under the UK Financial Conduct Authority's (FCA's) 'Project Innovate'[10] during Year 1 of its 'Regulatory Sandbox'.

Box 1 FCA Project Innovate 'Sandbox' examples

- 'BUD' is described as *'An online platform and app which allows users to manage their financial products, with personalised insights, on a single dashboard'*,
- 'Govcoin Limited' is a project through which, *'A technology provider has partnered with the Department for Work and Pensions (DWP) to determine the feasibility of making emergency payments using means other than cash'*,.
- 'Swave' is *'A micro savings app that provides an across-account view; enables a round-up service every time a user spends money and calculates an affordable savings amount based on the user's spending behaviour'*.

[10] https://www.google.ie/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwj6nI66vYzXAhVEJVAKHdt1DHgQFggmMAA&url=https%3A%2F%2Fwww.fca.org.uk%2Ffirms%2Ffca-innovate&usg=AOvVaw2Te2kO41_a0NYbMzPheqTZ

Serval years ago (2005), MABS co-funded research (‘Do the Poor Pay More?[11]’) which described the several ways in which low-income households bore an additional financial overhead in their payments for routine goods and services which arose directly as a cause of their relative poverty. Subsequently, in a variety of social policy submissions to various regulators and Government Departments, MABS has highlighted the ways in which lower-income households stand to become more disadvantaged by virtue of their inability to access ‘best value’ products and services which had increasingly become the preserve of those with access to mainstream financial services and the internet. A ‘re-democratisation’ of financial services is currently being enabled via smart-phone technology which offers significant potential for low-income groups, providing there is both an enabling regulatory and policy environment.

Box 2: Examples: Digitalised financial services innovation in less developed economies

- Kenya's 'M-PESA' mobile payments’ system which, over the past 10 years, has come to be used by two thirds of all adults in Kenya. Its success is attributed to the fact that carrying cash is dangerous and also because many Kenyans working elsewhere use it to send money home. One study found that in rural Kenyan households that adopted M-PESA, incomes increased by 5-30%[12.] M-PESA can also facilitate more habitual savings as it does not involve the 'friction' associated with going to a bank to make a deposit or even accessing a PC to carry-out online banking.
- Somaliland, is one of the poorest countries in the world. Yet ‘It stands at the forefront of a mobile payment revolution with its ZAAD platform. At over 30 mobile payment transactions a month on average, the average citizen of Somaliland is far ahead of the rest of the world’s average of 8.5 such transactions per capita per month.’[13]

CASH STILL MATTERS

Until enabling technologies such as those described above become fully accessible across Irish society ‘cash’ will still matter for many Irish consumers and especially to those who manage on a very low-income. Having cash in hand provides flexibility and fluidity and enables such consumers to manage day by day and week by week; electronic transaction platforms do not, as yet, provide sufficient freedom of choice. MABS National Development has begun an internal analysis of new payments’ mechanisms using real but anonymised ‘household budget’ case data to test whether they can replicate the necessary cash-flow fluidity associated with hard cash at an affordable cost. Where new

[11] https://www.mabs.ie/downloads/reports_submissions/Do_the_Poor_Pay_More__OPEN__May2005_1_.pdf

12http://www.economist.com/blogs/economist-explains/2013/05/economist-explains-18

[13] http://theconversation.com/cash-is-falling-out-of-fashion-will-it-disappear-forever-79316

payments' technologies are evolving some are accompanied by rules and transaction charges which, at current levels, are often prohibitive for those on the lowest incomes.

The current 'transition' within the economy from cash to e-payments is, in MABS experience, imposing a time and cost premium for certain Irish consumers who are not yet, for a variety of reasons, in a position to transact digitally.

CULTURE MATTERS: TECH-LED INNOVATIONS MAY BE WEAK ON CONSUMER PROTECTION

Finally, pioneering digitalised financial services are, in many instances, 'tech-led' which means that the necessary understanding of consumer protection may not be 'hard-wired' into business model development that occurs outside 'incumbents'. The lack of a 'compliance culture' within tech-led 'fin –techs' can give rise to a risk they may not recognise the potential for consumer detriment until it's too late. Where mainstream financial services traditionally provide end-to-end services to their customers, emergent fin-techs tend to specialise in just one aspect of the process – e.g. payments and later (if successful) go on to build fuller suites of services using multi-modal and inter-organisational approaches. This 'bundling' of products and services complicates the 'customer journey' and for regulators and consumers makes locating accountability/governance (and consequently supervision), within the supply-chain more complicated. It will likely also make the assertion of consumer rights more difficult.

MABS recent experience of similar market fragmentation arising due to the sale of loan books in the mortgage and other parts of the credit market, highlights the difficulties experienced when different parts of the 'supply chain' are subject to different regulatory regimes.

In a 2017 paper, '*Fintech, Regulatory Arbitrage, and the Rise of Shadow Banks',* Buchak et al[14]., outline some broader reasons for concern. The observations are based on the rapid growth of 'shadow banking[15]' enabled by fin tech in the US. They make the point that if regulations matter then we should be concerned when *'leakage undermines efficacy'*, they further note that the 'Too Big To Fail' (TBTF) risk can occur in non-bank entities and that shadow banks undermine the notion of a *'level*

[14] Buchak, Greg and Matvos, Gregor and Piskorski, Tomasz and Seru, Amit, Fintech, Regulatory Arbitrage, and the Rise of Shadow Banks (September 2017). Columbia Business School Research Paper No. 17-39. Available at SSRN: https://ssrn.com/abstract=2941561

[15] https://www.irishtimes.com/business/financial-services/ireland-is-world-s-fourth-largest-shadow-banking-hub-1.3077914 (It is recognised this sector is not currently oriented towards the Irish consumer financial services market.)

playing field' in financial services. Somewhat worryingly, from the MABS perspective, the research notes movement into mortgage-lending and the tendency for the shadow-banking sector to focus on minorities for whom mainstream lending is not accessible. Finally, risk relating to the fact that 'fin-tech', as a business model, has not yet been 'cycle tested' is also noted.

In the following sections we provide observations on each of the relevant questions asked in the Discussion Paper.

SECTION 2 DIGITALISATION

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.

As aforementioned, the Discussion Paper is comprehensive in its coverage of pertinent issues. Notwithstanding this, it is not possible for MABS to comment insightfully on innovations that are not yet apparent in its casework.

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.

In the main, MABS is concerned with borrowers who are over-indebted and living on a low income, and, as such, its experience is primarily related to consumer credit. In MABS experience there is an ongoing and unmet appetite for affordable credit amongst low-income households. In its absence low-income households, of necessity, access whatever form of credit is otherwise available. In this context financial services that enable greater access to affordable credit have significant growth potential.

However, if this need continues to go unmet there is potential for exponential fin-tech driven growth in high-cost credit. It seems inevitable that the convenience currently offered by the 'door-step lender' may soon be replaced by the 'mobile lender' as both technical and regulatory evolution combine to reduce transactional costs and enable much more fluid transfer of funds.

"The digitisation of financial products - making many loans little more than a mobile phone swipe away - has meant that supply has become broader and easier[16]

[16] http://www.bbc.com/news/business-41655915

It should be noted also that in much the same way as illegal money lending continues to operate beneath the regulatory ambit, the same technology could enable the emergence of a type of 'dark net' for illegal money-lending, with all the associated risks for the most vulnerable consumers.

SOCIAL MEDIA LED CONSUMPTION OF FINANCIAL AND OTHER SERVICES

One further noteworthy trend is the rapid-growth in 'social –media led' consumer events such as 'Black Friday' where Irish consumers have come quite rapidly, to spend very significantly (estimated at in excess of €100m) online, in securing Black Friday and 'Cyber Monday' 'bargains'. While MABS is fully supportive of opportunities for consumers to achieve best value, the somewhat 'frenzied' and social media-fuelled spending that arises from these types of events can sometimes undermine a more rational approach to ongoing and planned money management.

In a digitalised economy it seems more important than ever, that consumers can access high quality, free, independent and confidential advice such as that provided by MABS and other reputable consumer advice bodies.

SECTION 3 BENEFITS & RISKS

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

VULNERABLE CONSUMERS MAY BE LEFT BEHIND

Certain risks and benefits have been highlighted previously. Over and above those specific risks we perceive significant risk that the market will advance without a necessary focus on the needs of low-income or otherwise vulnerable consumers, who may suffer further financial exclusion and associated detriment as a result.

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.

ADVICE & 'ROBO-ADVISORY'

As an organisation whose main service-offering is 'advice' MABS has some observations about 'robo-advisory' services. We understand that the scale and application of such services are limited at present and that, based primarily on algorithms, robo-advisory has been demonstrated to prove a more robust mode of conveying financial advice in certain instances, but should be treated with caution.

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.
MABS has very limited direct evidence of detriment to consumers as a result of digitalisation other than the general tendency in financial services innovations to date to fail to adequately take into account the needs and preferences of low income groups in product design and the consequent potential for such consumers to become further excluded as financial services evolve.

SECTION 4 CONSUMER PROTECTION

OBSERVATIONS ON QUESTIONS 6 & 7

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.
Q7 How could the consumer protections in the Code relating to access be enhanced? Please outline the reasons for your proposed enhancements.
As previously highlighted MABS cannot yet determine the extent to which consumers are adequately protected in a more digitally-enabled financial services environment. Observing market evolution as well as establishing baseline research incorporating relevant KPI's for the purpose of monitoring could be useful. MABS experience over the years of a variety of financial services innovations is that there is often a 'lag' between the point at which a new innovation becomes 'mainstream' and the point at which borrowers start to contact MABS about difficulties they are experiencing.

MABS would observe that there are several potential risks in terms of the expertise and knowledge gap amongst consumers and consumer advocates, the potential lack of a consumer protection culture amongst tech-led innovators, the complexity of the products, the potential for exponential growth and proliferation etc.

OBSERVATIONS ON QUESTIONS 8 & 9

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.

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.

DIGITAL LITERACY

MABS see this as a potential area of considerable practical concern. Our first concern relates to levels of literacy generally and the provision of important product-related literature and 'small-print' via web and mobile devices. All of the difficulties with information provision associated with traditional financial products continue to apply but we would also observe that there may be further difficulties for consumers in reading and understanding important product information particularly on a small screen- via a mobile phone. It is, however, also accepted that consumers who experience literacy difficulties with traditional media can become 'digitally' literate if information provision is developed with their needs in mind and this goal should be at the forefront of future information design and dissemination.

CONSUMPTION UNDER PRESSURE

A further and related concern is how and when such important product information is consumed; digitalised financial service provision creates 24/7 possibilities for purchasing new services which are literally at consumers' 'fingertips'. While serving to increase access this also increases the potential for important purchases to be made under 'duress', emotional strain or otherwise in a manner which lacks necessary focus. This again would be a particular concern for 'vulnerable' consumers.

The Code makes specific reference to 'Telephone' contact between the regulated entity and its customer and we propose that consideration be given to including 'contacts' made via other electronic means such as via 'face-book' messaging as well as consideration to less overt contacts that may be being made with customers via targeted web advertising etc.

DURABILITY AND STORAGE OF 'PAPERWORK' IN A DIGITALISED ENVIRONMENT

With regard to what might be described as the 'paperwork' associated with financial products, MABS carries out, as part of its client casework, a general review of contracts and related client documentation associated with relevant financial products. Based on this experience, we have some concern that in a digitalised landscape the potential exists for loss of important records and documents ancillary to a contract unless consumers have a safe, durable and well-ordered mechanism for storing and filing such documents. The risk is intensified where devices are lost, stolen or broken without the relevant documentation being stored safely elsewhere.

'BIG DATA'

Digitalisation has obvious implications for the use, reuse and potential manipulation of personal data in ways which a consumer may be entirely unaware of. It also has the potential for consumers to take control of their personal data and use it to further empower them when accessing financial services. The Discussion Paper references, 'MyData[17]' which is *'a human centered approach in personal data management that combines industry need for data with digital human rights'*. This and similar products have the potential to give individuals control of their own data and enable them to use their full data sets in order to access innovative financial services and other consumer products. Its evolution makes the idea of 'DIY' consumption of government or financial services more probable and therefore has significant potential as a tool of financial inclusion. However, and as with other relevant areas cited in this submission, the 'know-how' to take control of one's personal data is not yet commonplace in Irish society. While MABS welcomes the further protections for consumers afforded by the GDPR, it is not clear what future risks or opportunities may exist for consumers who have already created a strong digital footprint by virtue of their historic use of various forms of social media or whether there may be an associated potential for exclusion of those who deliberately wish to have no such footprint.

OBSERVATIONS ON QUESTIONS 10 &11

Q10 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.
Q11 How could the consumer protections in the Code relating to suitability be enhanced? Please outline the reasons for your proposed enhancements.

The Code specifies (p37) that '

> *'Prior to offering, recommending, arranging or providing a credit product to a personal consumer, a lender must carry out an assessment of affordability to ascertain the personal consumer's likely ability to repay the debt, over the duration of the agreement'*.

MABS views that this is an area where both algorithms and data-analytics could better inform the affordability assessment process. However, we would note that the affordability assessment tools used must be fully robust and factor in all of the relevant expenses incurred by the consumer/their

17 http://mydata2016.org/

household and then go on to stress test appropriately for future income changes or shocks. MABS has some experience in this area based on developing 'standard financial statements' with its clients and again believes that there will always remain a benefit in human interaction in this core process to ensure that the borrower/consumer fully considers their full-range of outgoings and future income before committing to purchase a new financial product.

OBSERVATIONS ON QUESTIONS 12 & 13

Q12 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.
Q13 How could the consumer protections in the Code relating to complaints be enhanced? Please outline the reasons for your proposed enhancements.

As per previous observations on 'Arrears' Handling' we believe that, due to their potential to be both vulnerable and distressed at the point at which a complaint is being made, consumers who have a complaint with a regulated entity should have and retain a right to interact with a 'human' in a regulated entity when making a compliant.

Notwithstanding this, where, as is currently the case with the ongoing 'Tracker Review', it becomes apparent that the scale of the issue and the workload involved, are combining to cause delays in communication with affected consumers and in taking remedial action, there is an obvious potential to apply 'advanced analytics' as an aspect of the investigative and remedial processes. This type of enabling technology should obviously be available to the institutions concerned, but moreover could become a core part of the Central Bank's armoury in fulfilling its Consumer Protection and supervisory remits.

In relation to the above and with specific reference to the 'Tracker review' we would submit that a fundamental review of the 'Complaints Handling' section of the Code is conducted.

Q14 &15 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**.**

MABS has no observations on 'claims handling'.

OBSERVATIONS ON QUESTIONS 16 & 17

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.

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

As already stated we note that consumers may have difficulties in storing and recalling their own records when consuming financial services online. MABS often supports clients to compile relevant hard and soft copy documentation in support of their case and we feel that vulnerable consumers may have difficulty in managing their own financial records online. More could potentially be done as an aspect of creating an enabling environment for digitalised financial services by way of innovations (such as a publicly sponsored 'My-Data' type initiative) that would enable Irish consumers to combine all of their relevant financial documentation in one secure and durable 'virtual' file.

OBSERVATIONS ON QUESTION 18

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.

Section 5.24 of the Code, 'Exemption from Knowing the Consumer and Suitability', provides a financial services provider with an exemption where the consumer has specified a product by name and provider. It is our considered recommendation that in the case of the digital purchase of financial products or services, that this exemption to knowing the consumer and the related suitability provisions be removed, given the isolated manner in which such a digital purchase may be executed.

OBSERVATIONS ON QUESTION 19

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?

EXPERTISE-GAP & CYBER CRIME

There is vast potential for new risks in this area, several of which have been cited in previous sections of this submission. One of the major risk areas is the 'expertise gap' that exists between producers and consumers of digitalised financial products, in this context the potential for cyber fraud and other cyber security risks will be greater, given the relative lack of skill, experience and comprehension amongst some cohorts of consumers of new products and services.

LACK OF KNOWLEDGE ABOUT THE POTENTIAL BENEFITS OF ALTERNATIVE DATA

Just as the CBI has set up a new credit register, financial services providers (lenders) potentially have access to equally informative and reliable 'alternative data'/'aggregated data' sets (mobile data, apps data, social media data, location data and device usage information etc.) that could be used to inform or supplement lending decisions.

OBSERVATIONS ON QUESTION 20

Q20 Given responsibility for the protection of the consumer 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?

We would expect that the resolution to the first part of this question occur in business model development. The second issue, 'better protection of consumers interests' is, as previously noted, driven by culture. If a culture of consumer protection is not at the centre of financial services (traditional or digitalised) it is hard to 'manufacture' it via regulation alone.

One potential way of compelling firms to use innovative technologies in a positive way would be to impose an obligation on digitalised financial services providers operating above a certain scale or with a given market penetration level, to contribute to the development of 'social' fintech services in order to generate a more grounded and more practical focus on social gain as well as cultivating a pro-consumer culture amongst fintechs which would serve to strengthen the general approach to Code compliance.

OBSERVATIONS ON QUESTION 21

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?
MABS agrees fully with the principle but as with other aspects of the submission we highlight that the needs and preferences of low income groups are different to other cohorts of consumers and we

would not wish to see a 'dominant' digital journey emerge that does not take these differing needs into account.

OBSERVATIONS ON QUESTION 22

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.

MABS identifies no such impediment.

OBSERVATIONS ON QUESTION 23

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?

The digital world is one of innovation and our consideration of its potential should be equally innovative. The example cited previously in respect of the Federal Reserve's multi-disciplinary, 360-degree analysis of fin-tech innovations is a potential model. We propose that it would be beneficial for regulators, incumbents, civil society organisations, commercial regulatory specialists, start-ups, academics, government bodies, consumer advocacy organisations etc. to have an opportunity to fully consider new developments from a variety of different perspectives. As cited above, such an approach might assist in compensating for the current societal 'expertise gap' in this area. The FCA's 'sandbox' is a further extension of this, in its facilitation of actual projects with both social and commercial potential.

CONCLUSION

As with other innovations in financial services (Credit Unions, community banks), MABS sees the potential for digitalisation to be transformative for low-income, vulnerable and otherwise marginalised groups. We also recognise the possibility for serious innovation-related detriment (as occurred with sub-prime). The opportunity exists for the needs and concerns of these groups to be built- n from the start of a digitalised economy in Ireland, rather than as an 'afterthought' to fill a gap or; worse still, as a 'corruption' of a mainstream offering ill-suited to the interests of people who experience financial exclusion, ultimately causing more harm than good.

We hope that the CBI will consider our observations on the Discussion Paper but also recognise that while the Code is centrally important, it is only one component of a wider range of activities and supports that will be required to protect and enhance the financial well-being of the MABS client group.