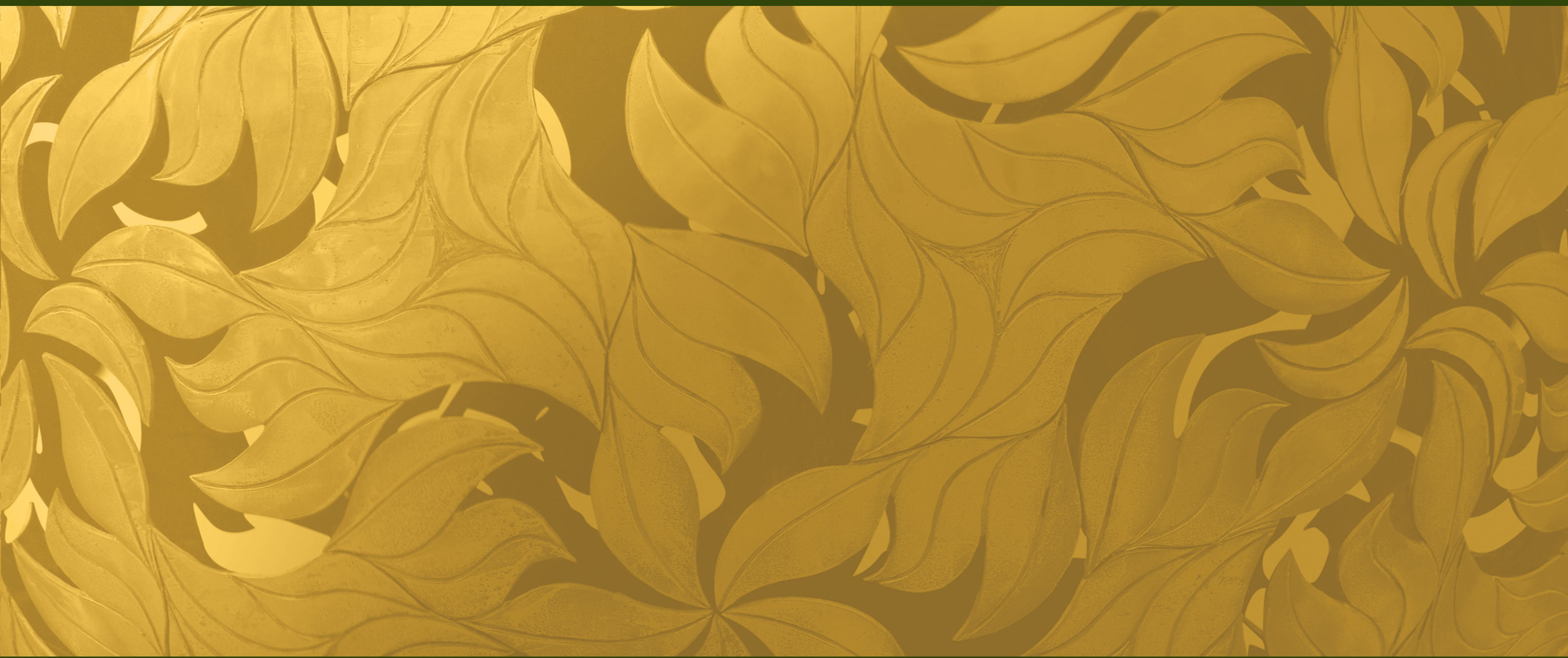
Financial Regulator
Rialtóir Airgeadais



Consumer Protection Code

PUBLIC RESPONSE TO CP10

December 2005

Consumer Director's Statement

Mary O' Dea
Consumer Director

The Financial Regulator has been given a statutory mandate in relation to consumer protection.

This mandate is reflected in our mission statement, which is:

- To help consumers make informed financial decisions in a safe and fair market, and

- To foster sound dynamic financial institutions in Ireland, thereby contributing to financial stability.

We believe that the introduction of this Consumer Protection Code ("the Code") is the foundation on which a fair deal for consumers will be built.

The Code reflects our principles-based approach to regulation. It is structured as a set of general, basic principles with some more detailed conduct of business rules in core areas. These are designed to protect consumers in their dealings with regulated entities ("firms") and also to clarify for firms the standards that they are expected to follow when dealing with consumers.

Prior to this, different standards were required of different firms depending on their legal structure and type of authorisation. The Code aims to ensure that the same level of protection is offered to consumers regardless of the type of firm they choose to deal with. It will also facilitate competition by encouraging a level playing field in the financial services marketplace.

This Code covers all aspects of a firm's interaction with consumers. Before entering into a relationship or transaction with a potential or existing customer, we will require the firm to find out as much about that customer as it needs to know in order to provide the right product to the customer. We will require the firm to offer a suitable product and to know why that product meets a particular customer's needs. Finally, if any problems arise later on, the firm must deal with their customer in an open and fair manner.

Throughout its relationship with a customer, a firm will have to provide a range of information to that customer. Some of this information will be provided before the product is sold and some afterwards. Other information may be required to be provided throughout the life of the product. Many of the submissions received during the consultation process argued that customers do not read much of the information currently available and that the Code will require more information to be given, thus resulting in "information overload". Our consumer research has shown that the reasons customers consider the information they receive to be of limited value and difficult to understand is that key details are clouded, they include a lot of jargon and the volume of information discourages them from reading the documents they receive. In giving information to customers, firms should remember that the information is to help customers to understand the product, and to make more informed choices. By presenting the information with this in mind, firms are less likely a) to consider the information 'a nuisance' and b) to present it to customers in a way that does not encourage them to read it or ask questions about it.

We would encourage firms to review the training they provide to staff and to amend their documentation to ensure that information is given and explained in a more meaningful way. We also believe that, if the staff of firms are trained to explain the information clearly, customers will understand and appreciate its benefits. Firms themselves will also benefit from this approach as it reduces the possibility of misunderstandings arising and customers being sold unsuitable products.

The standards that will be set out in our Code are high standards. However, we believe that many firms are adhering to best practice and seek to foster a consumer-focussed approach to doing business. The Code will ensure that these high standards will apply across the entire sector. By introducing the Code we will ensure a consumer-focussed standard of regulation that will put the consumer at the heart of financial services.

Mary O'Dea
Consumer Director

Introduction

The Financial Regulator issued consultation paper CP10 "Consumer Protection Code" in February 2005 ("CP10"). That paper set out the draft Code and sought the views of the financial services industry, its customers, consumer representative groups, community and social groups, the general public and the Financial Services Consultative Panels. We received 61 submissions on the paper. All of the submissions received are available in full on our website[1] and the names of those who made submissions are listed on page 46-47 of this paper.

There was a very high level of interest in this Code and we feel it is important to give some feedback on some of the decisions that we have reached. We do not want to wait until the Code is finalised before commenting, as the period from the date of the receipt of the submissions until the publication of the Code would then be too long. This paper is that public response. However, it does not form part of the Consumer Protection Code or any other requirement or provision of law or regulatory practice.

We are introducing the Code because of the demand for a code of behaviour for firms in dealing with their customers. We are unifying the consumer protection provisions of existing codes and handbooks to ensure a consistent level of service that consumers should expect from their financial services providers, so that when they seek to buy a financial product they can expect that the same rules will apply irrespective of the authorisation status of the firm they select. We have an obligation to ensure that we act reasonably when developing the Code and that we listen to the genuine concerns of the industry in relation to the practical implications of introducing a particular provision. We have made substantial progress in drafting the Code and can assure all those who made a submission that the issues raised were fully considered in arriving at our decisions on how to proceed.

The purpose of the Code is to help us to deliver on our strategic goal of helping consumers make informed choices in a safe and fair market. A fundamental part of this goal is to require firms to act in a fair and transparent way towards their customers. The Code aims:

- to ensure a consumer-focussed standard of protection for buyers of financial products and services;
- to ensure the same level of protection for consumers regardless of the type of financial services provider they choose; and
- to facilitate competition by ensuring a level playing field.

The Code will require firms to act in their customers' best interests by ensuring that they know and understand their customers' needs, they sell them products that are suitable and that there is an effective complaints handling mechanism if things go wrong.

In developing this Code it was our intention to have all the requirements applying to the relationship between a firm and its customers set out in a single accessible document. The provisions of the Code derive from a number of sources:

- we have retained provisions in existing codes that are working well and, where we felt that consumers will benefit, we have extended them to other financial services sectors;
- we have introduced some provisions from other jurisdictions;
- many provisions were derived from our own research including matters arising from our consumer-focussed inspections, market research that we conducted and complaints and queries received via our helpline or information centre;
- we incorporated some recommendations from the Joint Oireachtas Committees and the reports of the Competition Authority on insurance and banking.

[1] www.financialregulator.ie/consultationpapers/feedback

In developing the Code we were guided by the six core principles for better regulation set out by the Government in its paper "Regulating Better". We were influenced by a number of external factors, most notably developments in financial regulation at European level. The most noteworthy issue arising in Europe has been the Markets in Financial Instruments Directive ("MiFID") 2004/39/EC, which changes significantly the regulatory framework for the securities market and investment firms across Europe. The MiFID is generally a maximum harmonisation directive which restricts the host country regulators' ability to introduce their own rules. It also provides that the competent authority in the Member State where the investment service originates is responsible for regulating conduct of business rules when the firm is passporting services into another Member State. This changes existing practice for investment firms and credit institutions, when providing investment services, and differs from that which pertains in other sectors of the financial services industry. Discussions are still taking place in Europe on the content of the implementing regulations for the MiFID, including conduct of business requirements. As the outcome of these discussions is not finalised, it is not yet possible to be definitive on the exact nature or their impact. We are keeping the matter under review and will assess the impact of the MiFID on the full Code when the position becomes clearer, but it may have implications for the revised timetable discussed below, particularly in respect of the Investments chapter of the Code. However, MiFID issues will not affect considerable elements of the Code.

It was originally planned to publish a final Code in September 2005 and to implement it within six-months, i.e., end-March 2006. This timetable was adjusted to accommodate a number of factors, including an extension of the closing date for the receipt of submissions to facilitate both industry and consumer groups, the complexity and detail arising from the large number of submissions received and the need to hold a number of meetings that were requested by interested parties.

In addition, we decided to subject the draft Code to a Regulatory Impact Analysis ("RIA"). This will be one of the first RIAs carried out in the State since the Taoiseach launched the Government's Better Regulation framework in July 2005 of which public consultation is a fundamental part.

The final Code will be issued in July 2006. In the intervening period, we will be developing the specific requirements of the Code in keeping with the decisions set out in this document, consulting with the Minister for Finance, engaging with the Financial Services Consultative Panels and carrying out various logistical work necessary before the Code can be issued.

The general principles of the Code and those provisions that are imported directly from existing codes will apply with immediate effect after the new Code is issued. We will discuss with interested parties the implementation programme for new provisions, taking into account issues such as the time needed to train staff and adapt computer systems. It is our intention to allow a reasonable period for necessary adjustments.

While this paper is structured in the same way as CP10 for consistency, it does not address all issues in the Code individually. It considers the key issues arising from the consultation, in particular responses to the questions posed in Part 1 of CP10, the General Principles and then each chapter heading. Under the individual chapter headings we discuss in greater detail some of the substantive issues that were incorporated in the Code such as credit restrictions, suitability, etc. Under each issue we give a brief description of the purpose of the provision, indicate the key points arising from the submissions and then give our decision.

Throughout the submissions there were many constructive comments on how we might refine the drafting of the Code to improve its clarity and to allow for the intended outcome in a more cost-effective form of delivery. While we do not comment on these matters in this paper, many will be included in the drafting of the final Code.

Some respondents have suggested other new requirements that could usefully be included in the Code. While some of these additional rules appear to have merit, we gave an undertaking to consult on all aspects of the Code and feel that to incorporate new suggestions into the Code without consulting fully on them would not be consistent with that approach.

The Motor Insurance Advisory Board, the Competition Authority and the Joint Oireachtas Committees on Finance and the Public Service and Enterprise and Small Business have all issued recommendations calling for specific requirements to be included in our codes. However some of these were issued after we published CP10 and, as indicated above, we will not introduce significant new requirements into the Code without prior consultation. The recommendations fall into four categories:

- those which have either been previously incorporated into existing codes or into CP10;
- those not included in CP10 but which do not represent significant changes and can be implemented without undue problems for industry or consumers;
- those not included in CP10 which represent more significant changes but on which general agreement for inclusion in the Code can be reached with affected parties;
- those not included in CP10 which are more fundamental in nature and which will require a full consultation.

It is our intention to undertake an in-depth review of the Code after two years of operation and periodically thereafter. However, changes can and will be incorporated outside of this cycle where it is deemed necessary and in the consumers best interest.

General Comments on Consultation

There was general support for the Financial Regulator's intention to create a level playing field across the industry and between consumers by ensuring a standard level of protection for customers. Most respondents felt that the Code is necessary and constitutes a very significant step toward greater protection of consumers of financial services. Some general comments were made which were not related to specific questions asked or provisions included in CP10. These included:

1. Some operators in a particular market sector, usually the provision of credit, are not subject to authorisation or regulation by the Financial Regulator and the Code will not apply to them.

   We acknowledge that not all operators in the financial services sector will be subject to the provisions of the Code. However, we believe that the promotion of high standards of behaviour by those firms that we regulate will be beneficial to all consumers and will raise their expectations as to the level of service to which they are entitled.

2. Some people felt that the Code was overly prescriptive and not in keeping with our stated principles-based approach.

   The response to our first consultation on the Code CP2 "Review of Conduct of Business Rules for Financial Services Providers" suggested an almost unanimous preference for a principles-based approach but that the principles needed to be supplemented, in some areas, by some more detailed rules. We believe that we have struck a reasonable balance on this question. Our Code does not have the same level of detail as codes in some other jurisdictions as we tried to avoid the temptation to set out detailed rules to try to satisfy various questions and concerns of individuals and firms about the application of the rules in a variety of actual circumstances. This means that a common-sense approach must be taken to the application of the Code.

3. Some felt that the Code could increase bureaucracy and that there was a danger of information overload for customers.

   The Code will require that consumers be given appropriate and relevant information before, during and after the sales process. However, we believe that the purpose of any information given is to ensure consumers clearly understand the commitments they are entering into. The critical element in the provision of information is that it must be explained clearly rather than merely given to the consumer. The principles-based Code should not result in increased bureaucracy in the delivery of financial services. Many of the provisions of the Code are those that currently apply to intermediaries, where they have worked well. They are now being extended, as a statutory code, to a wider range of market participants such as banks and insurers.

4. There was a view that the specific rules were derived from the investment sector and were not appropriate to banking and general insurance services.

   The first codes covering financial services providers related to the investment sector and these were considered in developing subsequent codes and this Code. However, as indicated earlier, there were a number of influences on the development of the Code including codes developed by other regulators and voluntary codes. We have consulted and engaged widely with consumer and industry groups and have taken on board a lot of useful and practical drafting changes as a result of the representations made. Many of the provisions are common to all sectors. Any issues relating to a lack of clarity have been considered in the detailed drafting of individual provisions.

Private Customers

What CP10 Said

We proposed that the protections contained in the Code should be available to as many consumers of financial services as possible. We did this by suggesting that it apply to what we termed "private customers", which we defined as a customer who is not a "professional customer". A professional customer is a person who, as set out in the MiFID, possesses the experience, knowledge and expertise to make its own financial decisions and to properly assess the risks it incurs. The MiFID contains a list of the types of entities that are automatically classified as professional customers and also provides that firms of a specific size can also meet the professional customer criteria. These criteria are a balance sheet total of €20 million, net turnover of €40 million and own funds of €2 million.

The intention behind this proposal was to ensure that the Code would afford protection to sole traders and small and medium enterprises that do not have the knowledge or expertise to make their own informed decisions. We asked two questions:

Do you agree with this approach (definition of private customer)?
If not, please indicate the parts of the Code that should apply to professional customers.

What the Submissions Say

Most submissions felt that our proposal went too far and that it is inappropriate to extend its scope beyond the definition of consumer as a natural person acting outside their business, trade or profession. The high financial size requirements meant that the Code would extend to customers who would be relatively large corporate entities with significant resources and to any subsidiary of a larger group that might also be able to rely on the resources of its parent, as well as to public bodies. It would increase costs by adding a layer of bureaucracy to require certain types of information to be given to those customers for whom it may be inappropriate or unnecessary. The submissions felt that it might detract from the primary intention of the Code, which is to increase the protections available to consumers.

Some other respondents, primarily those acting on behalf of consumers, felt that the proposed scope was correct and should be retained.

Our Response

We accept the strong view put forward in many submissions that the proposed definition may have been too broad and that it would extend the Code to classes of customers who may derive no discernible benefit from it. We remain committed to ensuring that small businesses can avail of the protections afforded by the Code. For that reason we think that the definition of "consumer", as set out in the Consumer Credit Act, 1995 ("CCA") is too narrow. We are not constrained by that definition in formulating our Code.

Many recommendations for implementation by us from bodies such as the Competition Authority and Joint Oireachtas Committees are targeted at the small business sector. They suggest that the Code be used to give effect to certain provisions. If the scope of the Code was confined to natural persons we could not give effect to these recommendations.

We also accept the comments that the way that our draft Code defined "private customer" was a negative definition, i.e., we defined what it was not. We now propose to take on board the comments about the weakness of the definition and will define a consumer along similar lines to that recently introduced by the Financial Services Ombudsman Council. This has the added advantage of maintaining a certain degree of consistency across the industry. Therefore, a consumer, for the purpose of the Code, will be a natural person acting outside their business, trade or profession or a business with a turnover of €3 million or less in the previous financial year, including sole traders, partnerships, clubs and charities. This definition will not extend to a business that, while it may be below the turnover threshold, is a member of a larger group or is a special purpose vehicle established to carry out particular financial transactions.

However, we must also take into account requirements of EU law, in particular the forthcoming MiFID requirements, which may require the application of codes to other categories of customer. We are therefore considering the application of the General Principles to those categories of customer not covered by the above definition.

Moneylenders

What CP10 Said

We were conscious of the fact that certain provisions relating to moneylenders may not be appropriate in the context of the existing detailed provisions of the CCA and the cost of providing low value loans to their customers. We sought the views of respondents on the rules that should apply to moneylenders.

What the Submissions Say

The main thrust of the arguments in favour of not applying the Code to moneylenders is that the provisions of the CCA adequately cover the sector and the sums borrowed are relatively small. As such, any measures that might have an impact on the cost of delivery of services would have a disproportionate effect on the cost of services provided by moneylenders.

However, there was a strong view from the submissions that the exclusion of moneylenders from the Code would mean that their customers could not avail of the protections that the Code gives them and the service levels it requires from firms. It was stated that customers of moneylenders should have the same level of protection as other borrowers. It was also stated that whatever provisions may be introduced should not restrict a person's access to this form of credit.

Our Response

The provisions of the CCA provide a significant level of protection to customers of moneylenders. On balance, we believe that this level of protection should be supplemented by the Code. Rather than exempting them from the Code we will apply the General Principles to moneylenders.

We will be conducting a review of the moneylending market in 2006 and any other provisions of the Code that we might apply to moneylenders will be considered as part of that review.

Credit Unions

What CP10 Said

CP10 considered the application of the Code to credit unions under two business types. The first related to their core savings and lending services and the second to the non-core services that they are permitted to provide, such as acting as insurance intermediaries. The existing Codes apply to credit unions when providing non-core services and CP10 proposed retaining that status quo. We indicated that we did not propose to apply the Code to their core services initially, but would commence discussions with appropriate bodies about developing a code that would provide assurance to members while complying with the basic principles of this Code which provides similar protections to customers of other entities providing competing savings and lending products and services.

We asked respondents to *"let us know the extent to which you think the Code should apply to credit unions and how soon it should apply?"*

What the Submissions Say

There was a view that the non-application of the Code to the core services of credit unions was inappropriate in the context of the creation of a level playing field. Others felt that it would be difficult to develop an appropriate code given the diversity in size and scale of individual credit unions within the sector. However, the majority view, which we support, was that an appropriate code, recognising the special social service role of credit unions, should be developed, in the future, for credit unions.

Our Response

We intend to maintain the position set out in CP10 that the Code will apply to the non-core services provided by individual credit unions. Following the publication of the Code we will commence discussions with the Department of Finance, credit union representatives, consumer and social groups and other interested parties, with a view to applying an appropriate code for credit unions. The code for credit unions will take into consideration the special structure and voluntary ethos of the credit union movement. We hope to commence these discussions before end-2006.

Structure of the Code

What CP10 Said

The draft Code is structured as a set of broad principles with specific rules where necessary to amplify and clarify those general principles. The draft Code is also structured by product or service type rather than by a firm's regulatory status. As CP10 was the first opportunity for industry and other parties to view the proposed structure of the Code, we asked if they agreed with the structure and chapter headings and, if not, how they should be amended.

What the Submissions Say

The majority of submissions indicate general satisfaction with the structure and chapter headings. It is felt that it is the most user-friendly means of structuring the Code. Concerns were expressed about the lack of clarity in some of the headings and the inclusion of certain provisions in the Common Rules that may be more appropriate to specific chapters, mainly "Investments."

Our Response

We accept that more explanation and clarity would be helpful and will include it in the final Code. We are considering each provision with a view to ensuring that it is included in the appropriate chapter of the Code.

Certifying Information

What CP10 Said

We indicated that it was our strong view that a customer should provide accurate information when seeking financial services and be in a position to confirm that the information is correct. The provision of suitable products to customers is the main plank of consumer protection. For that reason, it is important that a firm is able to rely on the information it receives.

What the Submissions Say

The balance of views on this issue was very much in favour of requiring customers to certify that the information they provide is correct. It was felt that it would benefit both customers and firms and ensure that customers are offered suitable products based on the information they provide. This obligation currently exists in relation to insurance contracts.

Our Response

As there appears to be widespread support for this provision we intend to include it. However, as we do not have the authority to compel customers to certify the information, we will require firms to endeavour to have the customer certify the accuracy of the information provided. Where the customer declines to do so, the firm should note this fact on the customer's records.

Financial Access

What CP10 Said

This question was divided into two separate issues. The first looked at vulnerable persons such as the elderly or disabled and how services might be delivered to them while the second considered the inability of some consumers to access basic banking services through lack of specified identification documentation. We included one general principle and two specific provisions under the heading "Access". In Part 1 we also asked two questions:

1. *Do you believe that the relevant provisions of the Code will give vulnerable persons easier access to financial services and a better understanding of any risks they might incur?*

2. *Can a Code be developed that would prevent the use of technology from acting as a barrier to access while still facilitating and encouraging the use of different delivery channels? Could such rules prevent firms from delivering services solely over the Internet?*

What the Submissions Say

The submissions identified that this is a difficult area to address. Some firms expressed concern at the proposal to broaden the types of identity that would be considered acceptable for ID purposes and believed that it ran counter to their anti-money laundering obligations. On the provision regarding the use of technology, the industry's view was that this rule could preclude firms from offering products via a specific distribution channel. Groups representing the disabled expressed concerns about communication as they felt that the difficulty did not arise from access but from the personal communication methods used by firms. Many respondents stated that this issue should be considered further on completion of our joint study with the Combat Poverty Agency on access.

Our Response

There appears to be a consensus that, while an aim of the Code is to broaden financial access to all, it may not be the most appropriate way of achieving this objective. While we do not want to introduce any measures that would impinge upon the anti-money laundering obligations of firms, we believe that firms could be more pro-active in assisting potential customers who have difficulty in providing a specified form of identity or proof of address. Many customers do not have the documents specified by firms for ID purposes (commonly a passport, driving licence and utility bill(s)) for genuine and valid reasons, e.g., they do not travel abroad, do not drive or live in shared rented accommodation and do not have a utility bill in their own name. Thus the aim of this provision is to widen the range of documents accepted by firms to establish a person's identity or address, to all of those provided for under the various Anti-Money Laundering Guidelines. We do not believe that such a requirement would conflict with a firm's obligations under the Criminal Justice Act, 1994 or with the Anti-Money Laundering Guidance Notes published by the Anti-Money Laundering Steering Committee.

We recognise that, by their nature, technological developments create a barrier to access for certain people and it was not our intention to prevent firms from providing their products and services via the telephone or the Internet. It is our view that, while technology can facilitate a more efficient and cost-effective delivery of financial services to consumers, it must be balanced against the recognition that it will not be a suitable delivery channel for all.

Our joint study with the Combat Poverty Agency on access will allow for greater analysis of the difficulties some people have in accessing financial services. Any proposals regarding vulnerable persons and financial access emanating from that study will be considered fully before introducing new initiatives in this area, whether through the Code or other avenues.

Pending the outcome of the joint study in the first quarter of 2006, we have decided to retain the provisions regarding financial access in the Code.

Voluntary Codes

What CP10 Said

We indicated that while we agreed that voluntary codes had an important role in ensuring improved services for customers, there was a concern about the effectiveness of their enforcement. We asked respondents how they thought compliance with voluntary codes could be enforced and if the Switching Code introduced by the Irish Bankers' Federation should be incorporated into our statutory Code at this time.

What the Submissions Say

Many respondents recognised the role that voluntary codes have in assuring consumers but suggested that failure to comply with a voluntary code should be subject to the administrative sanctions procedure. Others indicated that voluntary codes were not appropriate due to their lack of enforceability. On the issue of including the recently introduced code of practice on switching bank accounts in the Code, some respondents favoured the integration of the Switching Code into the statutory Code, while others felt that it should be given more time before a final decision is made.

Our Response

The statutory Code will, we believe, be a comprehensive code covering all regulated business activities. Nonetheless, while the Financial Regulator does not have a role in enforcing voluntary codes, we accept that voluntary codes can play a valuable role in raising standards within individual sectors. It should also be noted that the Financial Services Ombudsman may, in considering individual complaints, take account of any relevant voluntary codes.

To date the Financial Regulator's position has been that the IBF Switching Code should be put on a statutory footing in due course. However, in its report on the competition in the non-investment banking sector in Ireland published in September 2005, the Competition Authority recommended that "if the Financial Regulator is not satisfied that a voluntary code is sufficient to encourage switching, then it should implement a statutory code, monitored, implemented and sanctioned by itself."

We have decided to adopt the position recommended by the Competition Authority. As we are generally satisfied with the progress achieved in implementing the voluntary switching code to date we will not incorporate it into the final Code at this time. However, we will continue to monitor compliance with, and the future development of, the voluntary switching code and, in the event that we are not satisfied that it is sufficient, we reserve the right to make provision for it in this Code.

General Principles

The general principles set out the broad standards as to how firms should engage with their customers and potential customers. They should be reflected in all aspects of the firms' business dealings with their customers. All firms should comply with both the letter and spirit of the General Principles.

What the Submissions Say

The four main issues raised in the submissions in relation to the General Principles were:

1 the use of the phrase "in the best interests of its customers" (GP 1,2, & 10),

2 references to "other applicable consumer protection legislation" (GP 4),

3 commission disclosure (GP 6), and

4 outsourcing (GP 10).

In the Best Interests of its Customers

What CP10 Said

"A regulated entity shall ensure that in all its regulated business activities it:

1 *acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market;*

2 *acts with due skill, care and diligence in the best interests of its customers;"*

What the Submissions Say

Industry respondents were particularly concerned about the obligation to "act in the best interests of its customers", which appears in three of the general principles. They expressed the concern that the inclusion of this term could raise customer expectations to an unachievable level and could also conflict with their obligations to other stakeholders such as shareholders and with a firm's own legitimate business interests.

Our Response

We understand the concerns expressed that one interpretation of the requirement to act in the "best interests of its customers" is that this could be an unrealistic target to expect many firms to achieve, particularly direct providers. There is a general acceptance that it is a standard that is expected of an independent intermediary engaged by customers to act on their behalf. We can see why a firm may form the view that obliging a firm, other than an intermediary, to act in the best interests of their customers could create a conflict with their obligations to the firm's other stakeholders. However, it is a standard that customers of all firms should be entitled to expect but it must be taken in the context of the products that the firm has to offer and the authorisation status of the firm. It does not require a firm to put the interests of its other customers above that of its stakeholders, but obliges a firm to treat customers fairly by supplying them with appropriate information and recommending and offering only products suitable to their customers' needs. For example, we do not, as some submissions suggest, expect firms to provide their services without charging customers, as to do so would put the firm's continued existence in jeopardy and a loss of continuity of service would not be in the best interests of their customers. We do not expect firms to provide their services without charge to customers nor would we expect them to recommend their competitors' products.

The obligation to act in the best interests of customers has its origin in the IOSCO[2] international conduct of business principles. This was carried forward into the EU Investment Services Directive and subsequently into the Investment Intermediaries Act, 1995.

We will take on board the concerns expressed and tighten the drafting of the affected general principles in the final Code in order to make the position clearer.

[2] International Organisation of Securities Commissions

Other Applicable Consumer Protection Legislation

What CP10 Said

"A regulated entity shall ensure that in all its regulated business activities it:

4 has and employs effectively the resources and procedures, systems and control checks that are necessary for compliance with this Code and other applicable consumer protection legislation;"

What the Submissions Say

Industry respondents felt that the reference to "other applicable consumer protection legislation" in General Principle 4 was inappropriate as it exceeds the remit of the Code.

Our Response

This general principle requires firms to have procedures in place to enable them to comply with the Code and other consumer protection legislation that is relevant to the services they provide to customers. It is designed to ensure that firms can meet their statutory obligations to customers. It does not itself impose those additional statutory obligations on firms, as they already exist in law. We believe that it is appropriate that firms be required to have proper resources and procedures in place to ensure compliance with legal obligations. We have decided to retain this general principle as drafted.

Commission Disclosure

What CP10 Said

"A regulated entity shall ensure that in all its regulated business activities it:

6 *makes full disclosure, in a way that seeks to inform the customer, of all relevant material information to the customer, including all fees, charges and commissions, before acting on behalf of a customer."*

What the Submissions Say

The comments on this provision concentrated almost exclusively on the appropriateness and value of disclosing commissions to customers for certain products. It was accepted that, as fees and charges are paid directly by customers, there is a clear obligation to disclose them to the customer at an early stage. However, as commissions are not the subject of direct payment by the customer but are paid by another firm the value in disclosing them is not always apparent. Some respondents expressed the view that, in the interests of a level playing field, if this cost is to be disclosed then all costs related to going to the market should also be disclosed, e.g., the costs to direct sellers of delivering their services. A view expressed is that the only benefit to customers from commission disclosure was where the product was an investment product and the commission had an impact on the final investment value. It was argued that disclosure of commission payable to an intermediary when arranging credit or a non-life insurance product may not have any tangible benefit to the customer. Most respondents felt that commission disclosure obligations for life insurance products are adequately covered by the Life Assurance (Provision of Information) Regulations, 2001 ("Life Disclosure Regulations").

Our Response

We accept that the commission structures and the impact of commission are different for each type of service provided by firms, such as investment, credit or protection insurance.

The purpose behind the draft Code requirement is to ensure that the customer is fully informed of all matters pertaining to their purchase of a financial product or service and particularly any costs that the customer has to bear either directly or indirectly. On non-investment services, our primary concern relates to the degree to which commission rates may influence a firm in recommending a particular product or service to a customer.

We are currently engaged in an exercise to review Remuneration Structures and Transparency. This review is considering the circumstances under which disclosure of commissions would be appropriate. We are also considering the form and content of the information provided to customers under the Life Disclosure Regulations[3].

We will retain the requirement to make full disclosure, in a form that seeks to inform the customer, of all relevant information including all fees and charges before acting on behalf of the customer. In the context of disclosure of commissions we will take account of the outcome of the review and our consideration of the Life Disclosure Regulations.

[3] Section 37 (2A) of the Investment Intermediaries Act, 1995 excludes insurance intermediaries from the obligation to disclose commissions under any code drawn up under that Act.

Outsourcing

What CP10 Said

"A regulated entity shall ensure that in all its regulated business activities it:

retains full responsibility for any outsourced activity and ensures that the providers of such outsourcing are able to perform these functions reliably, professionally and in the best interests of its customers;"

What the Submissions Say

The industry representatives who commented were concerned about the impact this provision may have on their ability to provide services through third parties. They felt that it was inappropriate to include requirements on outsourcing in a Consumer Protection Code.

Our Response

The intention of this principle is to ensure that where a firm enters into an agreement with a third party for the provision of a service to its customers, the firm continues to be responsible to its customers as if it was providing the service directly. It is only intended to relate to customer interface matters and does not impinge on a right to enter into service agreements with third parties. The Code does not impact on a firm that is outsourcing functions designed to meet their prudential obligations. The principle will be re-drafted to ensure that this sense prevails.

Knowing the Customer

What CP10 Said

Under the current Codes and Handbooks, insurance intermediaries, insurance companies and those firms authorised to conduct investment business are required to seek sufficient information about their customers or potential customers in order to enable them to provide the customer with a suitable recommendation or a product or service that suits the customer's needs. We consider these Know Your Customer requirements to be a key consumer protection measure and for that reason it is appropriate that they should extend to all firms. Failure to complete an appropriate "factfind" would, we believe, make it extremely difficult for a firm to comply with its suitability obligations.

What the Submissions Say

The submissions from the industry tended to focus on the requirement to prepare a written document called a "factfind", which they argued was disproportionate and unnecessary for basic products and could increase costs, require changes to their IT systems and require staff training. There were also concerns about the use of terminology such as the customer's "financial knowledge" and "investment experience". The use of these terms led many respondents to conclude that the "factfind"' was only appropriate for investment type business.

Our Response

We are satisfied that the requirement to gather a sufficient and appropriate level of information about the customer in relation to the product, service or advice sought is the first essential part of any relationship between a firm and a customer. As we referred to this process as conducting a "factfind", it was interpreted that we would require firms to complete a new form called a "factfind". This was not our intention, as we recognise that many firms are collecting this information already,e.g., through proposal and application forms.

The use of the phrase "written factfind" was not intended to prevent firms from collecting the data electronically and keeping it in an electronic form. We believe that it should not be necessary to complete a full factfind every time a service is provided to a customer. A firm will have some information on existing customers and it is a matter of adding to that information if the customer seeks or is offered additional services. In this way a firm will be updating and recording the customer's information as the relationship with the customer develops, thus ensuring that the information it holds on its customers is up to date.

We will redraft the 'Knowing the Customer' section of the Code to improve its clarity and ensure that the information collected from the customer is appropriate and proportionate to the advice, product or service being sought by the customer and is sufficiently comprehensive to allow the firm to provide the customer with a suitable product, service or advice.

Suitability

What CP10 Said

Under the current Codes and Handbooks, insurance intermediaries, insurance companies and those firms conducting investment business are required to comply with "suitability" requirements. However, these requirements differ across these Codes and Handbooks with the result that different firms are required to comply with different suitability requirements.

We are of the view that one of the main consumer protection methods at our disposal is to impose suitability requirements on firms, in order to ensure that a customer is only provided with suitable advice or sold a product suitable to his or her needs, in the context of the service provided by the firm. We are also of the view that consumers should receive the same level of protection regardless of the type of firm that provides the product, service or advice.

What the Submissions Say

Many submissions commented that the suitability requirements should only apply to investment products or where advice is being given to a customer. It was argued that the suitability requirements would be inappropriate for some products or services, e.g., making a withdrawal or a deposit from/to a bank account. The banking sector also contended that it should be exempt from suitability requirements as they do not recommend or advise customers, but instead offer a range of products and let the customer decide for themselves which is the most suitable.

It was stated that in the case of execution-only customers, firms should not be required to comply with the suitability requirements, as they are not obliged to comply with the know your customer requirements in respect of these customers. Some respondents pointed out that the requirement to have a customer sign a suitability statement would cause particular difficulties where a customer purchased a product via the Internet or the telephone. It was also argued that the requirement for the customer to sign the suitability statement does not provide any additional protection to the customer.

Our Response

The original drafting of the suitability requirements in CP10 required all firms to gather information from the customer and to subsequently issue a suitability statement to the customer outlining the reasons why a particular product was recommended to him/her.

We acknowledge the concerns that such requirements would be overly burdensome and bureaucratic for some products, e.g., basic banking products. We believe that, when firms are assessing the suitability of products or services they are offering their customers, they must go beyond mere eligibility. This will ensure that customers get what they need and the potential for mis-selling of financial products will be diminished. We intend to amend the wording of the suitability requirements to reflect this. As a principles-based regulator, we will allow firms to individually devise procedures to assist in compliance with this requirement.

We recognise that this represents a fundamental change for credit institutions in particular, but believe that it is to the benefit of consumers.

The final draft of the requirement will make it clear that the making of a withdrawal from or a deposit to a bank account would not require the preparation of a suitability statement for the customer.

We have decided that firms will not be required to comply with the suitability requirements in respect of execution only customers and customers conducting over the counter bureau de change transactions, as suitability can only apply in the context of the information gathered from the customer and firms are not required to gather information on these particular types of customers.

We agree that a firm should not be required to ask a customer to sign the suitability statement, as we agree that this does not provide the customer with any additional protection.

We will amend the wording of the suitability requirements in the final Code to reflect all of our decisions in relation to these requirements.

Unsolicited Contact ("Coldcalling")

What CP10 Said

In CP10 we stated that our intention in including rules on unsolicited contact was to prevent pressure selling of financial products to consumers. Another intention was to create a level playing field, insofar as possible, by ensuring that some firms do not gain an unfair advantage over others on the basis of their size or the range of services that they provide. We sought to do this in CP10 by limiting the ability of firms to make unsolicited contacts to both potential and existing customers, except where that customer has received a product or service from that firm "similar to the proposed purpose of the coldcall."

What the Submissions Say

Submissions in relation to unsolicited contact were received from many sources – firms, industry representative bodies, consumer groups and other interested bodies. The rules on unsolicited contact put forward in CP10 were generally supported by those bodies representing consumer's interests and by some other groups.

Submissions from firms and industry representative bodies raised the following main issues:

- unsolicited contact is already covered by the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004, the Consumer Credit Act, 1995 and the Data Protection Acts;
- the rules do not distinguish between marketing and operational calls and so will prevent routine contact between a firm and its customers;
- that clarification is required on what is meant by "similar to the proposed purpose of the coldcall";
- the term "oral communication" could be applied to face to face contact;

Our Response

At present, insurance intermediaries and insurance companies must comply with rules that restrict unsolicited contact with both existing and potential customers, which appear to be working well. It is our view that by applying these rules to all firms, we will be creating a level playing field in this area while also extending these protections to consumers who were not covered by them previously. In our view, it is appropriate for us to protect consumers from pressure selling tactics. This view has been backed up by the results of our consumer research in this area which showed that:

- coldcalling in relation to financial services is considered to be unacceptable;
- getting coldcalls is considered to be "invasive";
- coldcalling is considered to be a "hard-sell" and out of step with consumers desire for privacy;
- consumers support restrictions on coldcalling.

We accept that the wording "oral communication" could be interpreted as referring to any face-to-face contact between a firm and a customer or a potential customer. As it was our intention that the rules on unsolicited contact would only apply to personal visits and telephone calls, the rules on unsolicited contact will be reworded to reflect this.

We acknowledge that the Distance Marketing Regulations, the CCA and data protection legislation all contain some provisions in relation to coldcalling. However, we do believe that our proposed rules on unsolicited contact, in relation to personal visits or telephone calls, are compatible with such legislation.

With regard to the concern expressed about the possible impact of the requirements on routine or operational contact with customers in relation to existing products or services provided to a customer by a firm, it is not our intention that this type of contact be covered by the restrictions on coldcalling.

We also acknowledge that the phrase "similar to the proposed purpose of the coldcall" is open to interpretation. However our principles-based approach means that firms will have to use their own judgement in individual circumstances, by reference to the general principles and the spirit of the Code.

Charges

What CP10 Said

We are of the view that disclosure and transparency of all fees and charges is of benefit to all consumers. We proposed that firms disclose to consumers all charges, including third party charges and that notice is given before there are any changes in charges.

What the Submissions Say

Most respondents' comments were on the issue of third party charges. It was argued that third party charges are beyond the control of firms and that it is not always possible to advise customers of their cost prior to the provision of services. Other respondents made the point that it is very difficult to isolate all charges as they can be tied up in the product. In relation to the proposed requirement that all charges applied are detailed in statements to consumers, the submissions argued that the cost of doing this might be disproportionate to the benefits to consumers.

Our Response

Market research conducted on our behalf confirms that consumers feel there is a lack of transparency in relation to charges when dealing with firms. We accept that many firms may have to adjust their systems to display charges to consumers for products and services where they previously did not. However, we firmly believe that it is in the best interests of consumers and of the industry that there is transparency on all charges, including third party charges. All charges, including third party charges, should, where possible, be disclosed to consumers prior to the provision of a product or service. Where it may not be possible to advise of the monetary amount of third party charges in advance of providing a product or service, the customer should be alerted to the fact that such charges will apply.

The provision requiring firms to provide advance notification to customers, who have already availed of the product or service, of changes in charges will be amended so that only increases in charges, and any new charges must be notified.

Handling Complaints

What CP10 Said

We asked whether the complaints handling procedures were sufficiently comprehensive to ensure that consumers will be treated fairly.

We proposed that an oral complaint be treated in the same manner as a written complaint and that the firm make a contemporaneous note of the oral complaint.

All firms will be required to have a written complaints procedure in place for the proper handling of complaints. This procedure has a number of requirements that firms must adhere to in the handling of complaints.

What the Submissions Say

The complaints handling procedure section of the Code has been strongly welcomed by many submissions. It was generally accepted as sufficiently comprehensive to ensure that consumers will be treated fairly and that the timeframes set down are appropriate and achievable.

Some submissions expressed reservations about aspects of the proposals. They felt that the provisions were overly prescriptive and could lead to increased bureaucracy, particularly the timeframes for issuing acknowledgements. Some reservations were expressed about the lack of clarity in relation to oral complaints and how they should be treated.

Our Response

As there is general support for the provisions on complaints handling we are retaining them. We also believe that when a firm receives an oral complaint, it must offer the consumer the opportunity to have his complaint handled in accordance with the complaints procedure in the Code. We will redraft some of them to take on board the concerns expressed about the lack of clarity and the potential for increased bureaucracy. In particular we will provide clarity on the issue of timescales and on the practical handling of oral complaints.

Customer Records

What CP10 Said

We proposed that firms maintain customer records in an individual file and for six years after the date of the last transaction. We also proposed that firms provide customers on request with a copy of their records held by the firm, certified as a true and complete copy of the requested records.

What the Submissions Say

Respondents sought clarification in relation to some of the provisions, in particular, whether the provision that customer records (including details of each transaction) would have to be maintained for six years after the firm's relationship with the customer ended or six years after the transaction in question took place. Most submissions also interpreted the requirement to maintain an 'individual file for each customer' to mean that firms must maintain a hard copy paper file for each customer. Many submissions queried whether the provisions were consistent with existing Data Protection and Statute of Limitations legislation. Some submissions argued that it is not feasible to retain copies of receipts, correspondence and other documentation issued to customers, in a single location.

Our Response

We will redraft the record keeping requirements to include the following decisions:

- To make it clear that electronic records are acceptable.
- Individual records need not be kept in a single location, but must be readily accessible and must be complete.
- The six-year requirement will remain. However, we will clarify its application in respect of the end of the customer relationship or the date of the transaction.

Unsolicited Pre-approved Credit Facilities

What CP10 Said

There are two provisions in the Code related to the issue of unsolicited pre-approved credit facilities. The first provision relates to the offering of unsolicited pre-approved credit facilities to customers and the second relates to increasing a customer's credit card limit without their prior consent. We aim to prevent customers being encouraged to borrow when they were not considering taking out a loan and to ensure that customers are only offered credit to a level that they have requested. In addition, customers should only be given increases in their credit card limit at their request.

We did not intend to ban the sale of a particular product or prevent customers from being offered or accessing credit by, for example, discussing credit options with a lender. Instead we hope to address the manner in which a particular form of credit is advertised/sold, as we believe current practices are not in the best interest of the customer or the integrity of the market.

What the Submissions Say

The restriction of unsolicited pre-approved credit facilities was one of the most commented on provisions in the Code. It is a new measure, which elicited a lot of feedback from both industry bodies and consumer groups. Consumer advocates felt that offering pre-approved credit might lead to debt problems, as customers may be enticed to take out loans that they do not require.

Some of the arguments put forward by the industry were that current practice could be beneficial to customers. They stated that there are safeguards in place, including the fact that these funds can only be accessed when specifically requested and only after the customer completes a credit agreement. They added that this type of credit is only offered to customers who have shown that they have the ability to service additional facilities and see the offering of pre-approved credit facilities by the firm as pro-active management of their funds. Others supported the provision, stating that it would protect customers in cases where customers may not need a loan, or from drawing down the loan just because they have been approved. They also believe that it could reduce the likelihood of over-indebtedness.

Some respondents felt that the proposed restriction on the increasing of a customer's credit card limit could put them at a competitive disadvantage. They said that this might lead to customers getting higher initial credit limits on their credit card, as opposed to the current practice where new customers are given a relatively low limit, which is increased over time as they show they can meet the servicing requirement.

Our Response

Most submissions on this provision only commented on how the product is marketed/sold to existing customers and did not refer to how it is marketed/sold to potential customers, about whom firms may not have as much information as existing customers. This rule does not seek to prevent firms from conducting an internal assessment of its customers and deciding to allocate a higher credit limit if requested to do so. What we do not want is firms taking the additional step of offering a specific amount of "pre-approved" credit to the customer.

With regard to the provision relating to the unsolicited increasing of a customer's credit card limit, we would expect that credit card providers conduct a credit assessment on their customers on application and they comply with prudent lending criteria when considering whether to grant a customer's request for an increased credit card limit. This rule is to safeguard customers from increased credit card limits when they are not required or sought by the customer. Market research carried out on our behalf indicates that such unsolicited credit card limit increases are generally not welcome and can tempt customers into over-spending.

In response to the question posed in Part 1 relating to unsolicited pre-approved credit, just over half of the respondents agreed that such unsolicited pre-approved credit may be a cause for concern. Consequently, having reviewed the submissions received and our own market research we are satisfied that these requirements should be retained.

Payment Protection Insurance

What CP10 Said

The provisions on payment protection insurance ("PPI") were included in the Code in response to concerns about the sale of this product. We are concerned that many customers are paying for PPI without being sufficiently aware that a) they had signed up for PPI or were paying for it when it may not have been necessary for them or b) the circumstances under which they can make a claim. It is our intention to ensure that customers are aware that when they are considering taking out a loan that the purchase of PPI is optional. We believe that the proposed requirements that quotations for loan repayments and PPI premium are quoted separately to customers will ensure greater transparency of the costs involved in taking out PPI.

What the Submissions Say

In general, there was support for our proposal that the PPI premium and loan repayments should be unbundled. However, with regard to separate application forms and requesting customers to sign a 'confirmation statement', many respondents expressed the view that this would be costly to lenders and burdensome on both customers and lenders.

Our Response

As part of our series of inspections of credit institutions in 2004, a number of issues in relation to PPI were identified. These related to how PPI is sold, how the costs are disclosed to customers and how premiums are handled in the event of early repayment of a loan. We believe the provisions regarding PPI will improve the protection available to customers who wish to purchase PPI, as it will be clear to customers that they are entering into an optional insurance policy that is separate from the loan.

The majority of comments were in favour of quoting the loan repayments exclusive of the PPI premium. We are retaining the provision that loan repayments should be quoted separately from PPI payments. We have taken the industry comments regarding the cost of separate application forms and confirmation statement on board and will re-word the provisions to reflect this.

Debt Consolidation

What CP10 Said

This provision was included in the Code as debt consolidation has become more prevalent in recent years. The provision referred to the firm providing the customer with a table comparing the difference in cost of continuing with the existing facilities and the consolidated loan. For example, customers may not be aware that by extending the period of short-term personal loans to say that of their mortgage, it may cost considerably more or that they are consolidating an unsecured loan into a loan secured on their private residence.

What the Submissions Say

The submissions on this issue made reference to the preparation of a table rather than commenting on the substance of the provision. Most respondents were of the opinion that this provision is impractical and impossible where debts with multiple institutions are being consolidated, as the new lender will not have the full information. Some mortgage lenders and representative bodies that commented on this issue suggested that a warning statement would be sufficient as consumer protection.

Our Response

We do not accept that the loan consolidation requirements set out in CP10 are beyond the practical capabilities of firms, as they are obliged to seek necessary information from the customer prior to carrying out a transaction. Where firms do not have access to the relevant information from third parties, they are obliged to gather the necessary information from the customer in order to ensure that it complies with its suitability requirements. Firms are permitted to rely on the information provided by the customer.

We accept that a table of the total cost of credit may not be the most informative means of explaining the cost to customers. However we would expect that lenders would be able to give an indicative additional cost of consolidating a loan as opposed to a customer continuing to service their existing facilities.

Our market research indicates that consumers are not fully aware of the true costs involved in consolidating loans into a single loan. This research is supported by the responses to the question on loan consolidation in Part 1, whereby just over half of the respondents agree that customers do not always understand the full cost of loan consolidation.

Mortgage Re-financing/Equity Release Loans

What CP10 Said

The provisions in relation to mortgage re-financing and equity release products were included in the Code in response to recommendations from the Law Reform Commission, following concerns that customers who purchase one of these products may have difficulty in financing future needs. The intention was to offer protection to customers, particularly the elderly, by ensuring that they would be advised on the costs and risks of extracting equity from their home through such products. It was not intended that the provisions would apply to standard mortgage top-ups.

However, it should be noted that we do not authorise or regulate all of the providers in this market. A number of firms provide very similar products which are structured as solely property transactions and are often referred to as home reversion plans. As property transactions are not regulated by the Financial Regulator, firms that only provide home reversion plans do not require authorisation and are not subject to the Code.

There are three specific provisions in this area. The first is to ensure that the consequences of purchasing one of these products are explained to customers. The second requires that customers be made aware of the importance of seeking independent legal advice. The final provision contains a warning statement, the purpose of which is to make customers aware that by purchasing one of these products it may put their ability to pay for future needs at risk.

What the Submissions Say

Some respondents on this issue believed that the provisions are unnecessary while others welcomed them. One submission queried why there was extra protection afforded to equity release loans. The comments on the first provision feel it is unnecessary and advised that firms should not be required to inform customers of the consequences of products when they may not be aware of the consequences themselves. The majority of submissions with regard to the second provision agreed with it, as it would be consistent with existing practice in relation to the creation of a new mortgage. The feedback received on the final provision showed that some respondents misunderstood the intention of the warning statement, as they felt it was to protect the borrowers' credit rating. A suggestion made by one respondent was that we ensure that all equity release schemes come within our ambit and be subject to regulation.

Our Response

We are retaining these provisions for lifetime mortgages as, on balance, we believe that they will help protect vulnerable people who are contemplating releasing equity in their homes without understanding fully the consequences involved. Firms will be obliged to inform customers of the particular terms of these products and the consequences which may arise from them.

Insurance Products & Services

What CP10 Said

This chapter sets out provisions that all insurance undertakings and insurance intermediaries are required to comply with in order to ensure consumer protection throughout all aspects of the insurance process, from the seeking of a quotation to the processing of a claim.

What the Submissions Say

Respondents commented that it is not entirely clear whether all insurance products and services, such as investment-type insurance products, fall within the remit of this chapter.

It was also argued that the unique nature of health insurance must be taken into consideration when drafting and implementing the final Code. In particular, it was argued that the claims handling requirements are not relevant to this sector as health insurers operate a method of direct settlement with most healthcare providers rather than the insured. Therefore, the claimant does not generally become involved in the claims settlement process.

Our Response

We agree that there may be ambiguity in terms of the scope of this chapter. As a result we have decided that the majority of provisions will only apply to protection policies as defined in the Code. The provisions in relation to premium handling and tied agents will apply to all types of insurance. The provisions of the Investments chapter will cover investment-type insurance products and services.

We have considered whether all insurance provisions outlined in Chapter 5 in CP10 can be appropriately applied to the health insurance sector. We agree that health insurance operates differently to other types of insurance and this distinction will be reflected in the final Code.

Claims Processing

What CP10 Said

A number of new provisions in relation to claims processing were introduced in CP10 covering all aspects of the claims handling process. The claims handling procedures were also included as a question in Part 1 of CP10 to encourage feedback on this issue.

What the Submissions Say

One of the primary concerns raised by respondents in relation to the claims processing provisions is the lack of clarity surrounding who is the "customer" when making a claim, that is, whether "customer" refers to the third party claimant or the policyholder.

In terms of the question posed on claims handling in Part 1 of CP10, a large proportion of respondents expressed general satisfaction with the claims handling provisions. However, some respondents argued that the claims handling requirements might be overly burdensome and result in inefficiencies in the claims handling process.

Our Response

We accept that further clarity is necessary with regard to the reference to "customer" in the claims handling section, as the use of the term is unclear. To remove any ambiguity, references to 'customer' will be amended to "policyholder" or "claimant" depending on the particular provision.

In light of the concerns raised about inefficiencies in the claims handling process as a result of the new provisions, we are removing or amending certain requirements whilst ensuring that the level of consumer protection is not reduced. For example, the requirement to acknowledge the receipt of claims forms within two working days will be removed, as the benefits to customers would be outweighed by the cost of complying with this provision. Some submissions also pointed out that claims forms are not always necessary and this will be catered for in the final Code.

Investments

What CP10 Said

The chapter was headed up 'Investments' but did not define the particular products that were intended to be covered by this chapter.

What the Submissions Say

A number of submissions raised queries about what products were covered by this chapter, saying that some rules were not appropriate for direct equity investments, life assurance products, savings products etc. A number of submissions sought clarity on this issue.

Our Response

This chapter will not apply to deposits, general insurance products or protection policies. It is our intention that the final document will make clear what products are intended to be captured by this chapter, highlighting, where appropriate and where possible (given the ongoing evolution of new products), where certain provisions are only to be applied to certain products.

Cooling Off Period

What CP10 Said

We proposed that a thirty-day cooling off period should be introduced for investment products, which do not currently have such a facility in place. The purpose was to introduce a level playing field for investment products that were competing with life assurance investments.

What the Submissions Say

Submissions received stated that such a practice was unworkable unless customers who availed of the cooling off period also suffered any financial loss incurred by the product in the period prior to the client cancelling his/her instruction. Some submissions made the point that this effectively precludes the investment from taking place until the thirty days are up, by which stage the customer may be disadvantaged by movements in the value of the product. It was also felt that a cooling off period was inappropriate for share transactions. A number of submissions referred to the Distance Marketing Regulations which precludes the application of a cooling off period to certain, 'speculative' products. It was also suggested that thirty days was too long a time frame to have in place.

Our Response

The main intention behind a cooling off period is to allow customers who have entered into a potentially long-term commitment an opportunity to reconsider, within a relatively short period of time, whether or not they are fully satisfied with the decision they have made. These products often carry an element of capital risk and, on occasion, a customer may make a quick decision to purchase such a product. In that context, it is our view that this is an appropriate consumer protection measure to include in our Code. We also accept, however, that for certain products the operation of a cooling off period is impractical and may undermine the whole operation of a particular market, e.g., share transactions. This issue is addressed in the Distance Marketing Regulations and we are of the view that this protection should also be available to customers who purchase products on a face to face basis. We will draft the cooling off provisions to ensure that they are consistent with the Distance Marketing Regulations.

Investment Risk

What CP10 Said

We proposed the inclusion of various risk disclosure statements, in certain circumstances, in which the firm was to endeavour to have the customer sign a document separate to the product application form.

What the Submissions Say

Many submissions expressed concerns about 'information overload', in particular the fact that the declarations were required to be made on a separate document to the application form. Some submissions questioned the value of having the rule in place if it was not mandatory for the customer to sign the declaration and there were some comments about the wording of the risk warnings in the declarations themselves.

Our Response

Disclosing the potential risks to customers investing in products which do not guarantee the return of a customer's capital on maturity is a very important piece of information which must be relayed to the customer as part of the application process. We believe it is not sufficient to just give customers the necessary information about a product, it is important that the firm help the customer understand the information provided. It is not our intention that a customer is subject to so much documentation that the legitimate purpose of highlighting inherent risks in these products is lost. We therefore intend to dispense with the obligation for a separate document containing the risk warnings. We will require that the warnings be contained in the product brochure (if any) and the product application form containing appropriate disclosures. The customer will sign the application form containing appropriate disclosures as part of the normal application process.

Key Features Document for Tracker Bonds

What CP 10 Said

We proposed that a Key Features Document be issued for Tracker Bonds. The intention was that this document would serve as a useful tool for customers in highlighting for them the key features of what can be complex products.

What the Submissions Say

A number of submissions made the point that the proposed requirement to issue a Key Features Document for only one type of investment product would create an uneven playing field and would not assist in attempting to compare similar type products. The point was made that issuing a Key Features Document on top of complying with Life Assurance (Provision of Information) Regulation requirements would result in an unnecessary overlap and would have cost implications. Other commentators made the point that the document had to try and achieve a balance between readability and information overload. Comment was also made that some of the tax information required to be provided in the document would require the firm to give tax advice for which it may not be competent.

Our Response

We identified the sale of Tracker Bonds as a matter of serious concern to us. This concern was reflected in our decision to engage in a consultation process on this issue. We intend to retain the requirement to issue a Key Features Document for Tracker Bonds. As part of our three-year strategic plan, for the period 2007-2009, we are committed to analysing the applicability of Key Features Documents for some other products. Notwithstanding this, we will amend the proposed Key Features Document for Tracker Bonds to take account of possible discrepancies identified in the submissions.

Advertising

What CP10 Said

The advertising rules are intended to prevent the production of misleading, confusing and inaccurate advertisements directed at consumers. Thus, in order to avoid a situation where consumers might be misled by advertisements we suggested a series of rules based on information disclosure and the display of warning statements. The warning statements are intended to highlight the risk factors attached to various products and services.

These and other rules are designed to protect consumers by requiring the development of advertisements that contain clear, fair and relevant information on the features of a financial product or service. They are also aimed at encouraging firms to be more transparent in the information they provide to consumers when using a form of communication that is generally the first point of contact that a consumer will have with the firm. In addition, the rules should create a consistent and fair approach to the production of advertisements by all firms.

What the Submissions Say

Many of the submissions on this area focussed on impracticalities created by trying to marry the advertising rules with the definition of an advertisement. Another general point raised in the submissions highlights a view that the level of information disclosure and display of warning statements required by the rules, impose limitations on the ability of firms to advertise products and services using certain forms of media. It was felt that these requirements will lengthen advertisements considerably and will also substantially increase the cost of advertisements. Respondents are of the general view that too much information in an advertisement will lead to information overload, be ignored by consumers and thus, reduce the value of the disclosures.

Our Response

It is not our intention to overload consumers with information, neither is it our intention to limit the ability of firms to use certain media. Nonetheless we believe that the information disclosures and warning statements have merit and will be retained in the Code. However, we acknowledge that the advertising requirements might increase the costs and length of advertisements, particularly radio advertisements. Therefore, we have decided that the display of warning statements is only required where an advertisement refers to the benefits of a particular product. It is our view that references to the benefits of a particular product in advertisements should be balanced by references to the risks of that product. We have decided that it is not necessary to display warning statements in instances where a firm invites a customer to discuss the product or service in more detail. Further clarification will be provided in the final Code on the circumstances under which warning statements will be required.

With regard to the definition of 'advertisement' it was not our intention that face-to-face communication or communications which are not designed to lead to the purchase of a product or service be considered as advertisements. As such, in response to the concerns raised by respondents on the impracticalities created by trying to marry the advertising rules with the definition of an advertisement we have decided to reword the definition of 'advertisement' to improve clarity.

An issue which arose since CP10 was issued related to the advertising of unregulated products by regulated firms. We will clarify in the Code that the use of the regulatory disclosure statement (as required by Common Rule 36) should not imply that the firm is supervised in relation to the promotion or sale of unregulated products.

Total Cost of Credit

What CP10 Said

It had been noted that advertisements concerning lending, in particular, consolidated lending, could be open to confusion and misinterpretation. In order to avoid such situations, we suggested that the total cost of credit be displayed in all advertisements for credit.

What the Submissions Say

The submissions raised concerns about the rules requiring the display of the total cost of credit in advertisements for all types of credit. It was suggested that it would be difficult to calculate the total cost of credit of a product, as specific amounts and periods are required for this calculation and it would be particularly difficult to calculate this figure for credit given in the form of credit cards and overdrafts.

Our Response

We have considered the comments raised about the difficulties associated with displaying the total cost of credit for all types of credit in an advertisement. Notwithstanding these concerns, we are strongly of the view that the provision of total cost of credit figures in advertisements is very useful to consumers. Therefore, we are retaining the requirement to display the total cost of credit. However, we accept that it is not always possible to calculate the total cost of credit for certain products ,e.g., overdrafts and credit cards, and we will give further consideration to these issues. The final Code will provide further clarification on the application of the requirement to display the total cost of credit.

Guarantees and Taxation

What CP10 Said

In order to ensure the transparency and reliability of guarantees attached to products, the advertising rules prohibit advertisements from describing a product or an investment as guaranteed unless there is a legal agreement with a third party who undertakes to provide the guarantee, the firm has made an assessment of the value of the guarantee and information about the guarantor and the guarantee are made available to customers. There is also a requirement in this section of the chapter that where a reference to the impact of taxation is made in an advertisement it must set out the tax implications of investing in that product to alert consumers to the effects of such taxation measures.

What the Submissions Say

Serious concerns were raised about the inclusion of the guarantee requirements in the advertising rules. It was argued that such rules prohibit a firm from providing its own guarantee and thus compel it to use the services of a third party. This would reflect a radical change for life assurance companies which have traditionally provided their own guarantees.

The submissions also commented that the requirement to state tax implications would restrict a firms' ability to use advertisements, as the space on most media is too limited to include all of the information required. The submissions suggested that such information be included in an information document.

Our Response

It is not our intention to place a requirement on firms to always have third party guarantees in place. Rather, when referring to a protected product, we require that an alternative term be used when advertising products that are not third party guaranteed, as the term guarantee holds a particular meaning for consumers. It is important to state that this requirement only covers the use of the term guarantee in an advertisement or product name, it does not dictate who can or cannot provide assurance that commitments entered into can be met. In considering the timeframe for the implementation of this requirement we will have due regard for "grandfathering" existing products that are described as guaranteed.

In considering the comments made on the level of information required by the tax disclosure rule, we are of the view that this rule will be retained. This rule is only applicable where a reference to tax is made in the advertisement to improve clarity.

Definitions

What CP10 Said

Defined terms appear in bold and italics throughout the Code, and are listed in the Definitions chapter. These definitions were intended to give direction to the end users of the Code, provide clarification as to what the provisions require and remove any ambiguity where possible.

What the Submissions Say

The majority of concerns raised by the respondents related to the clarity and scope of the defined terms. Some of these terms were overly broad and ambiguous in their meaning, posing practical problems for the application of some of the related provisions, the main examples of this being the existing definitions of advertisement, protection policies, customer and execution-only customer.

The definition of an advertisement generated a great deal of comment, mainly as it was considered too broad and impractical, especially given some of the detailed requirements of the Advertising chapter. The submissions were also strongly opposed to the inclusion of the term 'oral communication' within this definition, as they felt we did not elaborate sufficiently on this term, thus causing a great deal of confusion.

There was a strong view among the submissions that the existing definition of protection policies was too restrictive, it did not appear to cover all forms of protection policies and as a result the scope of this definition should be extended accordingly. The definitions of customer and execution-only customer as they currently stood were considered unworkable for the purposes of the Code. In relation to the definition of customer, many submissions felt that while this definition included a potential customer in reality some of the requirements of the provisions could not be applied to a customer of this type. In the case of execution-only customer, many respondents felt that the current definition was unclear and appeared to place an unnecessary restriction on any generic discussions with customers.

Respondents also raised the point that a number of the definitions were taken straight from existing codes and did not fit with the concept of a unified code, as they were originally intended to apply to individual sectors only such as investment, insurance, credit institutions etc.

It was also felt that there were a number of words which were not defined in CP10 but which should be, as their meaning and context were not clear. The main examples of this were the use of the terms 'regulated entity' and 'advice'.

Our Response

On the basis of the comments contained in the submissions we are considering the drafting of all defined terms with a view to improving clarity. Our response to the definition of an advertisement is addressed in the Advertising section of this paper. We are also considering the points raised in relation to the use of defined terms originating from existing codes, and, where necessary, we are re-drafting these terms in light of their suitability for a unified Code.

Where some commonly used terms appeared in CP10 but were not defined, we are considering this issue and will insert a definition where we believe it is warranted. Furthermore, the term 'regulated entity' will be defined within the Scope section of the Code and therefore will not require a separate definition in the Definitions Chapter.

A number of issues arose as a consequence of submissions relating to other chapters of the Code. These issues included the scope of particular definitions in their current form and their capacity to clarify the intention of the relevant provisions. Subsequent issues may also arise as a result of the forthcoming MiFID directive. As a result some definitions will be re-drafted or adapted where necessary, in order to provide sufficient clarity, consistency and direction.

APPENDIX

Names of Parties who made Submissions

1. A.E. Dawson & Sons
2. ACCA Ireland
3. Acorn Life Limited
4. Advertising Standards Authority of Ireland
5. AIB Group
6. Alder Capital Limited
7. Anglo Irish Bank
8. Balcombes Claims Management
9. Bank of Ireland Group
10. Brokers Federation of Ireland
11. BUPA Ireland
12. Chartered Institute of Loss Adjusters
13. Consumer Consultative Panel
14. Consumer Credit Association – Republic of Ireland
15. Consumers Association of Ireland
16. Cornmarket Group Financial Services Limited
17. Credit Union Development Association
18. Custom House Capital Limited
19. Dingle Primary Care Team
20. Financial Engineering Network Limited
21. Financial Insurance Co. Limited & Financial Assurance Co. Limited
22. Financial Services Ireland
23. Finnegan Insurance Brokers Limited
24. Free Legal Advice Centres Limited
25. GE Money
26. Hibernian Life & Pensions Limited
27. ICAN Interactive Advertising
28. IFG Group Plc
29. Irish Association of Investment Managers
30. Irish Bank Officials Association
31. Irish Bankers Federation
32. Irish Brokers Association
33. Irish Finance Houses Association
34. Irish Hard of Hearing Association
35. Irish Insurance Federation
36. Irish League of Credit Unions
37. Irish Life Assurance Plc
38. Irish Mortgage Council
39. Kerry Community Care Group

40. MBNA Ireland
41. Money Advice & Budgeting Service
42. Ms Ann P Woods
43. Mr Declan Carew
44. Mr Glenn Moran
45. National Council for the Blind of Ireland
46. Northern Rock Plc
47. One-Parent Exchange and Network
48. Open and Direct Limited
49. Permanent TSB
50. Professional Insurance Brokers Association
51. Royal and Sun Alliance
52. Society of the Irish Motor Industry
53. St Paul Travelers Insurance Company Limited
54. Textus
55. The Competition Authority
56. The Law Society of Ireland
57. The Law Society of Ireland – Conveyancing Committee
58. The Pensions Board
59. The Society of Actuaries in Ireland
60. Ulster Bank Group
61. Vivas Insurance Limited

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