



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

# Consumer Protection Code Review

Fintech & Payments Association of  
Ireland Response

## Response Information

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An organisation or representative body

### What is the name of your organisation or representative body?

Fintech & Payments Association of Ireland

### Please specify your organisation/representative body type.

Other

## Broad Theme A – Availability and Choice

### Q.1 What are your views on availability and choice of financial services and products for consumers?

Members believe that there is good availability of financial services and products within the E-Money and Payment Services sectors, with a broad range of products available to consumers. However, this view does not extend to Credit Institutions given the number of Credit Institutions which will remain in the Irish market following the departure of Ulster Bank and KBC.

The closure of traditional bank branches elevates the importance of alternative access to financial services throughout the financial system for example digital access to financial services and the availability of cash services within the financial services systems which had been provided via the bank branches.

The industry and the CBI both have roles to play in the continued success of the financial services sector and ensuring that Ireland remains an attractive location to innovate, providing further availability and choice of financial services for consumers. This CBI discussion paper is welcomed by the industry as an opportunity to inform the approach to regulation of financial services. The growth of the Fintech sector is more important than ever given the reduction in the number of Credit Institutions.

For this reason, Regulation in Ireland should be consistent with other EU Member States to ensure providers can offer and develop products and services in a harmonised way across the EU.

### Q.2 How important are new providers and new delivery channels to serving consumers' financial needs?

In order to ensure the continued availability and choice of financial services it is important to ensure that new providers and delivery channels are developed to meet customers' needs.

New financial service providers and new delivery channels are considered very important in helping to serve consumers' financial needs. Particularly in the current banking environment in Ireland where there are a limited number of credit institutions and closure of traditional bank branches.

Additionally, the next generation have different expectations in relation to financial services and hence the importance of providing safe and secure alternative channels.

### Q.3 In implementing its consumer protection mandate, how should the Central Bank reflect the importance of competition in its regulatory approach?

An environment that supports competition, attracts new market entrants, provides stability and also promotes consumer confidence in the products being offered.

The consumer mandate should be executed with proportionality in mind, focusing

on the financial service being provided and the target market for the product. A one-size fits all approach is likely to create barriers for smaller/newer market participants/entrants.

In terms of new market entrants, the authorisation process in Ireland was considered to have improved in recent years, as those who were most recently authorised by the CBI described the process as clear, engaging and responsive. Furthermore, ongoing engagement with the CBI through their supervisory activity was described as a positive experience relative to other jurisdictions. The CBI should continue to engage in a clear and responsive manner. We welcome the opportunity to provide responses to papers like this and encourage open discussion with members on an individual basis.

## Broad Theme B – Firms Acting in Consumers’ Best Interests

### **Q.4 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?**

Agree

Agree. If approach taken is principles based rather than prescriptive guidance. Guidelines should also explicitly refer to proportionality and the nature, scale and complexity of business.

### **Q.5 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?**

Not Sure

No or Not Sure - “what other guidance would you suggest?”

Members view that the current outline of ‘customer best interest’ guidance is useful, additional guidance to bring this ‘to life’ for firms would be welcomed and the approach taken should be principles based rather than prescriptive guidance. Guidelines should also explicitly refer to proportionality and the nature, scale and complexity of business.

A focus on what ‘good outcomes’ for customers looks like would be useful. Members felt that the FCAs Consumer Duty requirements were onerous but did mention that it could be beneficial if any CBI Guidance in this area touched upon the four areas of good outcomes for consumers as set out in the FCAs Consumer Duty. These include: (1) the governance of products and services, (2) price and value (3) consumer understanding, and (4) consumer support.

Members would find it particularly helpful if the CBI issue example scenarios of consumer protection incidents, the weakness / failure that arose and the

recommended approach that firms should take to meet consumer protection standards. This would help firms to more comprehensively understand and learn from the failures of the past.

Also, a sectoral view on consumer protection requirements could be useful, albeit there was an appreciation that a cross-industry view would reduce complexity.

## Theme 1 – Innovation and Disruption

### Q.6 Do you agree with our proposed approach to enhancing our Innovation Hub?

Not Sure

No or Not Sure - “please provide further information”

Members welcome the CBI proposal to enhance the innovation hub, comparing it to other regulatory bodies who were more advanced in their approach to innovation and had developed a “sandbox”. While Ireland may not have the capacity to develop a sandbox to the scale of some other territories, the CBI may benefit from collaboration with other regulatory bodies in this area.

Some Members who are already authorised did not feel that they could discuss new or innovative products within the innovation hub, and that it was better to discuss with the supervisory team once new product ideas were well established. A segregation of duties might enable this perceived conflict to be removed

It was acknowledged the pace of change in the Fintech industry is fast. Members are open to working with the CBI, sharing their knowledge and insights, and supportive of potential secondments of CBI staff into industry or industry staff into the CBI. This is a journey that we need to travel together and would appreciate sectoral insights from the CBI, specifically as they relation to evolving risks and potential mitigants.

Members would find it useful to see the types of engagement that the CBI has with firms via the Innovation Hub, in addition to the statistics on the number of interactions the CBI has with firms. This would perhaps encourage further interactions between the innovation hub and other firms.

In addition, the approach to the innovation hub should also link across and/or be informed by other cross-sectoral policy frameworks e.g., IFS Strategy. Strong consideration should also be given to the skills needs of the sector (including public bodies), given Ireland is one of Europe’s leading knowledge economies and developer talent should be seen as an integral part of the country’s long-term plan for financial services. Finally, the application of regulation to new technologies should be actively and transparently benchmarked against other EU jurisdictions to ensure consistent implementation and a level playing field in the Single Market.

**Q.7 What more should be done to support innovation while ensuring consumers' best interests are protected?**

Please refer to responses to question 6.

**Q.8 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 principle of proportionality in the application of regulation is important in this regard as it is understood the enhancements to the CPC will be sector agnostic. The application of regulation on a risk-based approach, that is proportionate to the nature scale and complexity of each firm's risk will enable new entrants to the market to establish themselves and continue to grow their cost base in line with their business as additional resources are required to manage their risks. This will enable new entrants to the market to compete with incumbents who oftentimes have large established structures.

New entrants to the market often rely to a greater degree on outsourcing to third parties or indeed intra-group outsourcing in order to access the services they require whilst they grow and build scale of their own. Members would appreciate a proportionate approach to scaling their internal functions in line with the growth projections, enabling them to reach sufficient scale to develop internal functions with the skills and capabilities they require. In a similar vein, dual hatting may be proportionate to the nature, scale and complexity of new entrants to the market in the initial start-up phase.

Clarity around where it is appropriate to apply different requirements and expectations to new entrants to a particular sector / newly established firms as compared to more established firms would be welcome.

**Theme 2 – Digitalisation****Q.9 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?**

Agree. As personal users of digital solutions, Members believe there is an opportunity to provide more support to consumers on a real time basis across the industry. In relation to education, Members agree that they have a role in protecting and informing customers. The CBI also has a role to play, supporting society to better understand the evolution of new digital channels and relevant products.

**Q.10 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?**

Participants generally agreed that individual-targeting of ads can be compatible with the requirements for firms to act in the best interest of customers. By its very nature, customisation should result in a tailored offering to meet customers' needs once the means by which firms have access to data on consumer preferences has been obtained and used appropriately. Participants however recognised vulnerable customers in particular, should have additional controls in place to mitigate any additional risks.

Examples of point-of-sale controls could include individual pop-up messages which clearly set out pertinent information in an easily understood manner (e.g., product characteristics and where applicable key risk information should be highlighted to customers along with potential associated negative outcomes for consumers). These pop-up messages could include an option for consumers to tick that they do not fully understand and would like a customer sales team representative to call them to discuss.

## Theme 3 – Unregulated Activities

**Q.11 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?**

Not Sure

There was consensus that the "Regulated by the Central Bank of Ireland" was not particularly useful to consumers for a number of reasons. Authorised firms can provide both regulated and unregulated products. There is no clarity provided to customers where some activities are not regulated. Furthermore, some firms are required to register with the Central Bank of Ireland which adds further confusion.

**Q.12 How can the difference between regulated and unregulated activities be made clearer for consumers?**

Disclosure of the regulated status of a product / service made via the would clarify for customer's which products, services and/or transactions were subject to CBI regulation, and which were not.

In order to better inform customer's understanding of the disclosure "regulated by the CBI", firms could be required to include a link to the CBI's Consumer Hub or CCPC where further information on what protections customers are afforded when they purchase a product or service that is subject to regulation by the CBI.

**Q.13 Should there be additional obligations on regulated firms when they undertake unregulated activities?**

No

Regulated firms should not be subject to additional regulatory obligations when they undertake unregulated activities. The rationale for regulated products and services triggering regulatory obligations is inextricably linked to firms having to seek and obtain an authorisation or permission before they can undertake such activities. Where a firm does not require permission from a particular regulator to provide a particular service, it should not be subject to the requirements of that

regulator in the provision of those services. While there may be an increased risk of consumers misunderstanding whether the product or service they have purchased is subject to CBI regulation when a firm sells both regulated and unregulated products/services. Including a disclosure on the regulated status by product would be perhaps a more pragmatic approach than seeking to extend regulations to unregulated products and services.

There is a balance to be struck in terms of imposing regulatory costs on a particular sector - which may not be in place in other EU jurisdictions - and may result in making market entry more costly in Ireland and/or increasing prices, which would result in reduced benefit of competition for consumers in Ireland vis-a-vis consumers in other EU member states. It is important to ensure a level-playing field with other EU member states.

We therefore do not agree with the suggestion in the Discussion Paper (page 48) that regulated firms ensure that all services and products provided by them - including unregulated products and services - are suitable taking account of the consumer's needs and risk appetite. We note that as currently drafted, EMIs are excluded from the scope of Chapter 5 of the CPC (which pertains to suitability requirements), and we expect that this exclusion would continue to apply)

## Theme 4 – Pricing Matters

### **Q.14 What can firms do to improve transparency of pricing for consumers?**

Members noted that providing access to easily understood pricing information and disclosures is key to ensuring that consumers' needs are met. It was noted that firms should include “information about” fees and charges which consumers may incur over the life of the product or service. Further, information should be presented in a clear and unambiguous way and component pricing should be included where relevant.

Members understand and agree that customers should be able to compare products and services from a range of providers and select the most appropriate product for their needs which represents the best value for money for them. All members considered that this is not a huge issue for EMI and PI firms (based on the nature of the products / services and pricing practices) as long as customers are fully informed and able to move between providers.

### **Q.15 In relation to pricing, are there examples of firms using unfair practices to take advantage of customer vulnerabilities?**

No such practices were raised.

## Theme 5 – Informing Effectively

### **Q.16 How can regulation improve effectiveness of information disclosure to consumers?**

In our view, given how firms interact and communicate with their customers today,



and how these modes of communication have changed over the past decade, certain of the Information Disclosure requirements that apply to EMIs and PIs are outmoded. For example, under the PSD2 regime, certain information is required to be 'provided' via 'durable medium'. The lack of clear and definitive examples of what constitutes a 'durable medium' has meant that many of the methods which are primarily used for communicating with EMI and PI customers (including business customers) may not be sufficient to satisfy this duty to provide the information by way of durable medium. In our view, it would significantly improve the effectiveness of information disclosure to consumers if the CBI were to issue clear guidance on what they regard as examples of how the 'provide by durable medium' requirement may be met in the context of B2B and B2C payment and e-money services and examples of the types of practices which would fall short of the Central Bank's expectations in this regard. There is often a significant level of disclosure requirements with financial services products which consumers are asked to confirm that they have read and understood, however given the volume of disclosures and the often-legalistic nature, the disclosures are thought to be ineffective.

Members believe that pricing disclosures are critical and could be contained within “Key features documents”. The current level of disclosure requirements is complex, which can be an issue for ensuring adequate and effective compliance in EMI and PI firms.

**Q.17 How can firms better support consumers’ understanding – can technology play a role?**

All members agreed that technology can play a significant role in supporting financial literacy for their customers. There are a number of examples given to achieve this, for example, analysis of consumer patterns, the issue warnings, and effective ways to inform consumers of scams.

Other enhancements to be considered include a requirement to use “pop ups” calling out key risks or videos to better explain the products/risks so as to support consumers’ understanding of the terms and conditions and other disclosure requirements.

**Q.18 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.**

No additional specific references were noted as this is in relation to mortgage products. All the areas referenced in the response to Q16, and Q17 of this theme were deemed by members to be applicable to E-money and payment firms.

## **Theme 6 – Vulnerability**

**Q.19 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?**

Members discussed the fact that identifying vulnerable customer groups and defining customer vulnerability responses must be done on a firm specific basis. The starting point should be for firms to understand their client types and perform a ‘consumer vulnerability analysis’ / ‘internal profiles’ of customers in order to determine the vulnerability status. This will drive each firm’s response to address customer needs across the spectrum of vulnerability.

**Q.20 What other specific measures might be adopted to protect consumers in vulnerable circumstances while respecting their privacy and autonomy?**

It was generally agreed that technology can play an important role in firms identifying vulnerable customers and acting in their best interest. One way to achieve this is profiling customers as outlined above and also looking at patterns,

attributes, transactions, which could indicate that something is potentially wrong / not in line with the customer's purchase or transaction history.

Additionally, firms could include at onboarding stage, the option to self-declare their status of vulnerability.

The concept of a 'trusted contact' as set out in the CBIs discussion paper was positively received by members.

## Theme 7 – Financial Literacy

### **Q.21 What can the responsible authorities do to improve financial education?**

Members agreed that CBI can play an important role in promoting financial education. Development of comparison websites where customers can easily compare providers would strengthen consumer literacy and protection.

Members recognise the importance of financial literacy education in the early years for secondary schools where it should be mandatory to educate students on several financial practical life skills such as, what are credit accounts, loans or pensions.

Financial Literacy and Digital Literacy are essential components to the success of the financial services ecosystem, as it evolves. Expanding the focus area to include SMEs and sole traders is vital to support the digitalisation of the real economy and achieve the objectives of the Digital Ireland Strategy.

### **Q.22 How can consumers be empowered to better protect their own interests when dealing with financial matters?**

No additional specific references were noted.

## Theme 8 – Climate Matters

### **Q.23 How should the financial system best fulfil its role in supporting the transition to a climate neutral economy?**

Financial Services providers must play a key role in the transition to a climate neutral economy and should be incentivised and supported to do so by the regulator which will require the regulator to respond to innovations in this space with appropriate speed and skillset. This can be achieved by informing consumers of and incentivising them to choose greener, climate neutral options. Albeit, clarity is needed in terms of classifying 'green options' and to avoid the current issue of 'greenwashing'.

Continuing to facilitate financial services employees to work from home on a part time, hybrid basis would have a long-term beneficial impact on the environment through the reduction in transportation which is a key polluter. In addition, a move

towards a fully paperless culture would also have a positive impact on the environment, for example, using methods such as digital documents and e-signatures.

**Q.24 How will climate change impact on availability, choice and pricing for financial products and services?**

No additional specific references were noted.

**Q.25 Does the impact of climate change require additional specific consumer protections?**

Not Sure

No additional specific references were noted.



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