Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

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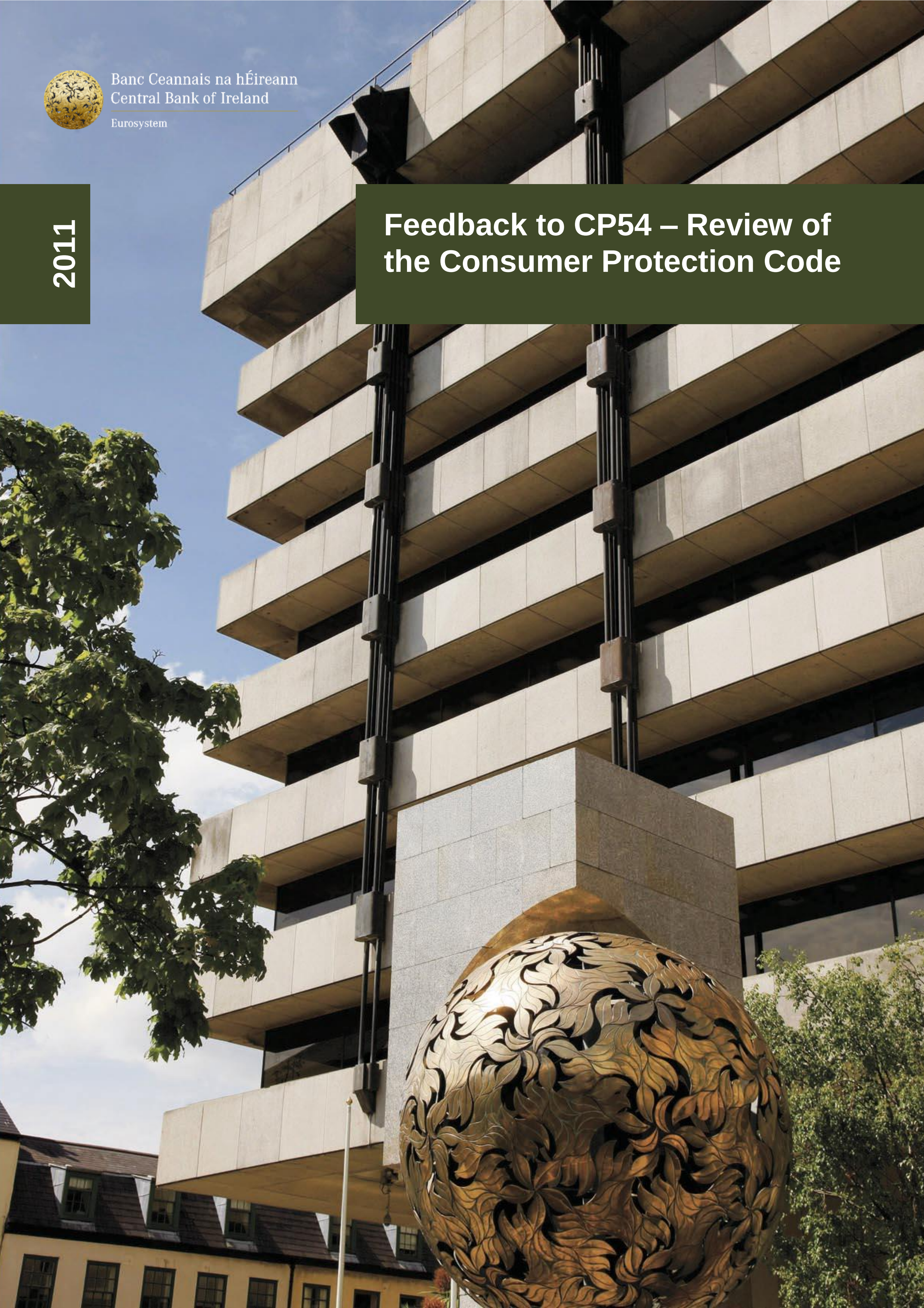
Feedback to CP54 – Review of the Consumer Protection Code



Introduction

In 2006, the Central Bank of Ireland (Central Bank) introduced the Consumer Protection Code (the 2006 Code) to strengthen protection for consumers by introducing clear conduct of business rules for all regulated entities in order to increase standards of service to consumers and to ensure that consumers are provided with financial products that are suitable for them.

During 2010 and 2011, the Consumer Protection Directorate undertook a review of the 2006 Code in order to:

- address issues that have arisen during our consumer-focussed inspections;
- take account of market intelligence received; and
- provide clarity on the impact of EU legislation and other developments which have arisen since its introduction.

On 28 October 2010, the Central Bank published Consultation Paper CP47 *Review of Consumer Protection Code* (CP47) setting out proposed new and amended requirements in order to strengthen the existing Consumer Protection Code. Following detailed analysis of the comments received during this consultation process, in addition to undertaking some further research and analysis of the issues under consideration, we published a second Consultation Paper CP54 *Review of Consumer Protection Code* (CP54) in June 2011. In CP54 we outlined the position we had reached on some issues raised in CP47, highlighted a number of new or amended provisions for feedback and provided a final opportunity to stakeholders to review a full version of the proposed revised Code. In total, 92 submissions were received from interested parties. Appendix 2 contains a list of respondents to the consultations.

The views expressed in the course of both consultations have been carefully considered in drafting the revised Consumer Protection Code (2012 Code), which incorporates a number of new and amended provisions. We would like to express our appreciation to all those who provided assistance and feedback during this process.

Many aspects of the 2006 Code have now been amended and over 100 new provisions have been added. A list of many of the significant changes is available in Appendix 1.
The 2012 Code is effective from **1 January 2012**.

Regulated entities are responsible for their own compliance with the 2012 Code. To aid regulated entities in their interpretation and understanding of the 2012 Code's provisions, we are providing additional clarification in a number of areas where concerns were expressed or uncertainty was evident in the submissions.

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

Clarifications are set out under the following headings:

1. General Queries

1.1 Will the 2012 Code apply retrospectively?

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

'New' obligations in the 2012 Code which did not apply prior to 1 January 2012, shall apply with effect from 1 January 2012. A list of many of the significant changes, including new provisions, is available in Appendix 1.

1.2 How has the definition of consumer changed?

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

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

1.3 Clarification regarding pension schemes.

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

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

1.4 Clarification regarding the provision of credit.

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

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

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

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

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

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

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

1.5 Clarification regarding references to variable rates.

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

2. General Requirements

2.1 Proposed rules regarding personal visits and contact with consumers.

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

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

It should be noted that the obligation on a regulated entity to meet the requirements set out in Provisions 3.40 to 3.45 is without prejudice to any other obligations a regulated entity is subject to, including without limitation, under the Data Protection Acts 1988 and 2003 and as stipulated in the European Communities (Electronic Communications Network and Services) (Privacy and Electronic Communication) Regulations 2011 (S.I. 336 of 2011).

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

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

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

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

Provision 3.30 sets out that a product producer must not require an intermediary to meet sales targets in order to retain an appointment. Provision 3.31 requires that, in order to pay commission to an intermediary based on sales targets, a product producer must be able to demonstrate that the arrangements:

a) do not impair the intermediary's duty to act in the best interests of consumers; and
b) do not give rise to a conflict of interest between the intermediary and the consumer.

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

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

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

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

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

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

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

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

3. Provision of Information

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

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

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

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

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

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

A number of respondents to CP54 referred to similar disclosure obligations between the 2012 Code and the Life Assurance (Provision of Information) Regulations 2001 (Life Regulations). We accept that there is a certain amount of overlap with the Life Regulations and we do not expect regulated entities to duplicate disclosures. As such, where a regulated entity meets the disclosure requirements in the Life Regulations, we would expect that any supplementary disclosures required by the 2012 Code will be provided in addition to those required by the Life Regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Knowing the Consumer & Suitability

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

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

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

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

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

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

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

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

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

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

4.4 Do the credit affordability assessment requirements apply retrospectively?

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

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

The Consumer Credit Act 1995 ("CCA") requires a lender to provide details of the effect on the instalment amount of a 1% increase in the first year interest rate. This information must be included on a front page notice for housing loan agreements. Provisions 5.9 and 5.12 of the 2012 Code requires calculation of the effect of a 2% interest rate increase in certain circumstances. Lenders are required to provide the information required under provisions 5.9 and 5.12 in addition to the information required to be issued to consumers under the CCA.

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

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

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

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

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

5. Rebates & Claims Processing

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

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

5.2 Clarification regarding loss adjustors and expert appraisers

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

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

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

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

6. Arrears Handling

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

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

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

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

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

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

regulated entity to write to the personal consumer and warn him or her of the legal consequences of non-payment.

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

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

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

However, at all times, regulated entities must ensure that they comply with the requirements of Provision 8.13 and should note that where communication is made successfully in compliance with a requirement of the Code, that requirement is considered to have been met and any further communication in that regard, to which the consumer has not given consent, is considered unsolicited and is subject to the limit set out in 8.13.

7. Advertising

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

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

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

7.2 Clarification regarding the terms initialism and acronym.

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

8. Errors and complaints resolution

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

Provision 10.1 provides that a regulated entity must resolve all errors speedily and no later than six months after the date the error was first discovered. Provision 10.2 requires that errors which have not been fully resolved within 40 business days of the date the error was first discovered must be reported to the Central Bank. A number of submissions suggested that only 'material' errors should be reported to the Central Bank. Given the breadth of regulated entities to which the 2012 Code applies, a materiality threshold is difficult to define and requires an element of subjectivity as to what constitutes a material error.

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

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

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

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

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

9. Other Issues

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

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

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

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

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

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

9.2 Why is moneylending not covered by the 2012 Code?

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

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

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

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

Appendix 1: High level summary of the more significant changes to the Consumer Protection Code

Change no.	Description of provision	Code Reference	Amended/New
Chapter 2 – General Principles			
1	Compliance with the Code resources, policies and procedures required	2.4	Amended provision
Chapter 3 – General Requirements			
2	Facilitation of vulnerable consumers	3.1	New provision
3	Requirements when dealing with a person acting under a power of attorney	3.7	New provision
4	Requirements, including information that must be provided, when ceasing operations or merging	3.11	Amended provision
5	Requirements, including information that must be provided, when closing, moving or merging a branch	3.12	Amended provision
6	Requirement when opening joint accounts	3.13	Amended provision
7	Consumer's right to pay a charge separately instead of incorporating it into loan amount	3.12	New provision
8	Requirements in relation to feeder accounts	3.18	New provision
9-12	Requirements in relation to bundling of products	3.19-3.22	New provisions
13	Application form for payment protection insurance	3.24	Amended provision
14 -18	Requirements in relation to conflicts of interest	3.28 -3.32	New provisions
19-21	Circumstances in which a personal visit can be made	3.37 -3.39	New provisions
22 -25	Product producer responsibilities – provision of information regarding investment products	3.52-3.55	New provisions
Chapter 4 – Provision of Information			
26	General requirement in relation to information	4.1	Amended provision

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Change no.	Description of provision	Code Reference	Amended/New
27	Requirements in relation to font size in all information documents	4.4	Amended provision
28	Requirements for published notices regarding interest rates	4.5	Amended provision
29-32	Requirements for published notices regarding interest rates	4.7 -4.10	Amended provisions
33	Information to be included in terms of business	4.13	Amended provision
34-35	Use of term 'independent'	4.16-4.17	New provisions
36	Use of term 'broker'	4.18	New provision
37	Disclosure to be made by intermediary that does not provide a product or service on basis of fair analysis of the market	4.19	New provision
38	Disclosure to be made by intermediary that is tied to single product producer	4.20	New provision
39	Information that must be given prior to recommending, arranging or providing a product or service	4.21	New provision
40	Warning to be issued about the consequences of missing a repayment	4.23	Amended provision
41	Information that must be given when credit is denied	4.24	New provision
42	Information requirements in relation to redemption charge for fixed rate loans	4.25	New provision
43	Information requirements in relation to mortgage rates to be provided on a firm's website (if any)	4.28	New provision
44	Information requirements in relation to permanent health insurance policies	4.36	Amended provision
45	Information regarding restitution work to be given when offering a property or motor insurance policy	4.38	New provision

Appendix 1: High level summary of the more significant changes to the Consumer Protection Code

Change no.	Description of provision	Code Reference	Amended/New
46	Information to be provided following refusal to quote	4.39	Amended provision
47	Information that must be provided where premiums are subject to review by insurance undertaking	4.40	New provision
48	Information requirements in relation to investment products other than tracker bonds	4.46	New provision
49	Information requirements in relation to PRSAs	4.53	New provision
50	Information to be given when proposing to incorporate a charge into a loan	4.55	New provision
51	Requirement to display schedule of charges imposed by a firm	4.56	New provision
52	Disclosure requirements for mortgage intermediaries and IIA firms in relation to remuneration received from a product producer	4.57	New provision
53	Disclosure requirements in relation to nature of service to be provided in respect of ongoing remuneration	4.58	New provision
54-55	Disclosure requirements in relation to remuneration in respect of non-life insurance products	4.59-4.60	New provisions
56	Information to be provided where intermediary allows payment by fee	4.61	New provision
Chapter 5 – Knowing the Consumer and Suitability			
57	Knowing the Consumer requirements	5.1	Amended provision
58	Requirement where consumer refuses to provide information sought in relation to Knowing the Consumer	5.4	Amended provision
59	Requirements in relation to supporting documentation for a mortgage application	5.6	Amended provision

Appendix 1: High level summary of the more significant changes to the Consumer Protection Code

Change no.	Description of provision	Code Reference	Amended/New
60	Requirement in relation to assessing reasonableness of information submitted in support of a mortgage application	5.7	New provision
61-67	Requirements in relation to assessing affordability of credit	5.9 – 5.15	New provision
68	Requirements in relation to assessing suitability of a product of service for a consumer	5.16	New provision
69	Requirements in relation to statement of suitability to be provided	5.19	Amended provision
70	'*Important Notice'* warning to be included in statement of suitability	5.2	New provision
71	Requirements in relation to recording oral explanations to consumers	5.21	New provision
72	Format of statement of suitability for general insurance	5.22	New provision
73	Requirements in relation to statement of suitability where immediate cover required	5.23	New provision
74	'Execution-only' exemption from Knowing the Consumer & Suitability	5.24	Amended provision
Chapter 6 – Post – sale Information Requirements			
75	Requirement in relation to provision of statements in paper format	6.2	New provision
76	Requirements in relation to statements for term and notice deposit account	6.3	Amended provision
77	Information requirements in relation to term and notice deposit accounts	6.4	Amended provision
78	Requirements in relation to statements for credit products	6.5	New provision
79	Information requirements in relation to change in interest rate on a loan	6.6	New provision
80	Timelines for notification of an interest rate change on a loan	6.7	New provision
81	Information requirements in relation to changing from a tracker rate	6.9	New provision

Appendix 1: High level summary of the more significant changes to the Consumer Protection Code

Change no.	Description of provision	Code Reference	Amended/New
82-83	Requirements in relation to waiver provided for in provision 4.36	6.10-6.11	New provision
84	Information that must be given when an incentive is offered on a mortgage	6.12	New provision
85	Timelines for issuing policy documents	6.13	Amended provision
Chapter 7 – Rebates and Claims Processing			
86	Requirements in relation to rebates over €10	7.1	Amended provision
87	Requirements in relation to rebates under €10	7.2	New provision
88	Requirements in relation to deducting charges from rebates	7.4	Amended provision
89	Requirements in relation to uncashed premium rebate cheques	7.5	New provision
90	Requirements in relation to procedure for the proper handling of claims	7.7	Amended provision
91	Requirements in relation to appointed 3rd parties	7.11	New provision
92	Information requirements in relation to scope and cost of restitution work	7.13	New provision
93	Requirements in relation to the certification of restitution work	7.14	New provision
94	Requirement for claim settlement offers to be fair	7.15	New provision
95	Requirements in relation to the time given to consumer to consider settlement offer	7.17	New provision
Chapter 8 – Arrears Handling			
96	Information to be provided to consumers in arrears	8.2	New provision
97	Requirements in relation to assisting consumers in arrears	8.3	New provision
98	Requirements in relation to communication with consumers when arrears first arise	8.4	New provision

Appendix 1: High level summary of the more significant changes to the Consumer Protection Code

Change no.	Description of provision	Code Reference	Amended/New
99	Requirements in relation to liaising with nominated third parties	8.5	New provision
100-104	Information to be provided where an account remains in arrears after 31 calendar days	8.6 – 8.10	New & amended provisions
105	Information to be provided in relation to revised repayment arrangements	8.11	New provision
106	Information to be provided when consumer's offer of revised repayment arrangement is refused	8.12	New provision
107-108	Restrictions on communication with consumers in arrears	8.13- 8.14	New provision
Chapter 9 – Advertising			
109	Requirement in relation to key information in advertisements	9.6	New provision
110	Requirement in relation to inclusion of certain qualifying criteria in advertisements	9.7	New provision
111	Requirement in relation to warning statements to be included in advertisements	9.8	Amended provision
112	Requirement in relation to disclosure of tied status in advertisements	9.15	New provision
113	Requirement in relation to the use of acronyms in advertisements	9.17	New provision
114	Requirement in relation to the use of the term 'free' in advertisements	9.18	New provision
115	Warning statement to be included in advertisements for personal loans	9.23	New provision
116	Requirement in relation to use of Annual Equivalent Rate in advertisements	9.31	New provision
117-119	Warning statements to be included in advertisements for investment products	9.32– 9.34	New provisions
120-122	Requirements in relation to advertisements for Tracker Bonds	9.50– 9.52	New provisions
Chapter 10 – Errors and Complaints Resolution			
123	Requirements in relation to procedures for the effective handling of errors	10.1	New provision
124	Requirements in relation to the resolution of errors	10.2	Amended

Appendix 1: High level summary of the more significant changes to the Consumer Protection Code

Change no.	Description of provision	Code Reference	Amended/New
			provision
125	Requirements for the reporting of errors	10.3	New provision
126	Requirement in relation to refunds, which cannot be repaid, in respect of an error	10.4	New provision
127	Requirements in relation to maintenance of a log of errors	10.5	New provision
128	Requirements in relation to records regarding resolution of errors	10.6	New provision
129	Requirement in relation to resolution of complaints	10.7	New provision
130	Requirements in relation to maintenance of a complaints log	10.1	New provision
131	Requirements in relation to analysis of complaints and escalation of this analysis	10.12	New provision
Chapter 11 – Records and Compliance			
132	Requirement in relation to exercise of discretion on behalf of a consumer with respect to a product	11.2	Amended provision

Appendix 2: Respondents to Consultation Papers

Respondents to Consultation Paper 47 – Review of the Consumer Protection Code	
1	Dr Pauline Conroy, Social Policy Analyst
2	Liam Walshe
3	Peter Wrafter
4	Sean Cullen
5	Standard Life Assurance Limited
6	Fitzgerald Business Solutions Ltd
7	Genworth Financial
8	Lockton Companies LLP
9	InjuriesBoard.ie
10	Consumer Consultative Panel
11	Andrew Fogarty
12	National Financial Abuse of Older People Working Group
13	EBS Building Society
14	The Competition Authority
15	Irish Association of Investment Managers
16	ACE European Group Limited & Combined Insurance Company of Europe
17	Permanent tsb
18	Clarus Investment Solutions
19	Acorn Life Limited
20	Start Mortgages Limited
21	Irish Brokers Association
22	Stepstone Mortgage Funding Limited
23	Irish Banking Federation (supported by EBS, PTSB)
24	Northern Rock plc
25	J & E Davy
26	Professional Insurance Brokers Association Limited
27	RaboDirect
28	MABS National Development Limited
29	GE Money
30	Mercer (Ireland) Limited
31	One Direct (Ireland) Ltd
32	Association of Chartered Certified Accountants
33	Allied Irish Banks plc
34	New Ireland Assurance
35	Citizens Information Board

Appendix 2: Respondents to Consultation Papers

Respondents to Consultation Paper 47 – Review of the Consumer Protection Code	
36	123.ie
37	Aviva Group Ireland plc
38	Bank of Ireland
39	Society of Actuaries in Ireland
40	Zurich Insurance plc
41	Andrew Caslin & Caolan O'Callaghan
42	Ecclesiastical Insurance Office plc
43	Goodbody Stockbrokers
44	Ulster Bank Ireland Limited
45	Irish Insurance Federation
46	Joint Submission compiled by and/or endorsed by a number of Loss Assessors
47	Department of Health and Children
48	Mental Health Commission
49	National Consumer Agency
50	Chartered Accountants Regulatory Board
51	Free Legal Advice Centres Limited

Respondents to Consultation Paper 54 – Second Consultation on Review of the Consumer Protection Code	
1	MDC Mortgage Brokers Limited t/a Irish Mortgage Brokers
2	RTÉ Television
3	National Financial Abuse of Older People Working Group
4	Independent Broadcasters of Ireland
5	Personal Injuries Assessment Board t/a InjuriesBoard.ie
6	Zurich Insurance plc
7	Nationwide UK (Ireland) is a branch and trading name of Nationwide Building Society
8	Allianz plc
9	HSBC Bank plc
10	Irish Claims Consultants Association
11	Declan Moloney
12	Association of Chartered Certified Accountants
13	EBS Limited
14	Aviva Group Ireland
15	The Chartered Accountants Regulatory Board
16	Society of Actuaries in Ireland

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Respondents to Consultation Paper 54 – Second Consultation on Review of the Consumer Protection Code	
17	Irish Brokers Association
18	Genworth Financial
19	MABS National Development Limited
20	ABTRAN
21	Joint IBA, IMAF & PIBA Submission
22	Irish Life Assurance plc
23	An Post
24	National Consumer Agency
25	Willis Risk Services Ireland Limited
26	Haynes and Associates
27	PIBA
28	Bank of Ireland
29	MBNA Europe Bank Limited
30	Department of Health and Children
31	Finbar Moloney
32	One Direct (Ireland) Limited
33	Irish Insurance Federation
34	Ulster Bank Ireland Limited
35	Irish Banking Federation
36	Acorn Life Limited
37	J & E Davy
38	AA Ireland Limited
39	LA Brokers Limited
40	Allied Irish Banks plc
41	ASAI

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

Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

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