

Initial Observations on the Central Bank of Ireland's Consumer Protection Code Consultation Paper

Following an extensive engagement programme with Regulated Financial Service Providers (“**RFSPs**”), relevant stakeholders and customers alike, the much anticipated Consultation Paper (CP 158) on the Consumer Protection Code (“**Code**”) (“**Consultation Paper**”) was issued by the Central Bank of Ireland (“**Central Bank**”) on Thursday, 7 March 2024. In this Insight we set out:

1. a broad overview of the Central Bank’s key messages in the Consultation Paper;
2. the structure of the revised Code; and
3. the specific issues which the revision of the Code is set to address.

RFSPs should note that the Consultation Paper is open for feedback until 7 June 2024. Additionally, the Central Bank has indicated that it will publish its feedback statement along with the revised Code in early 2025 and has proposed a 12 month implementation period, from the final date of publication of the revised Code.

We will continue to consider the implications of the proposed changes to the Code and will publish further, more in depth cross sectoral as well as sector specific analysis in the coming weeks.

For any queries on this or any aspect of the Code, please do not hesitate to contact to any member of Matheson’s Financial Institutions Group or your usual Matheson contact.

KEY MESSAGES

The Consultation Paper states that the Central Bank’s goal is to deliver an **updated and modernised** Code that reflects the transformations in financial services in recent years and particularly in how they are delivered to consumers today.

The Central Bank hopes that the revised Code will also reflect the outcomes of a **number of recent consumer events** including the tracker mortgage failures, business interruption insurance events, the differential pricing regulation amongst others, while also enhancing the **clarity and predictability** for RFSPs on their consumer protection obligations.

The Central Bank stresses that the current General Principles and Requirements of the Code will remain at the core of the revised Code.

The Central Bank was anxious to address what it terms “**structural fragmentation**” which had arisen through the development of a number of “add on” codes in recent years. It seeks to achieve this through the incorporation of these codes in the revised Code. This in turn, it hopes, will enhance the coherence, consistency and accessibility of the framework.

The Central Bank explains that it seeks to **balance** the need of RFSPs to pursue their commercial objectives with the obligation to place their customers’ (and potential customers’) interests at the heart of their culture, strategy, business model and decision-making.

The Central Bank notes that the implementation of the revised Code may result in what it terms “**incremental cost impacts**” for RFSPs but in defending these costs, it sets out a cost-benefit assessment in which it maintains that the benefits strongly outweigh said costs.

The **scope** of the revised Code will remain the same, protecting individuals and small businesses. However of interest is the proposal, in the context of the Code, to widen the current threshold for small business from an annual turnover of €3m up to €5m.

Finally, the Central Bank confirms a statement which it made previously regarding the intention to consider **further updates to the revised Code** in light of ongoing legal and regulatory developments. Given the timeline for implementation indicated, it is unlikely that these revisions will be imminent, however it is still an important message for RFSPs to be aware of.

STRUCTURE OF THE CODE

The revised Code will be reflected in two new Central Bank Regulations.

Regulation 1:

- The First Regulation sets out Standards for Business, including standards relating to governance, resources and risk management and RFSPs' conduct standards. These will build upon and update the existing General Principles of the Code and are the final regulatory component of the Individual Accountability Framework ("IAF");
- The Standards for Business are complemented by the Supporting Standards for Business, addressed within the Regulation, which provide further detail on RFSPs' obligations;
- The Standards for Business will apply to all RFSPs, other than those providing MiFID services and crowdfunding services (for which there are equivalent regimes in EU legislation), and credit union savings and lending activities; and
- The Central Bank states that the Standards for Business align with the application of individual conduct standards under the IAF

Regulation 2:

- The Second Regulation has the existing General Requirements at its core;
- It comprises both cross-sectoral and sector-specific Conduct of Business requirements which will reflect existing, enhanced and new requirements;
 - Cross sectoral requirements relating to digitalisation, informing effectively, customers facing vulnerability, advertising and complaints resolution; and
 - Sector Specific Requirements relating to consumer banking, credit and arrears, insurance, investments and crowdfunding.
- A number of existing but standalone Central Bank codes and rules will be amalgamated to address structural fragmentation; and
- The General Requirements will apply to all RFSPs, other than reinsurance undertakings, RFSPs providing MiFID services, and credit union savings and lending activities. The Central Bank intends to engage with credit unions on the extension of the scope of the Code to all credit union activities when the revised Code is close to final.

Additional supports:

The Central Bank is proposing two supporting **Guidance** documents which offer additional guidance to RFSPs on

- securing customers' interests; and
- protecting consumers in vulnerable circumstances, and general guidance.

Finally, the intention is to also provide a number of digital tools, explainers and guides for both consumers and RFSPs. These are expected to be available once the Code is finalised.

SPECIFIC ISSUES

1. Principal Policy Proposals

The revised Code includes certain principal policy proposals from the Central Bank, to account for the ever evolving nature of financial services and key developments in the Central Bank’s supervision of RFSPs in recent years. These include both new requirements and enhancements to existing requirements in the following eight key areas:

Principal Policy	Central Bank of Ireland’s Intentions
1 Securing Customers’ Interests	<p>While the Central Bank notes that RFSPs firstly exist to pursue their commercial objectives, it believes that they should effectively incorporate customers’ interests into their culture, strategy, business model and decision-making, to support a well-functioning financial services market.</p> <p>The revised Code addresses how RFSPs can achieve this through “Securing Customers’ Interests”.</p> <p>It is the Central Bank’s view that the introduction of this new standard for business does not purport to introduce new, more extensive customer obligations on RFSPs rather provide greater clarity and predictability on the already existing requirements to support effective implementation. It achieves this through clearly setting out what RFSPs need to consider, the actions they need to take and the mind-set they should have towards customers.</p>
2 Digitalisation	Introduce new digitalisation requirements, ensuring RFSPs are customer focused in the design and implementation of digital services and delivery channels.
3 Informing Effectively	Ensure RFSPs communicate with customers more effectively, not only requiring RFSPs to disclose information to customers, but requiring them to meet their disclosure obligations in a way that informs effectively.
4 Mortgage Credit and Switching	<p>Ensure customers are supported to make informed decisions in relation to mortgage credit and switching. Impose a number of new and enhanced requirements including disclosure requirements on switching options and the cost of incentives.</p> <p>It is proposed to consolidate the Code of Conduct on Mortgage Arrears (“CCMA”) into the Code along with a number of enhancements to existing CCMA requirements.</p>
5 Unregulated Activities	Recognising the risks associated with the ‘halo effect’ and customer confusion when RFSPs undertake unregulated activities. Obligations are proposed to be placed on RFSPs that provide unregulated activities, to ensure that their customers can have no impression or misunderstanding that they are unregulated activities .
6 Frauds and Scams	In light of the increasingly sophisticated frauds and scams customers are targeted with, new requirements are proposed to ensure RFSPs are vigilant to the evolving risks to the system and their customers, and that they take appropriate actions to protect customers, particularly in a digital context.
7 Protecting Consumers in Vulnerable Circumstances	The definition of vulnerability will be updated along with the expectations on RFSPs in that regard. The proposed approach reflects the dynamic nature of vulnerability, recognising that customers can move in and out of circumstances that make them vulnerable. This is reflected in improved requirements, which will be supported by guidance, ensuring RFSPs are able to balance the needs and interests of their vulnerable customers, with an approach that is grounded in reasonable steps and proportionality.
8 Climate Risk	Given the important role that financial services and consumer preferences will play in the transition to a climate neutral future, new suitability and advertising requirements for RFSPs are proposed. RFSPs will be required to ensure that they communicate fairly and clearly on product sustainability features. These requirements aim to tackle the risk of greenwashing alongside broader, existing climate-related requirements at EU level.

2. Additional Policy Proposals

In addition to the Principal Policy Proposals, the Central Bank is also proposing a number of new and enhanced policy proposals in a number of specific areas. Once again, the intention here is to reflect the risks faced by consumers today and to provide greater clarity for RFSPs on their consumer protection obligations. The following is a high-level outline of the additional policy proposals:

Consumer Credit	<p>The revised Code will apply, in full, to the provision of indirect credit, such as Buy Now Pay Later agreements, Hire Purchase Agreements and Personal Contract Plans. This will ensure that customers of these credit providers are afforded the same protections as customers of other credit providers.</p> <p>The High Cost Credit Providers Regulations will be consolidated into the revised Code. In addition, the Standards for Business and Supporting Standards for Business will apply to High Cost Credit Providers. The updated approach to consumers in vulnerable circumstances within the revised Code will apply to High Cost Credit Providers.</p>
SME Protection	<p>Standards for Business and Supporting Standards for Business will apply to all customers that RFSPs do business with, including SMEs.</p> <p>The SME Regulations will be consolidated into the revised Code</p>
Insurance	<p>The revised Code will provide for explicit “opt-in” for automatic renewal which will apply to consumers in respect of gadget insurance, travel insurance, dental insurance and pet insurance policies. There will be no change to the automatic renewal of motor, home and health insurance in the revised Code.</p> <p>Customers will be issued with a ‘pre-renewal notification’ 20 days in advance of the existing ‘renewal notice’ to provide consumers with additional time to shop around.</p>
Investments & Pensions	The revised Code will strengthen requirements on RFSPs to inform customers of the importance of considering the ongoing suitability of investment and pensions products for their needs at the point of sale and in annual statements. RFSPs will also be required to explain why they do not provide ongoing suitability assessments.
Miscellaneous Enhancements	<p>Errors & Complaints Handling</p> <p>The revised code will enhance governance obligations on RFSPs of the handling of errors and complaints, requiring RFSPs to analyse errors and complaints on a regular basis and at least every six months, in order to identify and address trends or other potential issues in a timely manner. RFSPs will also be required to display their complaints procedure on any digital platform they operate.</p> <p>Retail Banking Review Recommendation</p> <p>As part of the pre-contractual information obligations at the commencement of the complaint process, RFSPs should clearly set out which Ombudsman/Alternative Dispute Resolution service will deal the complaint where the customer does not accept the decision of the provider’s internal complaints process.</p> <p>Record Keeping</p> <p>RFSPs are required to retain record for no more than 12 months (reduced from 6 years), where a customer does not become a formal client of the RFSPs. The Central Bank will consult on this reduction with the Data Protection Commission.</p> <p>Further Work</p> <p>The Central Bank anticipates further changes to the revised Code based on policy developments at a domestic and European level, including the application of the revised Code to credit institutions, Access to Cash, the National Payments Strategy, the EU Retail Investment Strategy, crypto-assets and the evolution of the EU Payments Services Framework.</p>

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