



A Review of the Consumer Protection Code – DP 2023

Submission to the Central Bank of Ireland Discussion Paper on a Review of the Consumer Protection Code

31 March 2023

Key points

- Financial Services Ireland welcomes and supports the review of the existing Consumer Protection Code, in order to better serve consumers.
- The review is an important step in the right direction, as the current CPC is not up to speed with the rapid development of technology and changed consumer culture. Its review is also welcome in the context of the Retail Banking Review recommendation for the CBI to “continue to enhance its strategy and implementation to ensure that its regulatory approach is consistent with realising the benefits of innovation ... while ensuring risks are managed and mitigated.”¹
- The timeframe of the implementation of the new regulations presents a problem. At least one year needs to elapse before the regulation can be effectively implemented, as this will have very considerable implications for firms operationally.
- The CPC must be ‘user-friendly’ and the approach should be holistic and cognisant of all the information provided:
 - for industry, that it is consistent and works well alongside other EU/national rules e.g. GDPR and Vulnerable Customers - the text should be reflective of the provisions within the Assisted Decision Making Act;
 - for the consumer, when considered as part of the cumulative body of protections and disclosures; and
 - for all users, the CPC should be a living document that can be amended more flexibly. This could be achieved by designating the CPC as a digital document, supported with videos and/or infographics to reach a wider audience.
- FSI believes that it would be more efficient for both the Central Bank and industry if the Conduct Rules matched those within SEAR. Two separate conduct metrics (even if the intended outcomes are the same) is not efficient.
- FSI welcomes the review of the Innovation Hub – ultimately a sandbox should allow for piloting of new firms and products in the market.
- Competition
 - The role of the CBI in fostering competition should be reflected in the CPC, stimulating the market and as noted in the Retail Banking Report², reflecting the need for a continuous flow of new entrants to the Irish market.
 - New entrants to the market must adhere to the same code as established entities.

¹Department of Finance Retail Banking Report, November 2022, p. 13.

² Department of Finance Retail Banking Report, November 2022, Recommendation 5 – Competition, p. 13.



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- As ‘consumers’ best interest’ is so salient to the new framework, we welcome the intention to provide more Guidance, and recommend borrowing from the well-established UK consumer protection code.

1. Innovation and Disruption

We emphasise the importance of innovation and welcome the CBI’s position in the DP that “Consumer protection measures must be balanced to avoid limiting competition between firms, or stifling innovation which can be beneficial for consumers.” As summarised by the ECB, “[i]nnovation is an essential driver of economic progress that benefits consumers ... [t]he ECB’s objective is to maintain price stability ... However, the long-term growth potential of the economy, which depends on innovation, also affects the ECB’s ability to achieve its mandate.”³

FSI believes that a regulatory sandbox, in tandem with a robust, transparent, and predictable authorisations process (both business-as-usual and new entrants) is needed to support innovation and consumer protection. Industry has sought the development of a sandbox for some time – and welcomes the CBI’s engagement this year on the detail of this proposal.

We agree that the interplay between innovation and the Central Bank’s role merits a deep and thorough analysis. As acknowledged in the DP, this is currently under review by the CBI, the CBI Financial Industry Innovation Forum and its industry sub-group. This commitment is hugely welcome, as the fostering of further innovation will be critical to a meaningful flow of new products and choices to the Irish market. The CPC as a living document, will come to reflect the outputs of this important work.

The innovation hub is a valued and important part of the CBI’s operating model. It makes a material and welcome difference to the work of many firms in Ireland – from incumbents to startups, indigenous and international. It needs to operate as part of a deeper structure of engagement with industry on the topic of innovation – again, work which is taking place through the above fora should be of assistance in developing the Central Bank’s thinking relative to the CPC.

Innovation and disruption will improve the environmental performance and has a key role to play in the the transition to net zero.

2. Digitalisation

FSI notes that a consultation was run in 2017 on this issue, the results of which – to our knowledge - were not published. While a number of years have passed, we would welcome publication of the responses, many principles of which have likely remained unchanged.

³ European Central Bank website, at www.ecb.europa.eu/ecb/educational/explainers/tell-me-more/html/growth.en.html



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As above, we think that the CPC should be a digital document first and foremost - digital interaction, not paper interaction. This should not simply mean receiving the same information via e-mail, but also allowing for videos/infographics/podcasts and a variety of ways to deliver information - this will be more inclusive and provide a range of options for consumers to better consume information.

3. Unregulated Activities

When a firm engages in both regulated and unregulated activities, there is a requirement on that firm to specifically call out if a product/activity is unregulated and explain what that means. A revised CPC 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 and should be provided at the pre-sale stage of the customer journey.

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. It is important not to imply that unregulated is in-and-of-itself a bad thing. However:

- Strict control is needed to ensure that services that should be regulated because they perform a similar function for consumers are not regulated/regulated differently from normal financial service providers.
- Sanctions/fines need to be appropriately dissuasive to those firms who are acting in an unauthorised manner, to deter such activity in the market.

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.

4. Informing Effectively

We need to be cognisant of the volume of information that we are asking the consumer to review, including how a revised CPC will inter-relate with the pending Consumer Credit Directive, set to be transposed by December 2023.

5. Vulnerability

We recognise the effectiveness of technology in promoting accessibility for the vulnerable, but the CPC will need to reflect the capacity limitations of firms in making assessments about vulnerability, for many reasons – including vulnerabilities that cannot be seen.

It will be important too, that any provisions in this space will not cause an automatic engagement with the GDPR.



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The provisions should be identical and consistent with those in the Assisted Decision-Making Act 2022 - different provisions will not be helpful.

6. Financial Literacy

FSI notes the lack of a coherent approach to financial literacy, including that the OECD recommendations in this space have not yet been adopted.

A holistic approach is required – namely a partnership between the government and industry to better embed financial literacy in the national curriculum, starting from childhood.

7. Climate Matters

As there is a multitude of existing ESG and other disclosures that firms already comply with, there should not be anything *additional* in the CPC. This issue is comprehensively dealt with elsewhere.

Firms 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/consistent requirements will facilitate members to support the transition.

Conclusion

We are grateful to the Central Bank of Ireland for its engagement and thought-provoking analysis of the consumer protection framework within the DP and look forward to further engagement through the consultation paper.

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