

Sage Submission on *Consumer Protection Code and Digitalisation Discussion Paper*

Sage Support and Advocacy Service exists to promote and protect the rights, freedom and dignity of vulnerable adults and older people through the development of support and advocacy services to address individual and systemic issues. In circumstances where people may be vulnerable, or have to depend on others, there is a need to ensure that their rights, freedoms and dignity are promoted and protected. Through its dedicated support and advocacy service, Sage works to ensure the will and preferences of the person can be heard and implemented, independently of family, service providers or systems interest. Influenced by the scandals of Leas Cross and Arás Attracta, Sage was established in September 2014 with funding from the HSE and The Atlantic Philanthropies and with the support and governance of Third Age. Sage Advocacy clg was established in September 2017 to be responsible for the future development and governance of the service.

It is estimated that 10% of older adults experience financial abuse. According to recent statistics from the HSE National Safeguarding Office, 1,645 cases of alleged financial abuse of vulnerable adults were reported in the period from January 2016 to June 2017. This represents an increase of 44% in reported cases of alleged abuse from the first half of 2016 to 2017. It is widely contended that abuse and neglect of vulnerable adults is significantly underreported in Ireland, due to the lack of public awareness of what constitutes abuse, and the lack of comprehensive policy and legal safeguards to protect vulnerable adults from abuse. Therefore the current figures on reported cases indicating the prevalence of financial abuse are considered to “...present just the ‘tip of the iceberg’”¹

In 2016 financial related issues for vulnerable adults and older people accounted for the second highest number of cases Sage were involved with². For example these cases can relate to working with a vulnerable adult or older person who has experienced financial abuse, supporting a person with additional needs to engage with their financial institution, supporting a person who is financially planning for future needs including long-term care, supporting a person to arrange an EPA or supporting a person with reduced capacity to ensure their financial resources are being used for their benefit.

Through Sage’s work it has identified that a vulnerable adult can encounter difficulties liaising with financial institutions as the institution is unable to meet their particular needs, or the person is no longer able to engage with the institution as they had previously done due to physical or cognitive changes. While some financial institutions are accommodating and seek to meet and respond to their customers’ changing needs, and to safeguard a vulnerable person’s financial interests, it is not consistent for all institutions and services. There is a need for financial institutions to be proactive in identifying customers who may be vulnerable, and putting in place measures to ensure they are fulfilling their duty to the customer by responding to their needs and safeguarding their financial

¹ National Safeguarding Committee (2017), “‘Lid must be lifted’ on Financial Abuse of vulnerable adults.” Press Statement. <http://safeguardingcommittee.ie/index.php/2017/10/16/lid-must-be-lifted-on-financial-abuse-of-vulnerable-adults/> [accessed 17/10/2017]

² Sage – Support & Advocacy Service (2017), *Annual Report 2016*. <http://sageadvocacy.ie/wp-content/uploads/2017/07/Sage-Annual-Report-190717.pdf> [accessed 17/10/2017]

interests. Without adequate safeguards financial institutions and services are at risk of enabling financial abuse, including theft and fraud.

Sage has included points under some, but not all of the questions raised in the Discussion Paper. Points raised may be applicable across other areas of the Consumer Protection Code.

General Points:

- With the commencement of the Assisted Decision-Making (Capacity) Act 2015 the Consumer Protection Code should be in compliance with the legislation, and reflect the Decision Making Support Structures and roles that will be established under the legislation which will give authority to appointed Representatives and Attorneys.
- In the determination of a vulnerable consumer the Consumer Protection Code should reflect and comply with the provisions of the ADM (Capacity) Act 2015 relating to a "relevant person".
- The Consumer Protection Code should reflect responsibilities of a financial service provider if they become aware of a consumer who is at risk of or has experienced financial abuse, and should ensure compliance with any Adult Safeguarding legislation introduced.

Potential Risks and Benefits

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

- As referred to in the Discussion Paper there is an increased difficulty for financial service providers to identify vulnerable consumers with a loss of human interaction, in addition it will pose difficulties for financial service providers to identify when a vulnerable consumer is experiencing financial abuse or fraud by a third party.
- There is potential risk for financial abuse or fraud by a third party who has been given access to a vulnerable customer's online banking information to assist them in managing their finances online, with easier access to products online a third party would have the opportunity to use another person's profile to access financial products.
- To counter risk consider the use of proactive checking tools online to ensure it is the consumer themselves that is accessing and making transactions on their own accounts, or to ensure that a third party doing so has the necessary permission/legal authority

Consumer Protection Framework

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

- Digitalisation of financial services should not aim to replace human interaction, the Consumer Protection Code should ensure there is a requirement for financial service providers to provide a level of service based on human interaction. Some financial service providers have implemented a 'point of contact' or dedicated and trained personnel to work with customers who may be vulnerable, consideration should be given to how this can be implemented in a digital environment.
- The reliance solely on data generated from digital profiling, digital footprint, pattern of life data, and algorithm profiling could discriminate and exclude people from financial products if there is a bias to exclude people based on risk factors that do not consider the individual's unique circumstances and needs. Conversely the reliance on data alone may potentially target people who are unsuitable for a product as the digital profile does not capture the person's unique circumstances and needs.

Nothing about you / without you

- Online platforms, systems and information sources should be designed following Universal Design processes and techniques to ensure they can be easily accessed by all people, and include prompts and triggers to ensure the customer/user has understood all information relating to a product. Systems should facilitate a customer requiring additional supports to easily make personal contact with the financial service provider throughout their customer journey, for example the use of 'chatbot' technology to recognise if a consumer is struggling to interact with the system that will trigger an intervention by a person if required.

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.

- Financial service providers could be required to take proactive measures to increase public awareness of, and develop skills for, interacting on digital platforms through for example:
 - outreach sessions with targeted groups
 - easily accessible information on potential scams, fraud and financial abuse
 - easily accessible information on how a consumer can protect themselves
 - highlighting the responsibilities of financial institutions to the consumer
- Consider ensuring that the use of automated responses and 'chatbots' are clearly identified to the consumer at the outset of their interaction/digital journey with the financial service provider. For transparency, and to ensure consumers are aware, technology should not be misrepresented as being a human interaction or the assumption should not be made that all consumers understand this.

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

- Financial products could be designed with consideration for the needs of vulnerable customers.
- To ensure suitability of products for consumers, a system would need to have ability to capture and respond to a consumer's needs as they change through the life course, or due to circumstance, for example tracking and proactively responding to changes in patterns of use to identify if a person is no longer able to engage through technology. The system could trigger a response from the financial service provider to engage personally with the consumer and respond to the person (or their representative) based on their current needs.
- The financial service provider's responsibilities to respond to a person's change of circumstances and change to their suitability for a product could be reflected in the Statement of Suitability.