



Banking & Payments
Federation **Ireland**

Banking & Payments Federation Ireland

Industry Feedback to the Central Bank of Ireland

Discussion Paper on the Review of the Consumer Protection Code

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1. Introduction

1.1 Summary Observations

BPFI welcomes the opportunity to input to the Central Bank of Ireland's (CBI) Discussion Paper on the Consumer Protection Code (CPC) (the Code). In its role as the representative body for the sector, BPFI has engaged closely with members on this submission, which captures the views of retail banks, retail credit firms, credit servicing firms and international providers passporting into the Irish market.

The Code is an important part of the financial service's regulatory framework and its seamless incorporation into the day-to-day business of members is critical in ensuring the provision of a service to consumers that has their best interests at the core. In this context, we request that financial services providers are given sufficient time to develop and implement any revisions to the Code emerging from this review. Ensuring adequate time to achieve full and proper implementation of any changes to this important framework is a key consideration.

In advance of publication of the Discussion Paper, BPFI made both high-level and detailed observations on the Code in 2019 and 2020 respectively. Many of the points made in those submissions are reiterated again in this submission where relevant, noting the publication of additional addenda to the Code in recent years and the changes that are taking place across the sector.

We believe that BPFI is well positioned to provide feedback to the themes raised in the Discussion Paper and to comment on the operation of the Code in its current form, informed by the experience of members who note the impact of its implementation first-hand. BPFI and members also have a close insight into market developments and emerging technology; an understanding of what customers expect from financial services providers; and have a considered view therefore of how the Code fits into a changing environment.

We hope that the comments below assist the CBI in its review of the Code and in undertaking the drafting of a revised Code that addresses the needs of consumers and supports the progress of an effectively functioning sector in a changed banking environment.

1.2 General Comments

At a summary level, some of the key themes emerging in discussions on the Code with members include:

1. **Consolidation of the Code, addenda and other associated CBI communications** - The consolidation of the Code and all associated addenda should be a priority, with a move to the online hosting of the Code in an easily accessible, easily readable and dynamic format, similar to that of the UK FCA Handbook. Such an approach would facilitate the inclusion of links and/or references to requirements that are anchored in Directives or Statutory Instruments, facilitating a regulation that is much more user-friendly. In addition, the communication of CBI expectations by way of Dear CEO letters and speeches should be incorporated into any online, dynamic Code to ensure the consolidated requirements are known and accessible in one location.

Furthermore, the use of a dynamic format, in the context of increasing digitalisation in the sector, is a key consideration in keeping regulation in line with the pace of technical change and innovation.

Whatever the format, the use of a static document is not feasible considering the nature and frequency of updates to the Code, and the practice of issuing of industry letters.

2. **Alignment of the consumer protection framework** – The review of the Code presents an opportune time to ensure requirements are aligned to achieve consistency across the framework and enhanced clarity for consumers, and to avoid the duplication or overlap of requirements. The alignment of the Code with other legislation/regulation should provide for the consolidation of certain requirements where relevant and allow for the implementation of a more simplified consumer protection framework, as called for recently in the Retail Banking Review Report.

More specifically, the Code contains various definitions of “Consumer”, “Personal Consumer”, “Person” and “Customer”. The CBI might consider restricting application of the Code to personal consumers only and that any customer acting for the purpose of a trade, business or profession be covered by the SME Regulations. Furthermore, the CBI should consider the definition of “consumer” as in the Code versus the conflicting definition of “consumer” in other legislation/regulations such as Consumer Credit Act 1995, the European Union (Consumer Mortgage Credit Agreements Regulations) 2016 (the Mortgage Credit Agreements Regulations), the European Communities (Consumer Credit Agreements) Regulations 2010 (the Consumer Credit Regulations) etc. Conflicting definitions inevitably lead to confusion in terms of which “consumer” is being referred to in requirements, procedures, controls etc.

It is also worth considering the various policies on data retention including those of the Office of the Data Protection Commissioner (ODPC) and the Financial Services and Pensions Ombudsman (FSPO) in particular, to ensure a streamlined approach to retention in a revised version of the Code.

Additionally, a review of the inclusion of Hire-Purchase, Consumer Hire and BNPL products within scope of the Code, to ascertain whether the Code should be applied in full, would be welcome. A consistent approach improves the consumer’s understanding and strengthens their protection.

3. **Consideration of the recommendations of the Retail Banking Review Report** - The publication by the Department of Finance (DoF) of its Retail Banking Review Report in November 2022 included several recommendations regarding consumer protection and the overarching framework for same in Ireland. Many of these recommendations were signalled for action by the CBI, for inclusion within its review of the Code.

We believe this approach is sensible, consolidating the work that will ultimately refine, consolidate and strengthen the consumer protection framework, especially at a time when several pieces of legislation have been revised or introduced, and the scope of the consumer protection framework has been expanded to capture additional providers and products.

Further reference to specific aspects of the Retail Banking Review Report is included later in this submission, in relation to specific Themes as relevant.

4. **Implementation timeframe** - We ask that the CBI remains mindful of the need for sufficient time to implement any requirements arising from its review of the Code, noting there will be further opportunity to engage as the review progresses by way of a consultation paper. However, it is important to point out that the existing requirements of the Code are well embedded into the day-to-day operations of members and any regulatory change that arises is implemented by way of a process that involves detailed requirements specification, IT planning and development, testing and quality assurance, and the roll-out of new processes, controls and staff training. This process must be followed to ensure that the requirements are fully and properly implemented. Any new requirements will also need to be considered in the context of investment and resource

planning in relation to competing demands on technical and business SMEs engaged on other regulatory change projects.

It has been the case over the last number of years that insufficient time has been permitted to members to implement regulatory change, which is not of benefit to members and more so to consumers. It is important to highlight in particular the annual IT change freeze that occurs every December and into January to avoid jeopardising payment systems over the busy Christmas and New Year period. The roll-out of system changes to reflect updated regulatory requirements should not coincide with this change freeze.

5. **Digitalisation** - The Code needs to be updated to reflect the increased levels of consumer interaction with their financial services providers in a digital environment, reflecting the extent of non face-to-face contact between members and their customers. This is important not just for members in their application of the Code and the development of business models, but also for consumers, who are embracing new technology and expect it to permeate into their financial products and services.
6. **Information Overload** - It is widely accepted that consumers are presented with too much information when entering into agreements with financial services providers. Most of the information is provided in line with legal and regulatory requirements, and the extent to which the information is read and of value to the customer is questionable. Recent legislative requirements have introduced the need for a summary document to be provided to the consumer, highlighting key aspects of the agreement. This is typically required in addition to all other documentation, as opposed to having the objective of reducing the amount of information provided.

We believe that as part of its review, the CBI needs to consider the information requirements under the Code and how these relate to those already required under existing legislation/regulation. If possible, information requirements should be scaled back, where addressed under existing requirements. Any requirements introduced to provide summary information should do so in a way that consolidates existing information requirements rather than adding another layer on top of what already exists.

7. **Vulnerability** - We ask that any measures introduced in a revised version of the Code would align with existing member policies and procedures, which have been developed in recent years through output of the work of the BPFV Vulnerable Customers Forum (the BPFV Forum), and with the requirements of the Assisted Decision-Making (Capacity) Act 2015. The work of the BPFV Forum has resulted in cross-industry collaboration and the sharing of best practices, with the roll-out of procedures and supports across the retail banks that are now well established and embedded in relevant interactions with customers. More recently, the work undertaken by the sector to respond to the withdrawal of KBC and Ulster Bank, has further refined the approach to supporting customers in vulnerable circumstances or those in need of additional support.

We believe existing policies and procedures in this regard provide a solid foundation on which to further develop supports for customers in vulnerable circumstances.

2. Feedback to Securing Consumers' Best Interests

2.1 Theme A: Availability and Choice - Effective Market Functioning

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

We believe the sector offers availability and choice in the services and products currently offered to consumers, with much of the day-to-day activities and transactions of consumers made possible by the financial services sector.

Consumers are currently able to interact with their financial services providers through various channels including in-branch, online, by phone and via app, importantly allowing for consumer choice based on individual preferences and circumstances.

The recommendations set out recently in the Retail Banking Review Report will go some way to ensuring consumer choice remains in relation to accessibility and choice.

The availability of comparison websites helps customers to understand the options available in the market, sharing information on the products available and facilitating price comparisons across similar products. This is an important tool available to consumers to assist in their understanding of the products available in the market and in their ability to make informed decisions regarding their financial products and services.

However, a key challenge for the sector is to run its core functions effectively and efficiently whilst meeting a diverse set of competing stakeholder needs. For example, financial regulators place a strong emphasis on strength and stability, while shareholders will need to focus on sustainable profitability to remain viable and continue to serve customers and society. The increasing cost of IT security adds to this challenge. These demands and expectations are not necessarily mutually exclusive however - there is a need to acknowledge and seek a means to achieve balance between stakeholder demands.

The sector is now operating in an evolving ecosystem with rapid technological advances, swiftly changing customer preferences, increasing competition from new technology-based market entrants, a necessity to reduce high fixed costs, extensive regulatory and compliance obligations, high capital requirements, the growing importance of funding the transition to the green economy, and a changing interest rate environment, all of which continue to contribute to a highly complex and evolving sector. The withdrawal of two market players demonstrates the challenges experienced in operating in this environment and highlights the obstacles or deterrents that must be considered by any potential new market entrants. These are important considerations in working to attract competition into the market.

In recognising the evolving ecosystem, the Code needs to be updated to reflect the move to greater digitalisation of banking. Generally, the Code needs to better reflect the increased level of non face-to-face interaction between firms and their customers, and some suggestions in that regard are outlined below in response to the questions raised under *Theme 2: Digitalisation*.

While allowing for more digital ways of providing financial services, members are aware of the fact that not all consumers are digitally enabled, nor do they want to interact digitally with their financial services provider. Retaining certain, more traditional services, for example access to cash, by way of an omni-channel approach will ensure those consumers are catered for, noting that not every product may be offered on every channel. Additionally, the development of a more digital offering will allow for expanded capacity in-branch for those customers who wish to avail of a branch service.

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

New providers and new delivery channels are important for servicing consumers' financial needs. New entrants contribute to a more competitive and innovative market. However, there needs to be fairness and consistency across providers in relation to the extent to which new entrants are regulated. This will ensure appropriate protection for the consumer and a level playing field for all providers operating in the market.

We recognise the risks and challenges associated with new delivery channels, as outlined in the Discussion Paper, and these are addressed later in this paper, in particular in response to the questions raised under *Theme 2: Digitalisation*.

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

Certain requirements already work to improve competition in the market including the provisions regarding mortgage switching set out in the June 2018 Code Addendum; the operation of the *Code of Conduct on the Switching of Payment Accounts with Payment Service Providers* (the Switching Code); transparency and comparability of fees and charges as required under the European Union (Payment Accounts) Regulations 2016; and existing obligations on firms to provide consumers with information regarding alternative options.

However, some of these initiatives can be developed further, and in relation to other products that may be suitable for switching. We note the recommendation arising from the Retail Banking Review Report¹, which calls for engagement between the Department of Finance (the Department) and the CBI “... to identify measures and initiatives to build consumer and SME knowledge and confidence in the switching process for mortgages and other retail banking products, including taking actions that make switching easier, and that address impediments and gaps identified in the process.”

Based on member's experience of switching, we note the inertia that exists amongst consumers in relation to switching, with consumers only motivated to switch in the case of interest rate rises, as seen currently in the mortgage market, or when forced into a move from one provider to another, as in the case of the market exits of KBC and Ulster Bank. Even in the case of the latter and as highlighted by the CBI in its recent publication on account migration statistics², the majority of current accounts have been moved outside of the Switching Code. The CBI analysis of the volume of switching attributes this relatively low number to a lack of consumer awareness of the Switching Code, based on the findings of a consumer survey conducted by the Competition and Consumer Protection Commission (CCPC). Engagement between the Department and the CBI should include consideration of ways in which this inertia and/or lack of awareness can be addressed, noting the wider research ongoing between the Department and the ESRI as referenced in the Report also, including reviewing the switching processes that are currently in place, which can be fragmented and therefore act as a deterrent from switching.

For example, the smooth switching of a current account typically requires action on the part of a Direct Debit Originator (DDO), but such companies are outside the scope of the Switching Code. The process to switch a mortgage can also be fragmented, drawn-out and costly, especially in relation to the conveyancing aspect of the process. In both cases, the consumer is required to complete certain

¹ **Retail Banking Review Report; November 2022**

<https://www.gov.ie/pdf/?file=https://assets.gov.ie/240770/d8b98fef-fe6a-4df8-b7d6-2f63e9f224b8.pdf#page=null>

² **Account Migration Statistics, published 16 March 2023**

https://www.centralbank.ie/docs/default-source/statistics/data-and-analysis/credit-and-banking-statistics/account-migration-project/account-migration-statistical-release.pdf?sfvrsn=136c9b1d_4

parts of the process themselves to ensure a successful switch. Integrating such external entities more into the switching process could lead to greater volumes of switching amongst consumers, or at least a more efficient process. More recently, the setting up of a regular forum which meets monthly to facilitate the sharing of issues and insights with DDOs, in the context of market withdrawals, has proved to be a valuable forum to ensure minimal customer detriment when switching current accounts.

While encouraging competition is essential in a fully functioning market, better customer outcomes should be a priority focus. Therefore, it is important to ensure a level playing field across all participants to achieve full and fair competition in the market. All providers should be required to operate on the basis of “same services, same risks, same rules”, i.e., ensuring that all participants in the market are subject to the requirements of the Code.

2.2 Theme B: Firms Acting in Consumers’ Best Interests

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

BPFI members would welcome guidance on what it means for a firm to act in the best interests of its customers. As highlighted in an early submission to the CBI on its review of the Code, BPFI suggested that a revised version of the Code should include guidance regarding high level customer outcomes for the fair treatment of customers and/or acting in customers’ best interests e.g., these could be aligned with the customer and product lifecycle, with the added benefit of informing the design and distribution of products.

We suggest the existing principles in the Code could be expanded to include a customer outcome principle. This will enable firms to further focus on customer outcomes and support fair competition within the industry. Additionally, the CBI could also consider developing practical, non-attributable examples of decision points and show examples of where the customers’ best interests would and wouldn’t be served.

However, we do not believe that guidance should become a prescriptive requirement. Codifying the principles that underpin the Code risks removing the power of autonomy of a firm, taking away the potential flexibility to enhance or expand on initiatives aimed at securing consumers’ best interests. In this regard, there has been guidance used as a minimum compliance standard that prevents enforcement action, and this has worked well for both firms and customers to date. We reference the existing General Principles in the Code and the FCA six consumer outcomes³, both of which set out the standards that firms should reach to ensure fair treatment of customers. These outcomes are sufficiently high level to provide a good reference point, with further guidance as outlined in the Discussion Paper ensuring clarity for financial services providers in securing consumers’ best interests.

It is important to consider best interests also in the context of other legislative and regulatory obligations. For example, the Individual Accountability Framework (IAF), which will introduce the Senior Executive Accountability Regime (SEAR), will place certain enhanced conduct obligations on individuals. It is important to ensure that the regulatory expectations of a revised Code and the requirements introduced under SEAR do not place conflicting requirements on firms and their staff. Any guidance therefore needs to balance the interests of all stakeholders including consumers, shareholders, regulators and the staff of regulated firms.

³ <https://www.fca.org.uk/firms/fair-treatment-customers>

To further protect consumers' best interests, we believe that the CBI has an important role to play in taking action and raising consumer awareness in relation to fraudulent advertisements about financial products and services. While the source of these advertisements may not be within the remit of the CBI, nonetheless we believe that the CBI should close down such activity and alert consumers to fraudulent advertisements, replicas of websites, scams etc. In this regard, we note the work of the FCA, as publicised in February⁴, to alert consumers to scams, to identify misleading advertisements and to stop the actions of unauthorised firms and individuals. We believe an important role exists in the same way for the CBI.

Other considerations, including certain enhancements introduced/about to be introduced across the sector which will go some way to improving and expanding on a consumer-focused agenda, include:

- Transparency/full disclosure of information – enhanced requirements have been implemented through transposition of the Payment Accounts Directive, with an obligation to provide consumers with a Fee Information Document at the pre-sales stage and a Statement of Fees outlining the exact cost of services to the consumer. There have been other requirements introduced also including the European Standardised Information Sheet (ESIS), arising from transposition of the Mortgage Credit Directive. In addition, the requirement set out in a revised Consumer Credit Directive will introduce further obligations regarding the disclosure of key information to consumers, through the proposed Single European Consumer Credit Overview (SECCO), pending final agreement on the proposal.
- The setting up of the Financial Services and Pensions Ombudsman under the relevant legislation and the establishment thereunder of an independent complaints review process have further enhanced consumer protection and remediation in certain cases. The review of complaints outcomes and the rectification of relevant processes to ensure resolution of the underlying cause ensure more efficient and consumer-focused processes than perhaps previously.
- Existing consumer protection obligations – in addition to the obligations mentioned above, there are other extensive consumer protection obligations in place arising from the Distance Marketing of Financial Services Directive, the Unfair Contract Terms Directive, the EBA Guidelines on Product, Oversight and Governance etc. While adherence to these ensure the protection of consumers, it is important to note that any revisions to the Code do not cause overlap or duplication of requirements in relation to protecting best interests.

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

Further to what is outlined in the Discussion Paper regarding proposed guidance, we believe that other parties have a role to play in contributing to achieving consumers' best interests.

For example, the development and implementation of a national financial literacy strategy would be a welcome addition to the financial services landscape, equipping consumers with appropriate levels of financial literacy and understanding of financial products. All stakeholders in the provision of financial products and services including government departments and agencies, regulatory authorities and financial services providers can contribute to a national programme to improve the level of financial literacy in the community. The Irish Banking Culture Board (IBCB) and National Adult Literacy Agency (NALA) should also be consulted on how responsible authorities can

⁴ <https://www.fca.org.uk/news/press-releases/financial-watchdog-blocks-thousands-misleading-ads>

support enhanced financial literacy. Further detail on this is set out in response to the questions raised under *Theme 7: Financial Literacy*.

The CBI should also consider the consolidation of information requirements – overloading a consumer with information serves to confuse the consumer and may undermine their ability to gain a clear understanding of contractual obligations; however, regulated firms are required to provide such information in line with several legal and regulatory obligations. We do not believe this information overload is serving the best interests of consumers. As outlined in a May 2016 ESRI report titled *“Investigation of Consumers’ Capabilities with Complex Products”*⁵, it was demonstrated that *“once consumers had to take into account more than two or three different factors simultaneously their ability to distinguish good and bad deals became strikingly imprecise.”* The same ESRI report also noted that *“everyone tested struggled once there were more than two or three product attributes to contend with. People with high levels of numeracy and educational attainment performed slightly better than those without, but the improvement was small.”* Perhaps one way to address this is to consider the provision of key information to consumers and our views in this regard are set out later, in response to the questions raised under *Theme 5: Informing Effectively*.

It is also important to acknowledge the obligations placed on the supporter/appointed third-party representative under the Assisted Decision-Making (Capacity) Act 2015, which calls into question the need for similar protections for consumers when appointing a third-party representative in other scenarios e.g., to make representations on a consumer’s behalf on arrears. This demands consideration as a further way to ensure consumers’ best interests are protected.

We believe that securing consumers’ best interests is a consideration that cuts across all themes of the Discussion Paper and further views regarding separate themes are set out in this response under the relevant sections, including under *Theme 6: Vulnerability* which is a key consideration in relation to consumers’ best interests.

⁵ <https://www.esri.ie/system/files/publications/BKMNEXT306%20%281%29.pdf>

3. Feedback to Specific Discussion Themes

3.1 Theme 1: Innovation & Disruption

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

Acknowledging the introduction of the Innovation Hub in April 2018, it has been noted by members that some have not engaged formally with this initiative to date. Therefore, we welcome the proposed extension and investment in this initiative – with potential benefits arising from enhanced understanding of technology developments in the market by the regulator and the related challenges which could impact consumers or entities in the roll out of more innovative products – and look forward to enhanced engagement in this regard.

Early engagement regarding innovative issues is considered important for firms to ensure the effectiveness and appropriate consumer benefits arise from the introduction to the market of any innovation in financial services. In this regard, we support the proposal to develop “*productive exchange between innovators and the financial regulatory system*” as outlined in the Discussion Paper. The broad nature of the support that we understand would be offered, in particular where firms may be making material changes to the manner in which an existing product is constructed or delivered, is highly relevant. Furthermore, the testing of innovative products and potentially digital IT developments required under new regulation, which has an impact across the financial services sector, could be tested via the Hub through the availability of a regulatory sandbox. This would be a welcome development.

While we agree with the principle of an Innovation Hub and its enhancement beyond its current configuration, the detail behind it is important in understanding the extent to which members may actively engage and benefit from it. Clarification relating to the purpose, scope and participants, and sight of a Terms of Reference are important factors that will work to determine its role as a key enabler for active engagement between the regulator, firms and consumers in the understanding and widened use of innovative technology in the financial services sector.

What more should be done to support innovation while ensuring consumers’ best interests are protected?

Following from above, we welcome greater engagement and support in working to introduce innovative products and services in the marketplace. Given the pace of change in the market, it is important for firms to innovate to ensure more effective and efficient processes and services, thereby resulting in improved customer experiences. We believe the CBI should place a strong focus through its Innovation Hub, as proposed in the Discussion Paper, on the interaction between digital solutions and regulation. However, such an approach must ensure the implementation of minimum standards across all companies providing financial products and services, both traditional and non-traditional, to create a true level playing field while maintaining consumer protection and financial stability. Where firms are not regulated, consumers need to be made aware and informed of the implications arising where the same protection is not in place.

We believe the key aspects of such a regulatory environment should:

- Balance the pace between increased regulation and innovation, by way of a more agile approach to updating regulations to ensure a corresponding pace of change with innovation.
- Enhance regulatory consistency to realise the opportunities offered by innovative technologies.
- Facilitate the development of tech-specific expertise in supervisory authorities to ensure effective, efficient and consistent supervision and consumer protection.

- Enhance financial and tech-related literacy and education amongst consumers, to allow consumers to fully embrace increasing choice and to benefit from more efficient processes. We believe that all involved in the oversight and provision of these products and services have a responsibility to improve the level of financial education and understanding of these innovations, including government departments and agencies, regulatory authorities and financial services providers.
- Focus on the delivery of customer benefits through innovation including more simplified engagement, elimination of information asymmetries and increased transparency.

There are further opportunities for innovation in relation to:

- Supporting consumers in the process of switching between financial service providers – in this regard, consideration should be given to an interbank platform to aid consumer switching. We refer to the energy and telecommunication sectors and the processes in place that help consumers move seamlessly between providers.

A system like that used in the UK – the *Current Account Switching Service (CASS)* – would be the preferred approach for an automated switching service in Ireland. We believe a central hub where all switching requests are logged and tracked, with the relevant parties to the process having a unique login profile(s), would allow for a centralised, streamlined process. At the outset, such a system should focus on the switching of current accounts, with future phases of development to consider additional financial services products. Regardless of the technology or scope, we believe switching should be straightforward and efficient for consumers to move products between financial services providers.

We have long been of the view that the involvement of third parties is critical to the success of any switching service. Based on the experience of switching to date and as proven during the past 12-15 months of engagement as two major players exit the market, the switching process involves multiple stakeholders from across different sectors. In BPFI, the setting up of a Direct Debit Originator (DDO) Forum, which continues to meet monthly, has provided a useful and informative basis for engagement, to keep relevant stakeholders updated on the work programme to manage customer transition; to allow for the identification and early resolution of issues arising; and has provided a collaborative approach to updating of customer information. We are keen to ensure that the strengthening of the relationship with DDOs, that has emerged through this industry-level engagement, continues into the future, and we believe that DDOs have a role to play in any automated switching solution and the discussions that will contribute to that becoming a reality. The involvement of third parties is relevant also in relation to the switching of other financial products, the most obvious being the legal profession and the role it plays in the switching of mortgages.

We note that separate discussions will take place in relation to switching, as called for in the Retail Banking Review Report, which also notes research on the topic being conducted by the Department of Finance in collaboration with the Economic and Social Research Institute (ESRI). We also note reference in the Discussion Paper regarding the migration of customers from KBC and Ulster Bank to new providers, and recognition of the need to review necessary enhancements to the Switching Code after completion of this process. We look forward to more detailed engagement with relevant stakeholders on this important topic in due course.

- Expanded promotion and use of open banking – it is timely to assess the technical capability now available following transposition of the enhanced Payment Services Directive (PSD2), which provides for the transfer of data via Application Programming Interfaces (APIs), focusing on opportunities available to leverage more streamlined services to provide for improved

customer interactions - for example, in the case of credit applications and decisions or via a switching service as above - and enhanced competition in the market.

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

The risk emerging when new players enter the market is that the industry has varying standards or levels of regulation applying, resulting in divergent consumer protection requirements. Consumers should be offered the same level of protection, regardless of the financial services provider they engage with. Therefore, new entrants should be brought within the regulatory perimeter to ensure a level playing field with the same rules and provisions applying, and to give assurances to consumers that any agreements they enter into with such players are subject to the same protections as other more established market participants. A recent example of where this has been achieved is in relation to the addendum to the Code arising from enactment of the *Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2022*, which brought additional products into scope of certain chapters of the Code. This was a welcome development and is conducive to good customer outcomes.

3.2 Theme 2: Digitalisation

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

We believe that the assessment by the CBI of the potential benefits of technological innovation for the benefit of consumers is accurate. Specifically, we see benefits in reduced cost, increased convenience and accessibility, enhanced choice and above all the provision of tailored products and services. Customer research, feedback and noted behaviours have informed that consumers want to be able to avail of financial services and communicate with their financial services provider at a time and place that is convenient to them. To meet customers' expectations, financial services providers need to be instant, accessible and proactive in their interactions with customers. The implementation of digital strategies underpinned by technological advances is a critical tool to being able to service customers in line with their expectations. Indeed, the increasing movement of customers and services online has provided a strong impetus for enhanced use of modern Fintech applications by Irish financial services providers. This applies to both consumer related activities and internal operations, whether through in-house use or engagement with a Fintech company. Examples of application usage includes new customer "onboarding", enhanced customer experience, advanced internal IT usage, cyber security, risk management, blockchain etc. Additionally, we would highlight that providers in Ireland are renewing and changing the application of Fintech developments on an ongoing basis to ensure that they are using the most suitable and appropriate technologies available.

We also note the challenges and risks identified in the Discussion Paper including the threat of fraud, the sharing of personal data and in some cases, financial exclusion. However, we believe that a key risk is the lack of consumer understanding and a full awareness of the risks inherent with non-face-to-face interaction with financial services. We believe that the key mitigants to this risk are the provision of key information in a concise manner and improvements to the financial literacy of consumers. Further views in this regard are outlined later in response to the questions raised under *Theme 7: Financial Literacy*.

It is vital that in the development of regulation and legislation going forward that a balance is achieved between allowing progress and innovation, while ensuring continued consumer protection.

Specifically, the Regulatory framework and rules should not impede development of consumer-centric solutions by financial institutions as demanded by consumers. Agile regulation is required which can keep pace with the technological change in financial services, thereby ensuring that digital solutions are delivered in a safe and inclusive manner. It is also very important in this regard that when regulating activities in Ireland the principle of “same services, same risks, same rules” applies. This will ensure a level playing field, fair competition and maximum protection for consumers across the spectrum of market players from incumbents to new entrants.

Some of the key issues regarding digitalisation of financial services include:

- As outlined above, the Code needs to be updated to reflect the increasing digitalisation of financial services, including in relation to the use of digital signatures when entering into consumer contracts. Generally, the Code needs to better reflect the increased level of non face-to-face interaction between firms and their customers.

At the same time however, maintaining a presence across channels is important in ensuring that certain customers do not become marginalised, in particular those who are less digitally enabled or have a preference for face-to-face interaction. Equally, it is important to recognise that for many customers, digital banking helps to address financial exclusion. Therefore, it is important that the legislative/regulatory framework adequately provides for different comfort levels with technology amongst consumers, thereby ensuring that financial services providers can offer products and services that cater to the needs of different customer cohorts. Adopting a forward-looking approach to make available as many channels as possible will help to address the vast array of different needs which exist across Irish society.

- There is an opportunity to update the Code in respect of the provision of documentation. The current requirements focus on the provision of “*original documents*”, which for many consumers can be challenging and time consuming. The requirements of the Code might be more closely aligned to the requirement of the *European Union (Consumer Mortgage Credit Agreements) Regulations 2016* (the Mortgage Credit Regulations), to “*appropriately verify*” documentation which includes the provision of documents in a digital format, which would ensure the balance between consumer protection and a consumer-centric approach which reflects current consumer behaviours.
- It is essential that firms understand what their obligations are when using non-paper methods of communication and how they might meet them, with reference to the term “*durable medium*”, which is included in European legislation and in the Code. This understanding is particularly important given the growing use of alternative formats used for the disclosure of information. We believe it is important that clarity is provided so that new innovative technology and media can be used to meet the obligation to disclose information in a durable medium, being cognisant of the existing requirements in this regard in EU legislation.

Within a revised Code, the use of terms such as “*give*”, “*provide*”, “*send*” and “*receive*” in a durable medium should be standardised and specific guidance on what steps need to be taken, particularly in an online environment, in order to meet that standard would be welcome. Additionally, we would request that the Central Bank considers issuing guidance to support the industry in its interpretation of the term. In this regard, we note the guidance issued by the Financial Conduct Authority (FCA) in the UK on this topic in 2017⁶. In this case, express guidance was provided on what validly constitutes a “*durable medium*” e.g., an email with an attaching pdf. A non-exhaustive list of what would validly constitute “*durable medium*” within a revised Code would be helpful.

⁶ <https://www.fca.org.uk/firms/durable-medium>

- While at all times members do their utmost to protect consumers, we believe that there is also an onus on the consumer to ensure they have sufficient awareness of the impacts of fraudulent activity and that they know to take appropriate steps to protect their security credentials. Indeed, the sector has been to the forefront in raising consumer awareness of fraud risk through its FraudSMART initiative. We believe there is also a need to review the CBI *Guidance on the Advertising Requirements of the Consumer Protection Code 2012*, which requires modernisation and future-proofing to incorporate new digital technologies and social media platforms which have emerged in the previous 10 years e.g., TikTok etc.

We would also suggest a review of the usage of *#ad*, taking into consideration how hashtags are used, which is to allow consumers follow a particular conversation on certain social media platforms. Furthermore, the Advertising Standards Authority of Ireland (ASAI) *Code of Standards for Advertising and Marketing Communications* (the ASAI Code) requires firms to present marketing communications in such a way that it is clear that the communication is marketing, and all social media platforms now place either a “*promoted*” or “*sponsored*” warning box on paid adverts so consumers can clearly identify that it is an advertisement. The CBI should consider the alignment of the ASAI Code requirements with those set out in the Code.

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

It is important to distinguish between personalisation and individualisation of ads, as the approaches to protecting consumers’ best interests will vary when targeting an individual as opposed to a group of consumers. We see the distinction as:

- **Personalisation** - targeting a group of consumers based on shared personal information e.g., targeting a group of consumers who have mortgages but no life cover with the firm.
- **Individualisation** - targeting an individual consumer based on specific information about that customer e.g., targeting a customer who has had 2 moratoriums in 3 years for a potential mortgage refinance.

For individual-targeted communications such as emails, text messages or in-app messages directly from a financial services provider, governance requirements and consumer protection regulation already exist to ensure that the consumer knows they are being targeted and why. It is also important to note that individualisation of communications can also lead to substantial benefits to consumers by making them aware of more appropriate products.

When used in the right way, personalisation can also aid and benefit consumers e.g., by not displaying information that they already know or that is not relevant to them. If used correctly, personalisation can lead to a cleaner and a smoother web journey for the consumer giving them a more tailored and focused experience.

Regardless of the format of communications, the requirements set out in relation to protecting the consumer’s data under GDPR embeds the principle of protecting consumers’ best interests.

Again, consumer awareness to increase financial literacy is critical to ensure the risks associated with access to financial services online/digitally are understood by consumers.

3.3 Theme 3: Unregulated Activities

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

We believe that this statement is useful to give consumers reassurance that a firm is regulated by the CBI - versus where the statement is not provided. However, we would question if consumers understand what this statement means and the protections that apply as a result of a firm being regulated. We believe that to make the statement clearer for consumers, it should be explained in plain English what being regulated by the CBI means and what protections are provided for consumers e.g., regulated firms have consumer protection measures imposed which include protections detailed in the Code, access to available compensation etc.

Furthermore, BPF and members are of the view that the CBI should carry out consumer research to establish the value of and understanding, or the absence thereof, that consumers place on this statement and to gather suggestions regarding how it may be made more consumer friendly.

In addition, accessing the CBI registers is not straightforward for consumers looking to check the regulated status of a firm. Being able to check whether a firm is regulated or not prior to engagement may assist consumers in making informed decisions about their interactions with financial services providers. Further work should be conducted by the CBI to make this more user-friendly for use by consumers and sector staff alike. This may also assist in some way with addressing incidents of fraud, and to contributing to consumer awareness and financial literacy.

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

When a firm engages in both regulated and unregulated activities, under Provision 4.9 of the Code there is a requirement on that firm to specifically call out if a product/activity is unregulated and explain what that means. We believe that a revised Code should be clear regarding the information that should be provided to the consumer in this regard. This approach would ensure clarity regarding the requirement and its application on a consistent basis at industry level. We believe that this should be provided at the pre-sale stage of the customer journey.

Once again, consumer research and testing are critical to fully understanding what approach best resonates with consumers to allow appropriate framing. For example, messaging such as *"This Product is not regulated."* may appear to make sense from a regulatory perspective but may worry and deter customers from purchasing a perfectly suitable product.

Ensuring an understanding by consumers of regulated versus unregulated activity should also form part of the wider financial literacy and education agenda, and ongoing public communications for consumers.

Furthermore, we support the CBI in its work to ensure the marketplace is fully regulated.

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

It should be very clear for consumers which activities a firm is regulated for. Consumers can often believe that a firm is regulated for all activities, once it has been approved as a regulated entity by the CBI. We note that firms are already required to include relevant wording on webpages etc. to inform if a particular activity is not regulated, but a more consistent approach is required across relevant providers. Currently, there is no stipulation on how information is presented, with specific

reference to provision 4.9 of the Code, which states “A regulated entity must have separate sections on any website it operates, for regulated activities and any other activities which it carries out.”

3.4 Theme 4: Pricing Matters

We acknowledge that the CBI does not have a role to play in setting prices within the market and will only intervene where there is a legal basis to do so. This approach is considered appropriate where there is an onus on all market participants to treat customers fairly and disclose information in a transparent manner.

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

At present, there are several requirements on firms to adhere to when introducing new fees or amending existing fees charged to consumers, and when consumers seek to avail of financial products.

Under S.149 of the Consumer Credit Act 1995, credit institutions are required to notify the CBI of any charges associated with the provision of a service to a consumer or a group of consumers. The legislation sets out the detailed process involved in the notification and review of such charges. This process is unique in the European context, with Ireland the only Member State that has oversight of the pricing proposals of financial institutions.

Under the European Union (Payment Accounts) Regulations 2016, certain members are required to provide the consumer with a Fee Information Document at the outset of the customer journey, the purpose of which is to allow the consumer to compare the fees charged on different payment accounts. The same Regulations also require the provision of a Statement of Fees to the consumer at least annually, to inform the consumer of the fees incurred on the account.

These existing requirements provide for legislative oversight of proposed fees, as well as transparency and comparability of account fees and charges, both before and during the lifecycle of certain financial products. In addition, the requirement on the CCPC in the same Regulations to provide a comparison website of the products set out in the Payment Accounts Services List, as published by the CBI, further adds to the comparability of products for consumers.

Further requirements regarding transparency are set out in additional EU legislation, for example in the European Union (Payment Services) Regulations 2018 (as amended), where in the event of changes to the Terms & Conditions of a framework contract, consumers are afforded 2 months’ notice and have options regarding acceptance or otherwise.

We believe that these requirements, where applicable, sufficiently address transparency and comparability of pricing. However, as alluded to previously, the fact that these requirements are not applicable to all providers results in an inconsistent approach across the sector, causing difficulty for consumers trying to compare similar products available in the market. We suggest therefore that such requirements are applied across all relevant providers to ensure consistency of approach and the greatest possible extent of transparency of pricing for consumers.

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

We are not aware of examples of firms using unfair practices in relation to pricing to take advantage of customer vulnerabilities.

3.5 Theme 5: Informing Effectively

How can regulation improve effectiveness of information disclosure to consumers?

We support regulators taking a more active role in supporting industry-wide education and information for consumers, including to demystify financial language and jargon across all platforms and by simplifying regulatory information and consumer brochureware.

We believe the points below are some of the ways in which regulation can improve effectiveness of information disclosure to consumers.

1. **Use of plain language** – There needs to be a move away from the legalistic terms and tone used in regulatory requirements to ensure clarity and understanding by consumers, along with consistent implementation and better customer outcomes. Members agree that the language and tone used serve only to confuse consumers. Many have spoken about internal projects to review consumer letters; however, such initiatives take significant time to get the content of letters correct to ensure that legal and regulatory requirements are accurately reflected in such letters.

We note the requirements introduced under the Consumer Rights Act 2022 that consumer communications be in “*plain and intelligible language*”, making specific reference to the requirement under S.134 that consumer contract terms be transparent and “... *expressed in concise, plain and intelligible language.*”

A plain English tone in a revised Code would therefore translate into more easily understood communications from the regulator to firms - removing the need to seek clarity or interpretation - and consequently from firms to consumers.

2. **Volume of information requirements** – There is agreement that adhering to all the information requirements set out in the relevant legislation and regulation results in significant volumes of documentation being issued to consumers. This can be overwhelming and confusing for consumers, and we question the extent to which all or any of this information is read and of value to consumers.

For example, a consumer entering into a mortgage credit agreement is presented with approx. 120 pages of information, arising from approx. 20 documents, all of which must be provided under the existing consumer protection framework. We believe this represents an overloading of information on the consumer and question the extent to which these documents provide value by helping the consumer better understand a mortgage.

3. **Provision of Key Information Document** - Where it is possible to do so, regulatory requirements should be streamlined to ensure that customer disclosure documentation is not duplicated.

Key Information Documents (KID) or Key Facts documents can be a good way of achieving this. However, there needs to be more prescriptive guidance from the CBI regarding the information that must be set out in such documents and what is at the discretion of regulated entities for inclusion, being cognisant that a balance is achieved between ensuring legal and regulatory requirements are addressed - especially in the case of contract documents, Terms & Conditions etc. - and that the consumer is clear on the implications of proceeding with a certain financial product. In addition, the introduction or greater usage of a KID must be aligned with a significant reduction of other/supporting documentation, not least because the likelihood of these being read and understood by consumers diminishes further - this suggestion is intended to reduce the volume of information provided to consumers and is not intended to result in the addition of a further document to an information pack.

Examples of initiatives to reduce the information presented to consumers/to highlight key information include reference to the Insurance Product Information Document (IPID), introduced under the Insurance Distribution Directive, and the bonkers.ie website, which presents information on financial products in a very clear and straightforward format.

In addition to pulling out key features of products, improvements may also be achieved by tailoring existing documents in line with the complexity of the product being sold. With specific reference to the Statement of Suitability, we believe the value of this document could be further enhanced were it to be tailored in line with product complexity. This approach, which we understand is implemented successfully in other sectors, adds to the understanding by consumers of a particular product and should be considered by the CBI in its review of the Code as a way to inform consumers more effectively.

In considering such requirements however, we ask that the CBI is cognisant of the system changes and associated lead-in time required to fully implement the provision of a KID or to revise an existing process. As highlighted earlier in this response, regulatory change requires significant planning and development, and the timeframe afforded for implementation must reflect the extent of changes involved.

4. **Overlap of legislation** – Where different legislation or regulation applies to certain products/services, there may be overlap in the information requirements set out in each. Firms are required to provide the documentation requirements of each piece of legislation or regulation however, resulting in significant amounts of information being provided to the consumer, a lot of which may be duplication of the same information. Similarly, with each addendum to the CPC over the previous 10 years or so, the resulting additional requirements have added layers of information in respect of each product.

As part of its review of the Code, we believe that the CBI should ensure the requirements in the Code do not overlap unnecessarily with other existing codes or legislation. We see this review as an opportunity to simplify the consumer protection framework, which has been highlighted as a recommendation in the Retail Banking Review Report.

5. **Post-sale review of consumer understanding** - The review of consumer understanding post-sales may be useful in helping to understand the extent to which the consumer understood their choice of financial product, with the findings being used to inform product development; as input to staff training; as a preventative measure in the complaints process; to improve the sales process; and to inform financial education into the future. This approach is already adopted in the insurance industry, in relation to life assurance products.

How can firms better support consumers' understanding - can technology play a role?

While the majority of information is posted to consumers as required under certain Regulations and to meet existing requirements relating to “durable medium”, some is made available to consumers online. However, this information is typically a duplicate of the information already posted. While members are supportive of a paperless approach and many consumers can opt to take this approach in relation to certain documents, members are conscious of some consumers not wishing to have documentation made available online. Therefore, we believe that consumer choice is a key consideration and allowing for flexibility in the Code would permit members to ensure such choice is available more readily. Regardless of how information is provided to consumers, the question remains if the information being provided is being read by consumers and if so, if it is of value.

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

We appreciate the importance to the consumer of mortgage products, representing the most significant financial investment that a consumer is likely to make. Several suggestions are set out below in relation to improving the experience for the consumer, including:

- **Clarity on roles and responsibilities** - Clarity regarding the role that each regulated entity plays in the process e.g., credit institution, mortgage intermediary etc., within specific requirements of the Code would be welcome. For example, members have informed of the confusion that can arise when consumers apply via the broker channel. There is often a lack of clarity for the consumer in relation to which party has responsibility at which stage of the process, which can lead to confusion and a lack of appropriate support for the consumer. This is also true of the role played by solicitors. We believe a clear demarcation of responsibility should be called out in the revised Code to ensure clarity regarding responsibility to the consumer at various stages of the process.
- **Disclosure of key information** - As set out above, highlighting key information would improve the effectiveness of the information provided and go some way to ensuring the consumer has a better understanding of the agreement they are about to enter into. We believe such information as the key Terms & Conditions, breakage costs, an outline of the cost of credit to illustrate the overall cost of the loan, the transfer/sale of loans and the implications associated, key calculations etc. are the most important in relation to mortgage products. Indeed, some of these are already provided as required under existing legislation/regulation, but perhaps embedded within the documentation.

Additionally, the use of comparative illustrations and stress test examples can be very effective in informing consumers. It may be more beneficial for the consumer to be provided with more educational information in a different format, such as illustrations, in the mortgage sales process.

In addition, we see brokers and online intermediaries having a role to play in the financial literacy sphere, where key aspects of the mortgage product should be clearly called out to the consumer by the broker/intermediary.

3.6 Theme 6: Vulnerability

Since 2017, BPFi has managed a Vulnerable Customers Forum (the BPFi Forum) which has resulted in the roll-out of processes across the retail banks that are now well established. Such initiatives developed as part of the BPFi Forum's engagement include:

- **Cross collaboration at industry level** through the BPFi Forum, where members share experiences and interactions with vulnerable customers and exchange best practice approaches.
- **Standardised approach to engagement** with various advocacy groups and representative bodies at industry level, providing input to training and information campaigns. BPFi is also represented on the Board of Safeguarding Ireland.
- **Dedicated vulnerable customer initiatives** whereby many members have dedicated units to help customers in need of additional support. Frontline staff are trained to help customers in an empathetic manner, to record vulnerability and to escalate to a vulnerable customer champion where additional support is required in the case of more complex cases.

- **Publication of targeted material** to assist those in vulnerable circumstances e.g., safeguarding finances, principles on financial abuse, opening bank accounts for Asylum Seekers and Refugees, cocooning during COVID-19, and information on available supports for those having to move account provider due to market exits.

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

Further to above, the sector fully recognises the transient nature of vulnerability for many consumers. It also acknowledges that for others, vulnerability is a more permanent feature for example, for those with impacted mental capacity.

We believe that a revised Code should include a more refined definition of vulnerability. We believe the current definition focuses on the selling part of financial services providers engagement with vulnerable customers, as opposed to taking the entire lifecycle of a customer relationship into consideration. Therefore, we believe that the definition as currently drafted is too narrow in scope, particularly in the context of the initiatives already rolled out in relation to supporting vulnerable customers. Specifically, we point to the UK's FCA definition⁷ as more closely aligned to the approach taken currently in relation to vulnerability. This definition of vulnerability *"... refers to customers who, due to their personal circumstances, are especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care. Firms should think about vulnerability as a spectrum of risk. All customers are at risk of becoming vulnerable and this risk is increased by characteristics of vulnerability related to 4 key drivers.*

- *Health - health conditions or illnesses that affect ability to carry out day-to-day tasks.*
- *Life events - life events such as bereavement, job loss or relationship breakdown.*
- *Resilience - low ability to withstand financial or emotional shocks.*
- *Capability - low knowledge of financial matters or low confidence in managing money (financial capability). Low capability in other relevant areas such as literacy, or digital skills."*

In addition, the Australian Securities & Investments Commission (ASIC) focuses on a broader definition as outlined in a speech⁸ in 2020:

"... vulnerability may immediately conjure to mind individuals who we consider disadvantaged or marginalised. A person on a low income. A single parent. An elderly pensioner. Or a person with a physical or mental disability.

And while the threat of financial stress may be greater within certain geographical and socio-economic groups, I think 2020 more than ever reminds us that any individual can experience vulnerability as a result of any number of factors.

Some of these factors might include the actions of the market or individual providers. ... It may also include personal or social characteristics that can affect a person's ability to manage financial interactions. ... ASIC's definition of 'vulnerable customers' also includes those people experiencing specific life events or temporary difficulties."

⁷ <https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf>

⁸ <https://asic.gov.au/about-asic/news-centre/speeches/asic-s-expectations-for-protecting-vulnerable-customers/>

The definitions are captured together in the table below for comparative purposes.

CPC Definition	Financial Conduct Authority (FCA) definition	Australian Securities & Investments Commission (ASIC) definition
<p><i>“vulnerable consumer” means a natural person who:</i></p> <p><i>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</i></p> <p><i>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).</i></p>	<p><i>Our definition of vulnerability refers to customers who, due to their personal circumstances, are especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care. Firms should think about vulnerability as a spectrum of risk. All customers are at risk of becoming vulnerable and this risk is increased by characteristics of vulnerability related to 4 key drivers.</i></p> <ul style="list-style-type: none"> • <i>Health - health conditions or illnesses that affect ability to carry out day-to-day tasks.</i> • <i>Life events - life events such as bereavement, job loss or relationship breakdown.</i> • <i>Resilience - low ability to withstand financial or emotional shocks.</i> • <i>Capability - low knowledge of financial matters or low confidence in managing money (financial capability). Low capability in other relevant areas such as literacy, or digital skills.</i> 	<p><i>“... vulnerability may immediately conjure to mind individuals who we consider disadvantaged or marginalised. A person on a low income. A single parent. An elderly pensioner. Or a person with a physical or mental disability.</i></p> <p><i>And while the threat of financial stress may be greater within certain geographical and socio-economic groups, I think 2020 more than ever reminds us that any individual can experience vulnerability as a result of any number of factors.</i></p> <p><i>Some of these factors might include the actions of the market or individual providers. ... It may also include personal or social characteristics that can affect a person’s ability to manage financial interactions. ... ASIC’s definition of ‘vulnerable customers’ also includes those people experiencing specific life events or temporary difficulties.”</i></p>

More recently, as part of the work at industry level in response to market exits, BPFi further refined the approach to dealing with customers in need of additional support. Three cohorts of customers are identified as potentially vulnerable, with support prioritised for those customers, including:

- **Accessibility** – for example, a person’s disability prevents them going to a branch.
- **Life events** – for example, a customer is impacted by a recent bereavement, long-term illness.
- **Capacity** – for example, a person with dementia needs support to make a decision at a particular point in time, such as opening a new bank account, or a person lacks capacity to make such a decision and there is no Enduring Power of Attorney in place.

In addition, in many situations today, members refer to *“enhanced customer support”* or *“customers in need of additional support”*, as in the case of the Moving Account⁹ campaign, rather than referring to *“vulnerable customers”*. A broader definition as suggested above would align more with this approach. We would also like to see some guidance/more clarity in terms of engagement with customers in need of additional support. The Code currently doesn’t provide this, resulting in uncertainty and a lack of consistency of approach in customer treatment. However, a revised, broader definition and any guidance needs to be balanced to ensure that it is not overly detailed and restrictive and allows for some flexibility.

We would also like the CBI to include a reference to the Assisted Decision Making (Capacity) Act 2015 (as amended) (the 2015 Act) in a revised Code and in particular, to address the Decision Support Arrangements which provide a framework for supporting customers making decisions.

⁹ <https://bpfi.ie/movingaccount/a-guide-to-moving-your-personal-account/customers-in-vulnerable-circumstances/>

We also ask that the CBI considers the Guiding Principles in the Act including the principle of having regard to the “*will and preferences*” of the customer, as set out in the 2015 Act i.e., how does this requirement of the legislation interact/complement the requirement of the Code to act in the best interests? Should one now take precedence over the other or should a combination of both be codified in the regulation? In any case, we believe that there should be consistency across the legislative and regulatory framework and that members are not faced with competing requirements when supporting customers.

A Code for Financial Professionals and firms will be published, as required under the 2015 Act, and we would also welcome consideration of this code by the CBI.

In working to support customers and in the context of a broader view of what it means to be vulnerable than currently drafted, we believe that several approaches can be taken to ensuring members work in the best interests of their customers by way of:

1. ***Focus on understanding vulnerability risk factors and additional supports required*** - The vulnerability risk factors/scenarios most relevant to each firm should be understood and managed. Any change to regulation should focus on the requirement for firms to understand their risk factors and provide reasonable assistance to customers in vulnerable circumstances. Focusing on the provision of reasonable supports removes the requirement to label customers as vulnerable or potentially vulnerable.

The factors listed in the discussion paper are in keeping with our experience of customer vulnerability.

2. ***Guidance is required on the appropriate recording and processing of information required to support customers*** - As set out in the discussion paper, staff of financial services firms need to be able to recognise and respond to vulnerability, seek additional support within the firm and appropriately record information, to ensure future engagements with the customer take account of their particular circumstances.

Noting that Regulation exists in relation to financial services providers’ obligations to record and process customer instructions and to support customers identified as vulnerable, it is important to highlight the interplay between these obligations and the General Data Protection Regulation (GDPR). Data protection obligations must be considered when recording and processing information, particularly when it includes Special Category Data (for example, relating to a customer’s health). Relying on the customer consent as a GDPR Article 9 basis for processing special category data can be challenging as the information may have come from a third party or the customer may not have capacity/ability to provide consent.

Clarity on the interplay between the obligations highlighted above is key to protecting vulnerable customers and ensuring their personal data is processed lawfully and transparently. Engagement between the CBI and the Data Protection Commission on this matter would ensure a robust revised Code that can be effective for all stakeholders.

3. ***The duty to act in a customer’s best interest, as set out in the Code, is an important obligation which provides firms with the right to act to protect the customer*** - The duty to act in the customers best interests can provide a basis for acting to prevent harm, particularly when balanced against other obligations e.g., under GDPR or the 2015 Act. Acting in a customer’s best interests includes respecting the customer’s autonomy and the right to make their own decisions.
4. ***Guidance is requested on escalation of suspected financial abuse*** - Where a firm suspects that a customer is at risk of financial abuse, measures are taken to safeguard the customer.

However, where a customer is unwilling or unable to report abuse, the ability of the firm to report a suspicion to the authorities/the HSE is limited. Guidance is required, in collaboration with external third parties, on when a firm may make an external report and where these customer cases can be reported.

5. **Guidance on facilitating a customer in appointing a supporter should be aligned to the Assisted Decision-Making (Capacity) Act 2015 Act**, together with the considerations which should be taken into account by the customer (the “*relevant person*” as defined in the 2015 Act) in appointing a supporter, and the Director of Decision Support Services (DSS) should be consulted. The suggestion regarding provision of a facility to allow a customer to provide the name and contact information for a trusted contact person is useful. However, safeguards to avoid manipulation of the customer are required. The rights of such a trusted contact person should be brought into line with the 2015 Act, where a customer/relevant person may appoint a Decision-Making Assistant (DMA) or a Co-Decision Maker (CDM). A Decision-Making Representative (DMR) may also be appointed.

While this facility should be aligned to the structures under the 2015 Act, the customer should have a choice whether they appoint a DMA or a CDM or engage directly with the provider. As a safeguard against the risk of coercion, it should be a requirement for the trusted contact person to provide identification documentation aligned with existing Anti-Money Laundering processes to the firm, for them to be considered as the customer’s contact. These processes and procedures should be addressed in consultation with the DSS.

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

While members have taken steps to ensure specific supports are available for consumers in vulnerable circumstances, it is imperative that regulated firms have the necessary authority and legal basis on which to address vulnerability. We believe the measures outlined below should be considered by the CBI as part of its review of the Code.

1. **Avoid an overly prescriptive approach to vulnerability** - We believe the measures outlined earlier have made a significant difference to customers who need additional support in engaging with their financial services provider. We ask that any measures introduced in a revised version of the Code would align with/be based on existing policies and procedures, such as those that have been developed in recent years to ensure a best practice approach to customers in vulnerable circumstances.

In addition, setting out an overly prescriptive approach in a revised Code would potentially remove the flexibility that members need, to be able to respond to complex cases of vulnerability as they arise. It would also restrict members’ ability to respond where other competing requirements and obligations may restrict the approach to dealing effectively with vulnerability. Such examples include GDPR requirements, with members currently relying on acting in the best interests of the customer to ensure that vulnerable cases are dealt with as appropriate.

A further suggestion would be that perhaps in any accompanying guidance to the Code, there could be information regarding dedicated materials for customers in need of additional support, pointing to those third parties who work with or assist those customers.

2. **Consideration of identification requirements for vulnerable customers** - Lack of acceptable photographic ID (i.e., a passport or driving licence) is a barrier to access to basic financial services for many of the most marginalised in society. For example, older customers, long term

ill, homeless or those living in temporary accommodation, refugees, prisoners, or those on probation.

While firms work with each customer on a case-by-case basis to identify a solution or exception, this approach:

- Is complex and time consuming for the customer often resulting in their having to seek additional documentation.
- Is difficult to communicate which may result in some individuals not engaging.
- Excludes customers from the most convenient channels such as digital channels.

This situation could be addressed by permitting firms to accept the Public Services Card (PSC) for the purpose of customer identification. Currently, the Social Welfare Consolidation Act 2005 (the Act), permits only certain “specified bodies” (of which financial service providers are not included) to request the PSC and only for access to public services. Amendment of the Act to allow financial services providers to accept the PSC would open an avenue to those customers without alternative identification to access financial services.

BPFI has engaged with the relevant Government Departments on this matter and have been informed by the Department of Social Protection that the PSC cannot be used for such purposes. While we recognise this issue is outside the scope of the review of the Code, we believe flexibility regarding this requirement is important to avoid exclusion from access to basic banking services.

3. **Ensure consistency of requirements** – Considering the potential for enactment of certain elements of the 2015 Act, we ask that the CBI gives careful consideration to the 2015 Act and ensures that any revisions to the Code are reflective of the obligations under the 2015 Act, to ensure consistency across the consumer protection framework and to avoid the risk that financial professionals will be bound by two conflicting obligations.

There are concerns in respect of conflicts between the Code and the 2015 Act and the draft *Code of Practice for Financial Professionals and Financial Service Providers* required thereunder. The Code provides that a regulated entity “acts...in the best interest of its customers” - this may conflict with the Act which encourages financial professionals to “give effect, in so far as is practical, to the past will and preference of the relevant person...” The Act also deals with the “unwise decision” and provides that making an unwise decision shall not be a basis upon which to consider a person unable to make a decision. As above, we ask that the CBI gives consideration to the 2015 Act to ensure a consistent framework and to avoid conflicting obligations.

4. **Consideration of vulnerability in a digital environment** - It is important to note that recording vulnerability and providing the necessary supports to customers can be made more challenging in a digital environment. For example, accessing an ATM and withdrawing funds may be an example of financial abuse; however, members would be unable to identify such activity as vulnerable at a distance and within a digital environment. Members are reliant on customers to always protect their financial information, such as User ID codes, PINs etc.

We believe this is an aspect of providing additional support to customers that should be addressed by way of guidance from the CBI, as ways of interacting digitally with financial services providers are developed. Accessibility and the tools that vulnerable customers use regarding assistive technology is also a consideration.

It is also worth noting that the word “permanent” has been removed in error from the [updated CPC guidance document](#) and we believe this needs to be amended.

3.7 Theme 7: Financial Literacy

To set some context, it is worth noting that Ireland fares relatively poorly in relation to financial literacy at a global level. The 2015 S&P Global FinLit Survey¹⁰ shows that in Ireland 55% of people are considered financially literate. This compares with 67% in the UK, 66% in Germany, 52% in France, 57% in the USA, 64% in Australia and a global average of 33%. Other key findings from the survey show:

- Low levels of financial literacy exist around the world.
- Numeracy and inflation are the most understood concepts.
- Risk diversification is the least understood concept.
- Financial literacy levels amongst women is lower than among men.
- Financial literacy amongst young people correlates with time spent in the education system.

Consumers are regularly faced with a range of financial decisions. Some of these are more common and happen on a day-to-day basis, such as managing a household budget. Other financial decisions can occur periodically or less frequently e.g., choosing what to do with savings, or getting a mortgage or house insurance, but at the same time have a lasting ongoing impact on the consumer's financial wellbeing.

Research conducted by one BPF member shows that people with poor financial literacy are more likely to worry about their finances, be at more risk of exposure to online fraud, and are unsure of where to get information about financial products and services.

Making the right choices and decisions regarding financial products and services can have a critical impact on consumers' financial wellbeing. Consumers that are more knowledgeable of financial matters are better placed to make informed and sound financial decisions. This in turn gives them a better chance of ensuring they have a relatively healthy financial wellbeing, underlining the importance of a robust, inclusive approach to financial literacy.

What can the responsible authorities do to improve financial education?

As above and as highlighted in the Discussion Paper, consumers who are well-informed are better placed to make good financial decisions.

While regulated entities have obligations to provide clear and easy to understand information to consumers, the level of financial literacy amongst consumers continues to vary, especially when it comes to complex products and an understanding of the composition of interest rates e.g., APR, AER. Therefore, all stakeholders in the provision of financial products and services have a responsibility to facilitate improving the level of financial literacy in the community - from government departments and state agencies to regulatory authorities and financial services providers. The Irish Banking Culture Board (IBCB) and the National Adult Literacy Agency (NALA) should also be consulted on how responsible authorities can support enhanced financial literacy.

In particular, the work undertaken by the IBCB, together with its members, studied important initiatives in relation to Transparent & Respectful Communications¹¹ and Financial Awareness¹², which could be further developed under a revised Code to enhance financial literacy and consumer understanding when engaging with financial services providers.

¹⁰ A global measurement of financial literacy, probing four basic financial concepts including risk diversification, inflation, numeracy, and compound interest - https://gflec.org/wp-content/uploads/2015/11/3313-Finlit_Report_FINAL-5.11.16.pdf

¹¹ <https://www.irishbankingcultureboard.ie/transparent-respectful-communications/>

¹² <https://www.irishbankingcultureboard.ie/financial-awareness/>

The recently published (December 2022) NALA report, titled “*Financial literacy in Ireland*”¹³ outlines recommendations for financial services providers and policy makers including:

- For financial services providers - to implement measures that support customers as they transition from offline to online financial services and provide training for staff on how to respond appropriately to individuals with unmet literacy, numeracy and digital literacy needs.
- For policy makers - to provide more education and training on financial literacy and to make current training and instruction materials for using online banking services available in plain language, through literacy-friendly guides, for the identified vulnerable groups.

We believe that the level of financial literacy required by consumers will depend on their life-stage and that the relevant authorities should conduct a proactive financial awareness and education campaign, not only through school curriculums, but also through television, radio, internet and social media channels, to support consumers as they consider the key financial implications and key products relevant for each life-stage.

There are several additional ways in which the responsible authorities can improve financial education including:

- We support the recommendations made in the Retail Banking Review Report in relation to financial literacy. As highlighted in this report, there needs to be a national strategy for financial literacy in Ireland and all relevant parties should be key stakeholders in the development of this strategy. However, this is a longer-term objective and actions need to be taken in the short- and medium-term to improve financial education.
- We believe the work being done by the CCPC, and as called out in the Retail Banking Review Report, is very helpful and worthwhile in providing consumers with the necessary information regarding financial products.
- We also note the information available via the Citizens Information website, which is comprehensive and laid out in a consumer-friendly format. Input from this organisation should also be sought in the development and roll-out of a financial literacy strategy.
- Consumers need to be made aware of where they can access information to improve their financial knowledge and skills, and these sources need to be easily accessible and trustworthy. The CBI’s Consumer Hub should be enhanced and better publicised as an independent source in this regard. In particular:
 - The existence and purpose of the Consumer Hub may not be widely known, and it should be publicised more as a key source of financial information and education support.
 - The use of the Consumer Hub could ensure there is one central source for consistency regarding the level and quality of educational material and information provided.
 - The Consumer Hub should also provide consumers with information on how to obtain independent advice regarding financial products and services.
 - The Consumer Hub could also be a key source of information to support the life-stage financial awareness and education campaign outlined above.
- The prescribed information which regulated entities are obligated to provide to consumers should be reviewed by the CBI and consolidated/reduced where possible.
- Certain required disclosures are complex and lengthy, making it difficult for consumers to understand. Therefore, information requirements should be consolidated and provided in a

¹³ <https://www.nala.ie/research/financial-literacy-in-ireland/>

summary and plain English format. This is an important consideration for the CBI in drafting a revised Code. Regulatory obligations should be drafted in such a way to facilitate easy translation from regulatory language to concise customer communications - the removal of financial jargon or regulatory terms would go some way to ensuring consumers read the information provided and understand financial products better.

- Consumer bodies should be consulted to ensure the scope and level of information provided by firms is understandable and results in good consumer choices. They should also be consulted in the development of the national strategy for financial literacy and the design of financial education programmes.

Many firms consult with NALA and other such organisations to proofread their brochures and standard letters to ensure they are fit for purpose and easy to understand by consumers, especially vulnerable consumers.

Furthermore, the utilisation of behavioural science has proven to be effective in helping consumers to better understand financial decisions.

- Financial education should form part of the school curriculum across all school classes, not just as part of Transition Year, especially in relation to key terms and products such as current accounts, loans, mortgages and deposits, as well as how interest rates operate.
- Members point to certain awareness campaigns that are straightforward and effective, such as drinkaware.ie and undertheweather.ie. It is considered that these campaigns adopt best practice regarding informing and enhancing consumer knowledge.
- The level of financial literacy should be reviewed and measured as part of a National Financial Literacy Strategy.

We are also concerned by the consumer investment risk associated with certain crypto-based products and welcome the EU Commission's proposal for a new EU legislative framework for crypto activities. The consumer protection measures proposed in the Markets in Crypto Assets (MiCA) Regulation include safeguards to the rights of the investor against Crypto Asset Service Providers (CASPs), giving much needed clarity to the obligations of CASPs to the consumer. We would also welcome greater supports for consumer education on crypto-based products and how consumers should check the regulatory status of the firm they are dealing with before transacting.

In addition, there has been a significant increase in crypto-related investment fraud over the last year, with fraudsters posing as legitimate companies by developing convincing or professional looking websites, producing documents which appear to set out the details of the "investment", or offering investors a dedicated page on a website where they can check on their "investment". Consumers can fall victim to these scams when they are researching products that offer better returns.

It is important that any financial literacy strategy must be all encompassing, ensuring a proper understanding of financial products across all providers and their products, including for example store card credit, payday loans, Buy Now Pay Later (BNPL) products and other high interest rate lending, and crypto products as above. While recent efforts have brought some of these products within scope of the consumer protection framework, and additional legislation is progressing such as in the case of the MiCA Regulation, greater consumer awareness and understanding of such products is required.

BPFI and members believe that the sector has a key role to play in developing valuable and viable partnerships with responsible authorities on what is a critical topic for consumers, and we are committed to inputting to and supporting any initiatives in this area.

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

Consumers can best protect their own interests by ensuring they access the information and financial advice available.

While firms should empower consumers with information to make financial decisions, consumers need to be aware of where they can access information to improve their financial knowledge and skills, and these sources need to be easily accessible. As above, the CBI's Consumer Hub should be enhanced and better publicised as one independent source in this regard - it should also contain information and materials that are accessible by consumers with disabilities or who are not digital-literate or lack access to good broadband/Wi-Fi services. The Consumer Hub could be advertised in libraries; schools, colleges and universities; Citizens Information Centres; and direct provision centres for example.

Information regarding financial products can also be accessed by researching various comparison websites, such as the comparison pages on the CCPC.ie website, bonkers.ie, switcheroo.ie etc. These sites facilitate the comparison of financial products, available from different providers and highlight their comparative benefits and costs - the consumer can use this information as a basis of their decision to proceed with a particular product or use the information as a basis for further research.

Financial education sources and materials should also reflect changing customer preferences and the move by consumers to greater use of digital methods of engaging with financial services providers and the impacts of this on consumer choice.

Regardless of how information is provided to consumers, the need to ensure any financial education sources and materials are designed so they are accessible, understood by consumers and are of value to the consumer in making decisions about financial products and services is paramount.

3.8 Theme 8: Climate Matters

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

BPFI members are committed to working with customers, colleagues and communities to support the transition to a resilient, net zero economy by 2050. This will require enormous investment (Sustainable Finance), customer support and innovation, but these efforts will make regulated firms and their customers more resilient to the climate and environmental crisis and better equipped for the green transition.

BPFI members are already playing a significant role in supporting the transition to a climate neutral economy. The sector recognises it has a critical role to play in financing the transition towards a low-carbon economy through its allocation of resources, including corporate and retail lending, financial markets intermediation and asset management. This is done through providing appropriate and attractive products and services to direct the flow of finance to sustainable activities, as per the key objective of the Paris Climate Agreement 2015.

Fulfilment of this objective has prompted the impactful legislative actions arising under the EU's Sustainable Finance Action Plan and the ESAs' Sustainable Finance mandate, and global initiatives

such as the International Sustainability Standards Board, the Taskforce on Climate-Related Financial Disclosures (TCFD) and the UNEP Financial Institutions Environment Programme.

We welcome that the Central Bank has identified addressing climate change as a strategic priority and has established the cross-industry Climate Forum.

Banks' path to net zero is twofold:

1. Investing and underwriting "green" assets and businesses to support those households and companies whose lifestyles and business activities support the government's plan to decarbonise the economy.
2. Playing their part in this economic transition by financing those "brown", more carbon intensive assets and companies so they can become "greener".

Members are also engaged in significant adaptations to their businesses by:

- Undertaking significant internal changes to repurpose their business model to support sustainability, facilitated in part by their commitments under the TCFD, United Nations Principles for Responsible Banking and the Science-Based Targets Initiative (SBTI).
- Working extensively to mobilise customers by providing products and services that support sustainability, by rewarding customers engaging in "green" activities, such as retrofitting a house or business or reducing emissions of a factory, for example.
- Appointments of Chief Sustainability Officers, charged with driving sustainability in their financial institutions and leading out on engagement with customers and stakeholders.

Member banks' integration of sustainability and commitment to supporting customers to transition to a more sustainable economy occurs in a challenging context, for example:

- Interest among consumers and market participants of products and services that reward sustainability behaviours is undetermined.
- There is a lack of standardised definitions of what constitutes "green", including differing reporting criteria for the many different reporting agencies. International standardisation of reporting standards is essential to ensure a level playing field.
- Implementation of the EU's complex and interrelated legislation such as Green Taxonomy and Disclosure and from the EBA, Pillar 3 climate-related risk.
- Recent severe, unexpected shocks - the Covid-19 pandemic, supply-chain disruptions affecting global prices for goods and services, and war in Ukraine - cannot distract from the PCA commitments and the new Climate Action Plan 2023.

Members are grappling with the extensive, complex, and inter-related new legislative and regulatory rules, requiring significant expertise and dedicated resourcing to implement fully. A regulatory regime with standardised requirements will facilitate members to support the transition. For domestic credit institutions, the emerging government policy on carbon (Climate Action Plan 2023, new National Retrofitting Office, carbon budget and transition pathways) will hopefully prompt customer demand for their growing suite of green financial services and products.

Members are putting in place measures such as skills training of staff to help them inform their clients, particularly households and SMEs, of the benefits of choosing "green" financial products and services. Many lenders already offer discounts on products that support energy efficiency - for example, loans to retrofit a property to a certain energy performance standard are offered at a discount, and some lenders offer sustainability-linked loans to SMEs looking to improve the energy performance of their business.

In summary, financial services providers are already committed in supporting the move to a climate neutral economy. Proposals for legislation/regulation continues to come from the EU and members are currently working to implement those with impending deadlines, to engage on proposed regulations and to understand the implications at a national Member State level. It is important that any requirements considered for inclusion in a revised Code give due consideration to the legislative framework coming down the track from the EU and to ensure consistency of obligations in this regard.

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

Climate change impacts on the availability, choice and pricing for financial products and services through the risk it presents and the opportunities it creates for technological and product innovation.

Credit institutions are aware that financial products and services will be impacted by both the physical aspects of climate change and the regulations introduced to fulfil the mandate of the PCA to channel financial flows into sustainable economic activities.

Small business customers that come into the scope of the Code (assuming it remains defined as those with a turnover of €3 million p.a. or less) will need support (information, signposting and education) to manage the cost and technological challenges inherent in shifting to cleaner modes of production and to manage supply chain and logistics risks that arise from climate events, for example. Alongside government and sector support, financial services providers will play a role in helping inquiring customers to recognise the opportunities of a decarbonising economy, where they can invest in lower-carbon products, or provide goods and services that help households or businesses to reduce their emissions. In addition to physical risk, the transition risk is inherent given a rising carbon price and the impact of the carbon budget on certain sectors.

Banks also have products and services in place to support personal customers to make greener financial choices - these are often offered at a discount and include signposting to government support, such as the grants for home retrofitting offered by the SEAI under the National Retrofitting Office. However, a broader view of the impact of these products must be taken, as not all customers can afford a deep retrofit of their property, noting that the funds are required for payment upfront, prior to being able to apply for any available grant. This again speaks to the need for a joined-up approach across numerous sectors.

Regarding greenwashing concerns, these raise reputation concerns for members, who must rely on the corresponding sustainability activity claims of customers and clients to complete their own ESG reporting requirement and sustainability achievements.

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

We believe that additional consumer protections are required, but not necessarily in relation to financial services. Rather, as outlined above, financial services providers are playing a significant part in supporting the transition to a climate neutral economy, but they represent one player in a much broader framework. We believe that a collaborative approach with other sectors should be adopted in working to achieve Ireland's climate ambitions. One important aspect of this would involve the education and empowerment of consumers to enable them to make financial decisions that support the decarbonising of economic activities and prompt energy efficiency. This is particularly relevant for sole traders and SMEs.