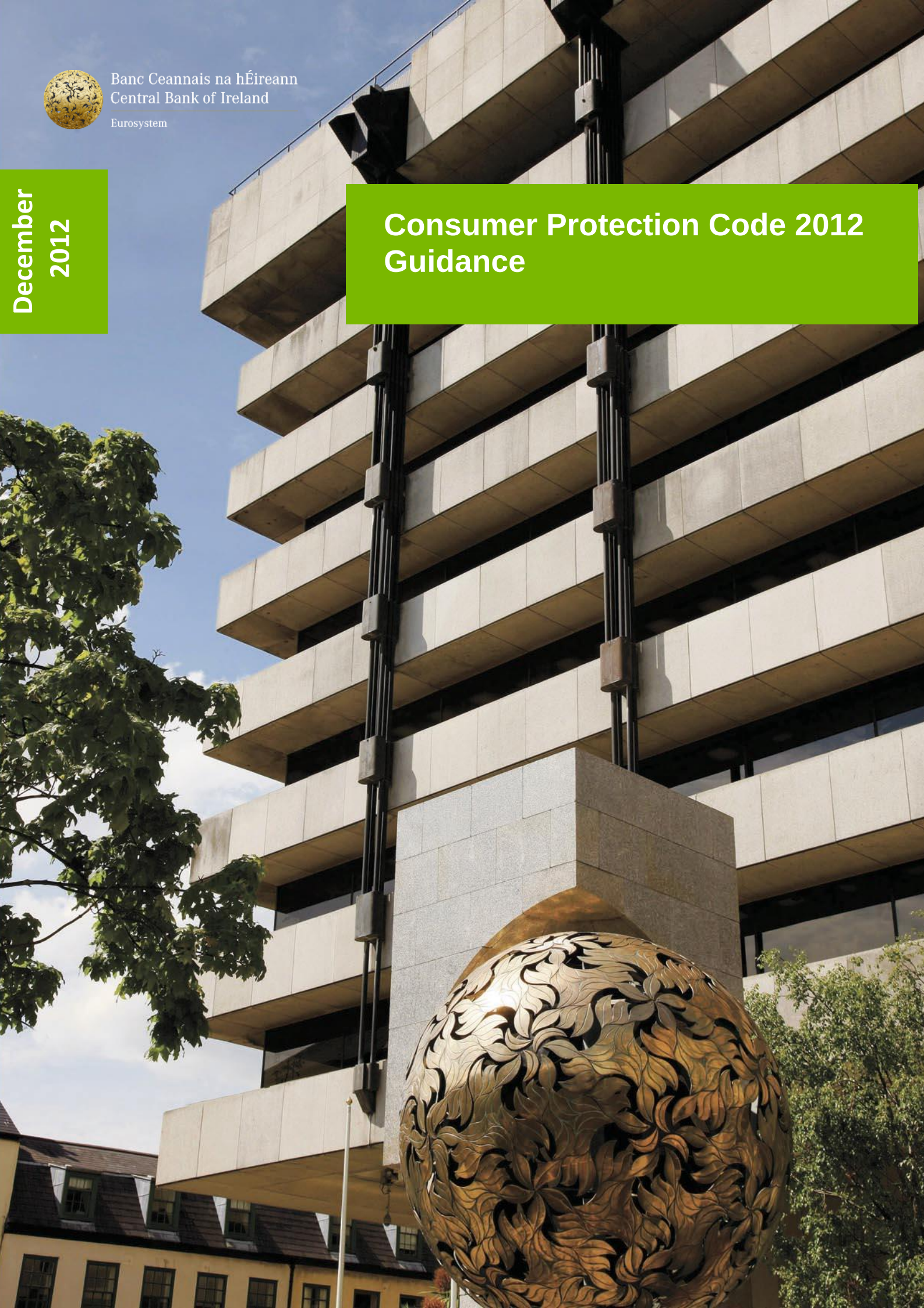

Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

December 2012

Consumer Protection Code 2012 Guidance

Regulated entities are responsible for their own compliance with the 2012 Code. To aid regulated entities in their interpretation and understanding of the 2012 Code's provisions, we are providing additional clarification in a number of areas.

Please note that this document is for information purposes only. It does not amend or alter the 2012 Code and does not form part of the 2012 Code. This document does not constitute legal advice and should not be used as a substitute for such advice. The Central Bank does not represent to any person that this document provides legal advice. It is the responsibility of all regulated entities to ensure their compliance with the 2012 Code. Nothing in this document should be taken to imply any assurance that the Central Bank will defer the use of its enforcement powers where a suspected breach of the 2012 Code comes to its attention.

Unless otherwise stated within this document, clarification was issued on 18th October 2011.

Clarifications are set out under the following headings: Page

1. General Queries

1.1 Will the 2012 Code apply retrospectively?

Any legal proceedings, or any investigation, disciplinary or enforcement action in respect of any provision of the 2006 Consumer Protection Code which applied prior to the issue of the 2012 Code may be continued, and any breach of any provision of the 2006 Consumer Protection Code which applied prior to the issue of this Code may subsequently be the subject of legal proceedings, investigation, disciplinary or enforcement action by the Central Bank or other person, as if the provision had not been amended or deleted and as if the 2006 Code had not been updated and re-issued.

All obligations under the 2012 Code apply prospectively from 1 January 2012.

1.2 How has the definition of consumer changed?

While the definition of consumer has been clarified, the scope has not changed. The definition of consumer includes "personal consumers". A personal consumer is a "natural person acting outside his or her business, trade or profession".

There are however a number of provisions, relating primarily to credit, whose application is limited to "personal consumers". These provisions do not apply to those "consumers" who are not "personal consumers", for example incorporated bodies with a turnover of €3 million or less in the previous financial year.

1.3 Clarification regarding pension schemes.

The 2012 Code applies to the provision of pension products, including PRSAs. Retirement annuity contracts are a particular type of insurance contract, and as such, they fall within the remit of the 2012 Code. The 2012 Code does not apply to Revenue approved occupational pension schemes that are the responsibility of the Pensions Board.

Where a pension scheme is constituted in trust, the trustees are considered to be consumers for the purposes of the 2012 Code.

1.4 Clarification regarding the provision of credit.

1.4.1 Provision of credit involving a total amount of credit of less that €200.

The 2012 Code does not apply to the provision of credit involving a total amount of credit of less than €200.

1.4.2 Provision of credit under credit agreements which fall within the scope of the European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281 of 2010)

The scope chapter of the 2012 Code clarifies which provisions in the 2012 Code apply to the provision of credit which falls within the scope of the European Communities (Consumer Credit Agreements) Regulations 2010.

2012 Code provisions specifically concerning the provision of credit apply to personal consumers. Existing protections for consumers other than personal consumers who are seeking credit have be incorporated into the Code of Conduct for Business Lending to Small and Medium Enterprises (SME Code) which comes into effect on 1 January 2012.

1.4.3 Provision of mortgage credit (which is outside the scope of the CCD)

A number of 2012 Code provisions focus on the provision of mortgage credit. These provisions apply to all mortgage credit sought or obtained by personal consumers (as defined in the 2012 Code), whether in relation to a principal private residence or an investment property.

1.5 Clarification regarding references to variable rates.

References to variable interest rates throughout the 2012 Code shall be interpreted as including tracker interest rates.

1.6 What constitutes a mortgage for the purposes of the Code? (*Clarification included 22/12/2011*)

For the purposes of the 2012 Code, a mortgage is considered to be a loan secured by a property.

1.7 Is email considered to be a durable medium? (*Clarification included 22/12/2011*)

The definition of durable medium is "any instrument that enables a recipient to store information addressed personally to the recipient in a way that renders it accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored."

Regulated entities should be cognisant of the requirement for the unchanged reproduction of the information stored. Email can only be considered a durable medium where it fulfils this requirement.

2. General Requirements

2.1 Proposed rules regarding personal visits and contact with consumers.

In CP54 we conveyed the view that pressurised selling of financial products to consumers, under any circumstances, is of particular concern in light of the consumer detriment which can occur and we proposed to further restrict the circumstances in which personal contact can be made with consumers.

Following a review of the submissions, we have decided to focus on strengthening protection for consumers against unsolicited personal visits from representatives of regulated firms. Consequently, the 2012 Code provisions (3.37 - 3.45) are a combination of the 2006 Code requirements for telephone contact and stricter rules in relation to personal visits.

It should be noted that the obligation on a regulated entity to meet the requirements set out in Provisions 3.40 to 3.45 is without prejudice to any other obligations a regulated entity is subject to, including without limitation, under the Data Protection Acts 1988 and 2003 and as stipulated

in the European Communities (Electronic Communications Network and Services) (Privacy and Electronic Communication) Regulations 2011 (S.I. 336 of 2011).

2.2. Unsolicited personal visits in respect of arrears (provision 3.37) *(Clarification included 21/12/2012)*

While unsolicited personal visits could be particularly difficult for some borrowers, we believe that a lender should be able to visit the home, where attempts at contact have failed and before deciding to commence legal action. However, it is important that any such visits represent a positive experience for the borrower and are conducted in an appropriate manner.

We expect lenders to conduct such visits in line with the following guidance.

- An unsolicited personal visit should only be made where the regulated entity has met the requirements of the 2012 Code and all other attempts at contact have failed.
- We refer to successful visits, i.e., where contact is made with the borrower, so a lender may have numerous attempts at a visit. These attempts are limited by the requirement to ensure that the level of contact and communications is proportionate and not excessive (Provision 8.13).
- The visit does not count towards the limit of three unsolicited contacts per month.
- The consumer must be provided with advance notice, in writing, of the lender's intention to make an unsolicited visit within a specified time frame (for example, in the next ten working days). At least five working days' notice should be given. This letter does not count towards the limit of three unsolicited contacts per month.
- The tone of the letter should be appropriate and positive. It should outline the importance of engagement between the borrower and the lender, and explain the intention of the visit, which should be to discuss the consumer's arrears situation and the next steps for dealing with the arrears. The letter should also give the relevant contact details and offer the consumer the facility to meet in a local branch instead of in the consumer's home. In addition, the consumer should be advised that they may wish to consider having a third party present, if they feel that it would be of assistance.
- A further personal visit may be agreed with the consumer in compliance with provision 3.38 of the 2012 Code.

2.3 Telephone contact with consumers who have subscribed to the National Directory Database Opt-Out Register.

Provision 3.40 sets out the instances in which a regulated entity may make telephone contact with a consumer who is an existing consumer and provision 3.41 sets out the instances in which a regulated entity may make telephone contact with a consumer other than an existing consumer. Notwithstanding the instances outlined in provision 3.41, regulated entities are reminded that they may not contact, for sales or marketing purposes, persons who have expressed a preference not to receive sales or marketing calls and have subscribed to the National Directory Database Opt-Out Register.

2.4 Can text messages be sent to consumers outside of the hours specified in Provision 3.43? ***(Clarification included 21/12/2012)***

Provision 3.43 of the Consumer Protection Code 2012 refers to telephone contact with a consumer, which may only be made between 9am and 9pm Monday to Saturday, unless otherwise agreed with the consumer. We would not consider that a firm which sends a text message to a consumer outside of these hours would be in violation of this provision.

2.5 A number of submissions requested clarification as to whether the 2012 Code provisions in relation to conflicts of interest are intended to ban the payment of commissions or other forms of sales remuneration by a regulated entity.

We do not consider remuneration arrangements that are based only or primarily on sales volume to be in the best interests of consumers as they create an inherent conflict of interest. Consequently, we have introduced a number of new requirements in the 2012 Code in relation to conflicts of interest. These provisions are intended to ensure that suitable products and services are sold to consumers.

Provision 3.30 sets out that a product producer must not require an intermediary to meet sales targets in order to retain an appointment. Provision 3.31 requires that, in order to pay

commission to an intermediary based on sales targets, a product producer must be able to demonstrate that the arrangements:

a) do not impair the intermediary's duty to act in the best interests of consumers; and

b) do not give rise to a conflict of interest between the intermediary and the consumer.

We expect all product producers to re-examine their policies in this regard, to ensure that they can demonstrate compliance.

2.6 Could a regulated entity lodge premiums from customers who do not meet the definition of consumer to a client premium account?

While provision 3.50 applies only to consumers, an intermediary is free to extend the protections of the 2012 Code to all its customers, should it wish to do so.

2.7 A number of submissions requested clarification on the use of the term 'intermediary' in relation to the provisions regarding product producer responsibilities.

For the avoidance of doubt, references to 'intermediary' include tied agents but do not include employees of product producers.

2.8 Some submissions suggested that the requirement for product producers to identify a target market (provision 3.52 (b)) will result in a product producer making generalisations about groups of consumers which could conflict with the Knowing the Consumer requirements.

Product characteristics, for example, ability to release funds, requirement for a once-off investment and/or regular contributions, and the risk profile of the product will enable product producers to identify a target market of consumer, for example, those with a need for access to funds, an ability to fund a once-off investment and/or regular contributions and a particular appetite for risk.

This does not negate the requirement for an intermediary to then carry out a full suitability assessment to decide whether the product matches a particular consumer's needs and objectives.

3 Provision of Information

3.1 Is a regulated entity required to use separate business stationery in respect of its regulated and unregulated activity?

Provision 4.8 states that a regulated entity may only use the regulatory disclosure statement in communications with a consumer where such communications relate solely to a regulated activity. Where a regulated entity corresponds with a consumer in relation to an activity which is not regulated by the Central Bank, it must not include the regulatory disclosure statement in that correspondence. In such instances, regulated entities are expected to use separate business stationery in respect of their regulated and unregulated activities.

This provision seeks to avoid situations where a consumer is inadvertently misled about the regulatory status of a service that does not require authorisation from the Central Bank.

3.2 Is a regulated entity required to insert its trading name in the regulatory disclosure statement irrespective of whether the regulated entity operates under its trading name?

Provision 4.10 requires a regulated entity to include both its full legal name and its trading name in its regulatory disclosure statement. A trading name is required to be included in the regulatory disclosure statement only where applicable, that is, where a trading name differs from the legal name of the regulated entity.

3.3 Does the 2012 Code seek to duplicate disclosure requirements set out in the Life Assurance (Provision of Information) Regulations 2001?

A number of respondents to CP54 referred to similar disclosure obligations between the 2012 Code and the Life Assurance (Provision of Information) Regulations 2001 (Life Regulations). We accept that there is a certain amount of overlap with the Life Regulations and we do not expect

regulated entities to duplicate disclosures. As such, where a regulated entity meets the disclosure requirements in the Life Regulations, we would expect that any supplementary disclosures required by the 2012 Code will be provided in addition to those required by the Life Regulations.

3.4 The terms 'independent' and 'broker' may be used where the 'principal regulated activities' of an intermediary are provided on the basis of a fair analysis of the market. How would an intermediary decide what constitutes its 'principal regulated activities'? (Provisions 4.16 and 4.18)

In order to meet these requirements, we would expect that at least 75% of a regulated firm's total turnover on an annual basis from regulated activities comes from regulated activities that are provided on the basis of a fair analysis of the market. The intermediary may provide other regulated activities on a limited analysis basis or hold tied agencies, provided these activities do not constitute more than 25% of total turnover on an annual basis from regulated activities.

Where the intermediary uses the terms 'broker' or 'independent' in relation to individual regulated activities, the intermediary must ensure that the regulated activity in question is provided on the basis of a fair analysis of the market.

For example, ABC Limited provides life assurance and pensions on a fair analysis basis, holds a tied agency in respect of home insurance and provides mortgages on a limited analysis basis. The provision of life assurance and pensions constitutes 75% of total turnover from regulated activities, home insurance 15% and mortgages 10%.

ABC Limited could use the terms 'broker' or 'independent' to describe the firm and/or the regulated activities of providing life assurance and pensions, or in any trading name used to refer to all the regulated activities of the firm. It could not use those terms in relation to the provision of home insurance or mortgages, or in any trading name in relation to these activities.

3.5 What level of detail must be provided in relation to warranties and endorsements as set out in provision 4.31?

If the detail of warranties and endorsements on policies appear in the terms and conditions of the policy, it is only necessary to give a summary of the main warranties/endorsements at quotation stage. However, the information given must be to a level that enables the consumer to make an informed choice.

3.6 Clarification was requested regarding provision 4.41 f), which sets out specific information that a regulated entity must provide to consumers before offering, providing, arranging or recommending a lifetime mortgage.

Provision 4.41 f) requires that the firm provides the consumer with an indication of the likely early redemption costs which would be incurred if the loan was redeemed on the third and fifth anniversary of the loan and at five yearly intervals thereafter.

For the avoidance of doubt, the obligation to provide this information at five yearly intervals is intended to mean at five yearly intervals subsequent to the fifth anniversary, i.e., in addition to providing an indication of the early redemption costs that would apply if the loan was redeemed on third and fifth anniversary of the loan, a regulated entity must also provide an indication of the early redemption costs that would apply should the loan be redeemed on the 10^{th},15^{th}, 20^{th}, etc. anniversaries, as appropriate.

3.7 Does provision 6.18 a) apply to whole of life insurance policy benefit charges?

Provision 6.18 a) provides that a regulated entity must notify affected consumers of increases in charges or the introduction of any new charges at least 30 days before the change takes effect. For the avoidance of doubt, this provision does not apply in the case of whole of life insurance policy benefit charges where annual increases in benefit charges may be made in line with mortality rates in order to keep the policy on cover, and this has been disclosed to the consumer at the policy proposal and commencement stage.

3.8 Provision 4.56 requires a regulated entity to display, in its public offices and on its website (if any) a schedule of fees and charges that it imposes on consumers. Does this provision apply to commission paid by an intermediary?

For the avoidance of doubt, this provision only applies to fees and charges imposed by a regulated entity on consumers and does not include commission paid to an intermediary by a product producer.

It should be noted that this provision applies to all regulated entities, including those that are subject to the Life Assurance (Provision of Information) Regulations 2001.

3.9 Is a regulated entity obliged to provide notice 30 days in advance of a decrease in the interest rate on a loan under provision 6.7? (*Clarification included 22/12/2011*)

While provision 6.7 does not explicitly refer to interest rate increases, the intention of the provision is that consumers will be informed about, and can prepare for, impending increases in the interest rate applying to their loans. Given that the 2012 Code is drafted in the spirit of protecting consumers, we consider that the 2012 Code does not require regulated entities to impose a notice period in relation to interest rate decreases on consumers who would otherwise benefit from a reduction in their repayment.

4 Knowing the Consumer & Suitability

4.1 Reminder regarding compliance with Data Protection requirements when gathering information from consumers.

It should be noted that, in order to comply with data protection requirements, information gathered from consumers by a regulated entity in compliance with the 2012 Code and, in particular, the Knowing the Consumer requirements (Chapter 5) should be used for the sole purpose for which it was gathered, for example assessing suitability. This data cannot subsequently be processed for other purposes, such as identifying marketing opportunities.

4.2 The 2012 Code introduces a new requirement in relation to vulnerable consumers. How would a regulated entity identify a vulnerable consumer?

Identification of a consumer's vulnerability or otherwise will require the exercise of judgement and common sense and should be based on a consumer's ability to make a particular decision at a point in time.

We consider that identification of a vulnerability should be an inherent part of the Knowing the Consumer process, during which regulated entities should consider whether there is any evidence of consumer vulnerability, as outlined in categories 1, 2 and 3 below.

	Categories of Vulnerable Consumers	**Examples of Vulnerabilities**
1	Capable of making decisions but their particular life stage or circumstances should be taken into account when assessing suitability.	Age, poor credit history, low income, serious illness, bereaved, etc.
2	Capable of making decisions but require reasonable accommodation in doing so.	Hearing-impaired, vision-impaired, English not first language, poor literacy.
3	Limited capacity to make decisions (temporary / permanent)	Mental illness/ intellectual disability.

Consumers that fall into category one should have their circumstances taken into account by regulated entities as part of the revised Knowing the Consumer and Suitability requirements.

Categories two and three have been included in the definition of "vulnerable consumer" and, in addition to existing protections, including the Knowing the Consumer and Suitability requirements, under provision 3.1, regulated entities must provide those identified as "vulnerable consumers" with such reasonable arrangements or assistance that may be necessary to facilitate their dealings with that regulated entity.

Websites which may be of assistance to regulated entities when dealing with vulnerable consumers include:

www.ncbi.ie

www.irishdeafsociety.ie

www.deafhear.ie

www.mentalhealthireland.ie

www.inclusionireland.ie

www.ageaction.ie

4.3 A number of submissions suggested that a consumer should not be prohibited from taking out a financial product on the basis that they refuse to disclose some or all of the information sought in compliance with provisions 5.1 and 5.3.

The Knowing the Consumer provisions set out certain information that should be gathered, where relevant. Regulated entities must judge what information is relevant in assessing whether a product or service is suitable for a particular consumer, and, if the consumer refuses to provide this relevant information, then it follows that it is not possible to properly assess suitability. Provision 5.4 requires that the consumer should be advised of this and that the product or service should not be offered, recommended, arranged or provided if the consumer refuses to provide this relevant information.

4.4 Do the credit affordability assessment requirements apply retrospectively?

For the avoidance of doubt, the credit affordability assessments in Chapter 5 (provisions 5.9 to 5.14) apply to new credit agreements after 1 January 2012.

4.5 Clarification was requested regarding provision 5.9 of the 2012 Code in relation to information disclosure for mortgages and a similar requirement under the Consumer Credit Act, 1995.

The Consumer Credit Act 1995 ("CCA") requires a lender to provide details of the effect on the instalment amount of a 1% increase in the first year interest rate. This information must be

included on a front page notice for housing loan agreements. Provisions 5.9 and 5.12 of the 2012 Code requires calculation of the effect of a 2% interest rate increase in certain circumstances. Lenders are required to provide the information required under provisions 5.9 and 5.12 in addition to the information required to be issued to consumers under the CCA.

4.6 Reminder regarding compliance with Data Protection requirements when submitting information obtained from a personal consumer under provisions 5.1 and 5.3.

Provision 5.10 requires a mortgage intermediary to submit the information obtained from a personal consumer under provisions 5.1 and 5.3 to the relevant lender to enable the affordability assessment(s) to be carried out. To the extent required under data protection law, this information should only be submitted with the consumer's agreement that his or her data can be passed to the named lender(s) for the purpose of formal assessment of his or her credit application.

4.7 Clarification regarding Current and Demand Deposit Accounts, Bureaux de Change

Provision 5.24 specifies that Knowing the Consumer and Suitability requirements do not apply in certain instances, as outlined in provision 5.24. In addition to the listed exemptions, it should be noted that regulated entities are not obliged to apply the provisions of Chapter 5:

- to any payment accounts subject to the European Communities (Payment Services) Regulations 2009 including, for example, current accounts, or
- for bureaux de change transactions, to which the 2012 Code does not apply.

4.8 Foreign Currency Loans *(Clarification included 21/12/2012)*

Where a regulated entity offers a foreign currency loan product to consumers it should be cognisant of the risks inherent in the product as well as the consumer's attitude to risk in complying with the 'Knowing the Consumer and Suitability' requirements of the Code. Under provision 5.16(b) of the Code, when assessing the suitability of the foreign currency loan product for a consumer, a regulated entity must consider and document whether the consumer is financially able to bear the risks attaching to the foreign currency loan. In assessing a consumer's ability to bear the risks, we would expect that the regulated entity would consider

the impact of a severe depreciation of the local currency and an increase in foreign interest rates. As required under provision 5.19 of the Code, the statement of suitability to be provided to the consumer should outline how the risk profile of the product is aligned with the consumer's attitude to risk.

5 Rebates & Claims Processing

5.1 When complying with provision 7.2, could a regulated entity make an aggregate donation to a charity?

In complying with provision 7.2, we do not require regulated entities to make individual donations for each rebate. It is permissible that a regulated entity may combine rebates to make a lump-sum donation to a charity. However, the regulated entity must maintain an itemised record of each amount per consumer.

5.2 Does provision 7.2 prohibit the setting of thresholds for payment of rebates in insurance policy terms and conditions? (*clarification included 22/12/2011*)

Where a regulated entity specifies in its policy terms and a condition that rebates (under a certain specified level) will not be refunded to the consumer, and additional premiums (under a specified level) will not be sought from the consumer, such a provision is not prohibited under provision 7.2. However, regulated entities are also reminded of their obligations under provision 4.22 to provide the terms and conditions attaching to a product or service, on paper or another durable medium, before the consumer enters into a contract for that product or service.

5.3 Clarification regarding rebates *(Clarification included 21/12/2012)*

To comply with Provision 7.4 an insurance intermediary must obtain the prior written agreement from the consumer every time it intends to deduct any charges from a premium rebate. This requirement would not be satisfied by obtaining such agreement in the terms of business signed by the consumer.

5.4 Clarification regarding loss adjustors and expert appraisers

For the purpose of provision 7.9, loss adjustors and/or expert appraisers are viewed as independent professionals who provide a service to regulated entities when assessing a claim.

5.5 How would a regulated entity demonstrate that a claim settlement offer is fair?

In complying with provision 7.15, it is expected that regulated entities are able to demonstrate how they assess claims and determine fair outcomes for consumers when settling a claim. In determining whether or not a settlement offer is fair, consideration should be given to a number of factors, including but not limited to the following:

- any evidence submitted by the claimant (or any third party acting on his or her behalf) to support the value of the claim;
- the evidence made known to the insurer or evidence that should be reasonably available to the insurer; and
- the procedures used by the insurer in determining the monetary amount of compensation offered.

6 Arrears Handling

6.1 From when do the Chapter 8 provisions in respect of arrears apply?

The 2012 Code comes into effect on 1 January 2012 and, as of that date, the provisions of Chapter 8 apply in respect of all arrears (as defined).

6.2 It was suggested in the submissions that there is an inherent conflict between requiring regulated entities to engage with consumers in arrears, on the one hand, and on the other hand, limiting the permitted number of contacts allowed with such consumers.

We disagree with this suggestion. We have only placed a limit on the number of unsolicited contacts each month and this has been done in order to protect consumers from harassment in relation to their arrears situation. The limit is also consistent with the limit imposed in relation to mortgage arrears under the Code of Conduct on Mortgage Arrears.

Chapter 8 of the 2012 Code requires regulated entities to seek to agree an approach that will assist a personal consumer in resolving an arrears situation and **requires** them to make contact as follows:

- Provision 8.4 sets out that 10 business days after arrears first arise, a regulated entity must immediately communicate with a personal consumer to establish why the arrears have arisen.
- Provision 8.6 sets out that where an account remains in arrears 31 calendar days after the arrears first arose, a regulated entity must, within 3 business days, provide detailed information in writing to the personal consumer and any guarantor.
- Provision 8.8 requires a regulated entity to provide updates every three months on the information required by provision 8.6, where arrears persist.
- In the case of mortgages to which the Code of Conduct on Mortgage Arrears does not apply, where arrears persist for 3 months and no alternative repayment arrangement has been put in place, in addition to the above, Provision 8.9 requires a regulated entity to write to the personal consumer and warn him or her of the legal consequences of non-payment.

Chapter 8 of the 2012 Code imposes the following **limitations** in relation to communications:

- Provision 8.13 requires that the level of contact and communication is proportionate and not excessive.

- Provision 8.14 imposes a limitation on unsolicited communications to three per month. This limitation does not include communications made in compliance with the requirements of the 2012 Code and, consequently, the limit does not apply to any communication the sole purpose of which is to comply with the requirements of the 2012 Code or other regulatory requirements.

However, at all times, regulated entities must ensure that they comply with the requirements of Provision 8.13 and should note that where communication is made successfully in compliance with a requirement of the Code, that requirement is considered to have been met and any

further communication in that regard, to which the consumer has not given consent, is considered unsolicited and is subject to the limit set out in 8.14.

6.3 Further Clarifications on the Provisions of Chapter 8 *(Clarification included 21/12/2012)*

Initial communication - provision 8.4

- The requirement for this initial communication applies for each account (as set out in the provision) and does not count towards the limit of three unsolicited contacts, as it is required by the 2012 Code.
- The intention of this provision is that the lender will engage with the consumer to try to establish whether the missed payment is indicative of an arrears problem.
- In complying with this provision, we consider that it is appropriate for a lender to attempt contact until such time as they have a conversation with the consumer to determine why the arrears have arisen, provided that the level of attempted contact is proportionate and not excessive.
- Once the lender has spoken to the consumer in relation to their arrears and has, in as far as is practicable, established the reason for the arrears, this provision is considered to have been met and any further contact is subject to the limit on unsolicited contact (except where it has been requested by or agreed in advance with the borrower).
- This initial communication can be attempted until 31 calendar days after the arrears first arise, at which point the day 31 letter must be issued. While provision 8.4 requires a lender to make the initial contact ten business days after the arrears first arose, a lender is not prevented from making the initial contact at an earlier stage (i.e., prior to day 10) should it wish to do so. However, as set out above, once the lender has spoken to the consumer in relation to their arrears and has, in as far as is practicable, established the reason for the arrears, this provision is considered to have been met.

Limit of three unsolicited contacts (provision 8.14)

- The limit applies to successful communication (e.g., a letter issued, text message sent or a telephone conversation held) and voicemails, and is not intended to apply to missed calls or engaged numbers.

- Attempts at contact should be proportionate and not excessive (provision 8.13).
- Once the communication is successfully made, the consumer should be given sufficient breathing space before communication is attempted again.

6.4 Does the unsolicited communications limit in Chapter 8 apply per product? (*clarification included 22/12/2011*)

The limit on unsolicited contacts as set out in provision 8.14 applies per consumer. Therefore, where a personal consumer has, for example, a credit card and a personal loan in arrears with a lender, that lender may initiate no more than three unsolicited communications each calendar month, by whatever means, to that personal consumer in respect of those arrears.

6.5 Is the limit on unsolicited contacts separate from the unsolicited contact limit outlined in the CCMA? (*clarification included 22/12/2011*)

The Clarification of Scope at the start of Chapter 8 of the 2012 Code states:

"b. The provisions in this Chapter do not apply to the extent that the loan is a mortgage loan to which the Code of Conduct for Mortgage Arrears applies."

Consequently, the limit imposed under provision 8.14 of the 2012 Code does not apply to the extent that the loan is a mortgage loan to which the Code of Conduct for Mortgage Arrears applies. In this circumstance, the limit set out in paragraph 21 of Chapter 3 of the CCMA applies. Consequently, the limitation on unsolicited contact imposed under the 2012 Code is separate from the limitation on unsolicited contact imposed under the CCMA.

A very simple interpretation of these limitations would allow a regulated entity up to six unsolicited contacts each month – three in accordance with the CCMA for mortgage arrears covered by the CCMA and a further three for all other arrears falling within Chapter 8 of the 2012 Code.

However, we would expect lenders to adopt a holistic approach to dealing with a borrower who is in mortgage arrears and consider all the information contained in the Standard Financial

Statement, which includes information on other debts. Therefore, while up to six unsolicited contacts are permitted under the 2012 Code and the CCMA, lenders should try to ensure that they approach the borrower's situation in a way that addresses all their debts, particularly where those debts are held with the same institution.

6.6 Do the arrears provisions apply if legal proceedings have been commenced to recover unpaid debts? (*clarification included 22/12/2011*)

In the case of legal proceedings, a regulated entity will have to determine on a case-by-case basis whether it is appropriate to continue to apply the provisions of chapter 8. Where a regulated entity institutes legal proceedings, communication obligations which might arise in the context of such legal proceedings would not be subject to any of the provisions of the 2012 Code.

7. Advertising

7.1 Concerns were raised in relation to the appropriateness of the advertising provisions in Chapter 9.

A number of submissions expressed the view that the proposed advertising requirements are not appropriate to broadcast or digital media and, taking this into account, we have made some amendments to the advertising provisions.

Concerns were also raised in relation to how key information should be presented and in relation to the requirement to outline risks alongside benefits. It was felt that these requirements may result in too much information being presented to consumers which could lead to confusion. Our objective in relation to advertising is clear - consumers should receive balanced information in relation to advertised products or services and, consequently, we expect regulated entities to bear this in mind when designing their advertisements and in deciding what information to include.

7.2 Clarification regarding the terms initialism and acronym.

For the purposes of the 2012 Code, initialism refers to an abbreviation consisting of initial letters pronounced separately, for example AER (Annual Equivalent Rate). An acronym is an abbreviation formed from the initial letters of other words and pronounced as a word, for example PIN (Personal Identification Number).

7.3 Is a regulated entity required to include a regulatory disclosure statement, as set out in provision 9.1, on banner advertisements or Google Ads? (*Clarification included 22/12/11*)

Where a web banner advertisement or Google Ad is of a size that renders the inclusion of a regulatory disclosure statement impractical, it is acceptable to link the web advertisement to a page on the regulated entity's website on which the regulatory disclosure statement is clearly displayed.

8. Errors and complaints resolution

8.1 Some submissions suggested that there should be a materiality threshold for the reporting of errors.

Provision 10.2 provides that a regulated entity must resolve all errors speedily and no later than six months after the date the error was first discovered. Provision 10.3 requires that errors which have not been fully resolved within 40 business days of the date the error was first discovered must be reported to the Central Bank. A number of submissions suggested that only 'material' errors should be reported to the Central Bank. Given the breadth of regulated entities to which the 2012 Code applies, a materiality threshold is difficult to define and requires an element of subjectivity as to what constitutes a material error.

We believe that a timescale for rectifying an error is an appropriate proxy for materiality for consumers, whose main concern is to have all errors rectified speedily. The timescales as set out in the 2012 Code will allow regulated entities the opportunity to resolve more minor errors well within 40 business days, while more complex errors, for example where systems corrections are required, should be resolved within six months and must be reported to the Central Bank.

8.2 Provision 10.3 requires regulated entities to inform the Central Bank where an error which affects consumers has not been fully resolved within 40 days. Does this only apply to errors which impacts negatively on consumers? *(Clarification included 21/12/2012)*

Provision 10.3 applies to all errors, i.e. those which negatively or positively affect consumers. It is important for the Central Bank to be aware of all errors affecting consumers as they may indicate an issue with, for example, systems or procedures.

However, regulated entities should not use Provision 10.2 as justification to require the consumer, where there has been an error in their favour, to rectify the issue within an unreasonable and unfair timeframe. Regulated entities must be mindful of the general principles, including general principle 2.1, which requires them to act honestly, fairly and professionally in the best interests of their customers. If the positive error is small, it may be reasonable to expect the consumer to return it in a short timeframe but if it is a large error, the consumer should be given sufficient time.

8.2 How often would a regulated entity be expected to undertake analysis of complaints as required by provision 10.12?

In order to comply with this provision we would expect a regulated entity to undertake an analysis of patterns of complaints on at least an annual basis.

8.3 Clarification regarding obligations under the Payment Services Directive and provisions 10.1 to 10.6.

The obligation on a regulated entity to meet the requirements set out in Provisions 10.1 to 10.6 in Chapter 10 is without prejudice to any other obligations a regulated entity is subject to, including without limitation, under the European Communities (Payment Services) Regulations 2009 (S.I. No. 383 of 2009).

9. Other Issues

9.1 Does the 2012 Code introduce specific requirements in relation to Basic Payment Accounts?

The 2006 Code already encourages financial inclusion by imposing a general principle that regulated entities should not prevent access to basic financial services. This principle remains in the 2012 Code.

In July 2010 it was agreed that a strategy would be developed in Ireland for the reduction of financial exclusion over a three to five year period. A Steering Group, chaired by the Department of Finance, and comprising many stakeholders including the Central Bank, the National Consumer Agency, the Irish Banking Federation (IBF), the Money Advice and Budgeting Service, the Department of Social Protection and the Irish Payment Services Organisation, was established in the latter half of 2010 to progress this commitment. An approach to supporting Basic Payment Accounts (BPAs) had not been developed at the time the first Code review consultation paper (CP47) was being prepared. However, it was decided to include five provisions in relation to BPAs in the second Code review consultation paper (CP54). These provisions related to the provision of information and assistance to consumers, where a regulated entity offers BPAs.

These provisions were subsequently reviewed in light of the Final Report of the Steering Group, which has been the subject of a public consultation in Q3 2011. The Department of Finance is currently working with the IBF on the design and plans for the roll out of a BPA on a pilot basis during 2012. The report notes that the pilot stage of the BPA scheme will allow lessons to be learned about the design of the product and the best approach to promotion and education in relation to the scheme.

In addition, the EU Commission has recently issued a Recommendation on basic bank accounts. While this Recommendation is not binding, the Commission has indicated that it will review progress after six months and may decide to introduce a Directive in this area. We are conscious that the implementation of the EU Recommendation may have further implications for the proposals as set out in the Financial Inclusion Strategy.

Consequently, given that the operation of BPAs (including the definition of a BPA) has yet to be finalised pending the outcome of the pilot phase, which is due to begin in Q1 of 2012, we have decided to defer the inclusion of any specific requirements in relation to BPAs in the Consumer Protection Code at this time.

9.2 Why is moneylending not covered by the 2012 Code?

Moneylenders are subject to the Consumer Protection Code for Licensed Moneylenders, which came fully into effect on 30th September 2009, and, as such, are not covered by the Consumer Protection Code.

9.3 Does the 2012 Code introduce specific requirements in relation to product regulation?

Consideration was given to introducing an extensive form of product regulation where we would play a direct role in vetting and authorising each product. In general, the argument against product regulation is that it would inhibit product innovation and lead to a longer product development process, adding costs and inefficiencies. While several other EU Member States have explored the possibility of implementing product regulation, with the exception of the Danish Financial Services Authority it appears that no other EU jurisdiction has implemented a form of product regulation. Therefore we believe that it would be premature to introduce product regulation in Ireland without further research and assessment.

However, we believe that product producers need to take on increased responsibilities and we have imposed new requirements in the 2012 Code in relation to product producer responsibilities which set out specific information that product providers must give to the intermediaries that sell products on their behalf.

T +353 1 224 6000 **F** +353 1 224 6561 www.centralbank.ie code@centralbank.ie

Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

Bosca PO 559, Sráid an Dáma, Baile Átha Cliath 2, Éire
PO. Box No 559, Dame Street, Dublin 2, Ireland