

Central Bank of Ireland

Consultation Paper on Consumer Protection Code

VIA EMAIL: codereview@centralbank.ie

6th June 2024

Re: CP158 – Consultation Paper on the Consumer Protection Code

Dear Team,

RegSol is a compliance advisory firm engaging with a range of regulated entities and primarily providing ongoing compliance support to retail intermediaries. Our consultancy team have undertaken a considerable amount of work to review the Consultation Paper and develop understanding on key areas of (potential) impact for retail intermediaries in particular. We have consulted with and sought the views of our clients and other stakeholders in preparing this submission. We are very much appreciative of the opportunity to put forward our views and hopefully contribute in a meaningful way to this consultation.

We commend the Central Bank for the work undertaken to date to move this review work forward, proposing new regulations that clearly reflect a number of key items raised in stakeholder outreach, and endeavouring to ‘future-proof’ elements of the Conduct of Business rules. The extensive stakeholder engagement over the past few years yielded clear themes for focus and it has been a very interesting process to delve into how these themes have been addressed within the proposed regulations. The provision of guidance documents, on Securing Customers’ Interests & Customers in Vulnerable Circumstances, alongside the regulations was helpful.

We have set out our specific observations in the Appendix to this letter and have endeavoured to respond to specific questions asked throughout the consultation paper where appropriate.

Kind regards,

[emailed without written signature]

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Proposed Conduct of Business Regulations:

'CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013 (SECTION 48) (CONDUCT OF BUSINESS) REGULATIONS 20[]'

1. Do you have any comments on the proposed Code enhancements with regard to digitalisation?

Proposed Regulation 38 states *'Where a regulated financial service provider is engaging with a consumer by means of a digital platform, for the purposes of providing the consumer with a financial service, the regulated financial service provider shall ensure the following:...*

The regulation (and Chapter 4) sets out a number of requirements which are clearly designed to ensure digital platforms are 'easy to use, understand and navigate'. Our general opinion is that these are positive requirements that should prompt improved experience for website users and aid consumers with low digital literacy.

Noting a core theme of this consultation being vulnerable customers (and vulnerability criteria hitherto capturing elements of accessibility) and being aware that the Directive (EU) 2019/882 (the European Accessibility Act (EAA)) (transposed into Irish law by the [European Union \(Accessibility Requirements of Products and Services\) Regulations 2023](#) effective date 28th June 2025), we suggest Chapter 4 provides an opportunity to explicitly link both sets of requirements.

Consumers with differing abilities have for far too long been excluded from independently accessing financial services. Given the EEA explicitly captures 'consumer banking services' and 'e-commerce services', we suggest the inclusion of a requirement to comply with the 2023 regulations in Chapter 4 which would send a clear message that accessibility matters and that compliance is expected. It also has the added benefit of linking similar requirements and avoids risks of regulatory blind spots (which we tend to see in practice where legislation (or communication) does not originate from the Central Bank of Ireland).

2. What are your views on the proposed requirements on banks where they are changing or ceasing branch services?

Proposed Regulation 127 (1)(b) states *'if a decision by the regulated financial service provider is made to proceed, provide at least 6 months' notice of its decision to consumers to whom it is providing the relevant financial services which it intends to cease operating, or which are the subject of the merger or transfer, to enable them to make alternative arrangements,'*

It is our understanding that the recommendation for an increased 6 month notice period for the ceasing of services originated from the Government's Retail Banking Review. Some brokers/retail intermediaries have expressed concern that imposing this requirement on all RFSPs does not reflect the working realities of intermediaries in particular and may present a challenge. It is suggested that an element of flexibility or indeed a shorter notice period would better reflect the nature, scale and complexity of such firms and the level of lower risk posed to customers where such firms cease trading.

3. Do you have any comments on the 'informing effectively' proposals?

With increasing requirements over the past number of years to provide specific documentation to consumers of individual product types, there has been a consistent concern with respect to 'information overload' and a rise in provision of information as a 'tick-box' exercise. The proposed shift to focus on consumer understanding and the effectiveness of disclosures is positive. We have worked

with a number of brokers who place significant importance on financial education in their advice process, and these proposals reinforce the benefits and need for that type of approach.

4. Are there other actions that firms could take to ensure that customers understand the status of unregulated products and services and the potential impact for consumers?

We welcome the proposals requiring regulated financial services providers (RFSPs) to provide clear disclosures where they engage with regulated and unregulated services. In particular, we believe that these proposals provide clarity to those intermediaries who have previously queried how to balance their efforts to provide compliant financial advice while also facilitating access to unregulated products where suitable.

With respect to another action that firms could take, we note the existing positive obligation to highlight the complaints process to the FSPO for regulated products and services. Where dealing with an unregulated product or service, RFSPs could equally highlight the action a customer could (or would have to) take where issues may arise (such as court action).

5. What other initiatives might the Central Bank and other State agencies consider to collectively protect consumers from financial abuse including frauds and scams?

There is a clear need for public awareness campaigns and initiatives to improve financial literacy and digital literacy. While obligations are placed on individual RFSPs under the proposed regulations to inform and protect their customers, there is considerable need for State agencies to do more to enable individuals to protect themselves and to support the removal of online scams/links so that members of the public are not exposed to them in the first place.

In Ireland, we are consistently seeing significant volumes of fraud, with older and less digitally literate individuals being easier targets, and high levels of money mules, with younger and less financially literate individuals in particular being targeted.

As stated in the consultation paper, feedback from stakeholder engagement highlighted the risks of moving away from person-to-person engagement. It is imperative that where RFSPs are providing services digitally, that they are obliged to continually educate on the usage of those services but also retain easily accessible support points that involve human interaction.

With respect to scams, greater work needs to be done regarding the non-action of social media companies where blatantly false advertisements are continually permitted to remain on sites despite repeated complaints.

6. Are there any other circumstances that we should consider within the proposed definition of financial abuse?

The definition of financial abuse seems appropriately broad to capture the full spectrum of potential abuse.

However, proposed Regulation 36 states *'A regulated financial service provider shall establish, maintain and adhere to clear policies and procedures for its employees to report, within the regulated financial service provider, concerns that a personal consumer is at risk of financial abuse by any person.'*

This regulation is presented in isolation within the proposed Conduct of Business Regulations and as such, could be rendered meaningless without clear links to other provisions detailing actions to be

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taken on foot of such a report or other linked obligations (such as proposed Regulation 12 of the Standards for Business Regulations).

The guidance on Protecting Customers in Vulnerable Circumstances includes at 2.3.11:

‘When there are issues of concern with customers, front-line staff should be able to bring their concerns to the attention of those within the firm who are sufficiently expert and senior, and authorised to take whatever actions can be taken by the firm to seek to prevent detriment or harm to the customer.’

It would however be helpful if the guidance document outlined potential scenarios/examples and suggested actions firms should consider taking (including notifying a Trusted Contact Person as per regulation 35, what to do when the abuser is the Trusted Contact Person, or when a criminal offence may need to be reported, for example).

7. What are your views on the proposed amendments to the Consumer Protection Code in relation to consumers in vulnerable circumstances? Do you have any comments on the draft Guidance on Protecting Consumers in Vulnerable Circumstances?

Proposed Regulation 33 reinforces the focus on ‘reasonable’ assistance which is positive.

Proposed Regulation 34 (1) introduces an explicit ‘vulnerable circumstances’ training requirement for staff in specified positions which we welcome.

Proposed Regulation 34 (4) states ‘A regulated financial service provider shall review, at least once every 2 years, whether the requirements of this Regulation including the objective referred to in paragraph (1) are being achieved and prepare a report of the findings of such review for the board of directors, or the entity or persons controlling the regulated financial service provider.’

We view this as a very broad provision with respect to ‘achieving the objective’ of the regulation. We query whether more specific obligations such as post-training assessments, etc. would be more helpful in achieving this aim and ensure greater consistency in the content of reports to Boards?

8. Is the role of the trusted contact person clear? What more could a Trusted Contact Person do?

We welcome the introduction of the ‘trusted contact person’ and that proposed Regulation 35 aims to align with Data Protection Act 2018 requirements and notes the potential status of other individuals involved under the Assisted Decision-Making (Capacity) Act 2015.

9. Recognising the role of EU consumer protections concerning climate and sustainability, do you have any comments on the proposed Code protections relating to climate? Do you agree with our approach to including sustainability preferences with existing suitability criteria? Have you any suggestions on how we can ensure all suitability criteria, including those relating to financial circumstances and sustainability preferences, are given an appropriate level of consideration?

We note the previous work done by Brokers Ireland in assisting retail intermediaries to comply with existing sustainability requirements and the provision of template additions to fact finds to ensure suitability preferences are extensively considered and captured. Objectively, that approach appears to balance considerations of financial circumstances and sustainability preferences.

However, the bigger issue appears to be that the market is not sufficiently established or diverse to facilitate recommendations that actually match sustainability preferences positively stated by consumers. In far too many cases, financial advisors are reporting that they cannot find relevant products. This has the absurd effect that consumers effectively have to ‘amend’ their preferences in order to access certain investment products.

10. Do you have any comments on the change to the definition of “consumer” under the revised Code to include incorporated bodies of less than €5m in annual turnover?

While the increasing annual turnover amount better reflects the profile of many small firms and will afford greater protections by bringing them in scope it is noted that the change in these proposed Regulations will create a conflict with other legal provisions. In particular, the Consumer Insurance Contracts Act 2019 (CICA), which in turn takes its definition of consumer from the Financial Services and Pensions Ombudsman Act 2017, relies on the €3 million in turnover definition.

In the absence of amendment to other legal provisions, a very obvious detriment occurs for those additional customers who are intended to benefit from the consumer protection measures but may not have access to the FSPO complaints process in particular if issues arise.

11. Do you have any comments on the proposed revised requirements for handling of errors or complaints?

We welcome the addition of escalation and management information requirements in particular as ensuring firm wide awareness and focus on errors and complaints. The increased frequency of errors and complaints analysis to minimum 6 monthly reviews is positive overall, however, we do note that complaint volumes in particular are generally proportionate to customer/business volumes. As such many smaller firms are unlikely to have sufficient (or indeed) any complaints/errors to review in a given 6-month period. Perhaps a threshold for the 6-month review frequency could be considered even if at a single digit level while retaining a mandatory annual review for those below threshold?

12. Do you have any comments on the proposed changes to the record keeping requirements?

Proposed Regulation 120 (3) states *‘For the purposes of paragraph (2), the regulated financial service provider shall provide the record in any period of time and in any format that may be specified by the Bank.’*

While we respect the need of any competent authority to demand information/documentation at will to ensure effective utilisation of its legal powers, confining this right to an absolute statement such as ‘any period of time and in any format’ objectively may raise concerns as to how that may be implemented (especially for smaller firms or those with no experience of Central bank engagement).

We suggest that the addition of some commitment to a reasonable and/or proportionate approach to such requests would help temper any such concerns.

Proposed Regulation 123 (1) states *‘A regulated financial service provider shall acknowledge all instructions from a consumer, or from a person acting on behalf of a consumer, within a reasonable timeframe, but no later than 3 working days from the date of receipt of the instruction.’*

It is noted that there is no definition of ‘instructions’ within the proposed Regulations albeit that a number of provisions explicitly deal with the processing of specific instructions (e.g. Regulation 116 regarding no further visits or calls). On plain reading this could cause confusion and unnecessary stress for RFSPs seeking to implement the proposed 3-day turnaround for issuing acknowledgements.

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It may be helpful to confine ‘all instructions’ to those related to ‘a regulated product or services being provided by the RFSP to the customer’.

Proposed Regulation 65 states ‘A regulated financial service provider shall ensure that, where it intends to keep a record of a telephone conversation with a consumer, the regulated financial service provider informs the consumer, at the outset of the conversation, that the telephone conversation is being recorded.’

We would query whether the phrase ‘to keep a record of a telephone conversation’ could cause confusion. On plain reading it could be interpreted as meaning a ‘record’ in any format including notes. It would be helpful if this could be clarified – is it in fact confined to call ‘recording’ (as the regulation title suggests) and therefore the provision neatly aligns with data protection transparency requirements?

13. What are your views on the proposal for a 12-month implementation period? Should some proposals be implemented sooner?

While there are a significant number of changes that firms will be required to make to training, policies, procedures, controls, reporting and digital channels (especially websites), etc. in order to comply, a considerable amount of the existing CPC regime has been retained. As such, the totality of material additions (rather than amendments) makes a 12-month implementation period appear reasonable for firms (especially with a structured project plan).

It is not recommended that partial implementation is pursued as that is very likely to lead to fragmented compliance.

Proposed Standards for Business Regulations:

CENTRAL BANK REFORM ACT 2010 (SECTION 17A) (STANDARDS FOR BUSINESS) REGULATIONS 20[]

1. Do you have any comments on the Securing Customers’ Interests Standard for Business, Supporting Standards for Business or the draft Guidance on Securing Customers’ Interests set out in Annex 5?

Our general view is that the proposed Standards for Business represent a common sense, minimum standard, that neatly aligns with the existing Fitness & Probity Standards and bring together certain specific obligations such as adequate financial resources, appropriate procedures, staff training, etc. The Guidance on Securing Customers’ Interests helpfully includes relevant examples.

2. Do you have any comments on our expectation that firms offering MiFID services and firms offering crowdfunding services should consider and apply the Guidance on Securing Customers’ Interests?

The [Central Bank \(Individual Accountability Framework\) Act 2023](#) provided regulation making power to the Central Bank with respect to ‘Business Standards’ and it has been consistently noted (including in April 2024 – Guidance on IAF document) that:

‘The Business Standards will be developed in conjunction with the separate review and consultation on the Consumer Protection Code noting the parallel with the General Principles

and the importance of alignment of the regulatory framework and the conduct obligations imposed on firms in this regard.'

On the basis that the IAF is intended to apply to all RFSPs subject to the Fitness & Probity Standards and that the Business Standards have consistently been held out as establishing minimum standards for 'firms', it appears objectively odd that retail facing sectors are positively excluded from the scope of these regulations.

If the Central Bank is satisfied that there are 'equivalent regimes in EU legislation' (for MiFID and Crowdfunding firms) there should be little conflict in having these apply to all sectors in order to ensure consistency. We note the proposed engagement with the Credit Union sector and are hopeful this could be concluded before commencement again to ensure consistency and avoid the need for future amendment.

END.