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REVIEW OF THE CONSUMER PROTECTION CODE

CONSULTATION PAPER – CP 47

SUBMISSION FROM THE NATIONAL CONSUMER AGENCY

January 2011

National Consumer Agency Response to the Consultation Document "Review of Consumer Protection Code" – Consultation Paper CP 47

The National Consumer Agency (NCA) is a statutory body established by the Irish Government in May 2007. It aims to defend consumer interests and to embed a robust consumer culture in Ireland. In March 2010, the NCA assumed responsibility for the statutory information and education functions of the Financial Regulator.[1]

The NCA provides free, independent information that helps consumers to understand financial products, ask the right questions and make the right choices about personal finances. The NCA's personal finance website www.itsyourmoney.ie provides a range of information to consumers including cost comparisons on day-to-day banking, savings, credit and insurance where consumers can compare the costs of various products offered by various regulated financial institutions.

The Agency notes that Central Bank is proposing to "undertake a regular survey of financial services product trends, analysing patterns in product sales, commenting on new product innovations and discussing potential emerging consumer risks" (p. 10). The Agency welcomes this initiative and notes that it complements work conducted by the NCA whereby markets and sectors are analysed with resulting information being made available to consumers, where relevant, so that they might better understand the markets in which they are participating. The NCA is of the firm opinion that informed and empowered consumers facilitate competitive and efficient markets.

Any new surveys should be developed, conducted and analysed in a manner which provides meaningful and timely information to both end consumers and also relevant policymakers and other stakeholders.

We have set out some key issues in Section 1 pages 3 - 5. Our response to the views sought by the Central Bank on certain new proposals are in Section 2 pages 5 - 7 and our additional views are outlined in Section 3 from page 8 onward. Where appropriate we have confined our views on the some of the proposals in the summary of revised provisions to Section 3.

We would be happy to discuss any aspect of our submission with the Central Bank.

[1] This follows a Government decision to transfer the statutory consumer information and education functions of the Financial Regulator, including www.itsyourmoney.ie, to the National Consumer Agency.

Section 1: Key issues for the NCA

Risk Rating

The Central Bank has proposed the development of a risk rating system for investments. We welcome this development and note that it is consistent with moves at European level to address the information deficit between financial services firms and retail investors. Although we have made a suggestion for a possible rating system within our submission we believe that further work is required to research, propose and validate any risk rating system and accompanying criteria, guidance and application process. We propose a joint NCA / Central Bank research project to progress this.

Hire Purchase (HP)

We believe that the Code should cover hire purchase (we appreciate this may require a legislative change). Many firms covered by the Code provide HP alongside other types of finance and it would be in the best interests of consumers as well as creating a more level playing field for providers if HP were covered. This would ensure that the protections outlined in the proposed Code would cover such important issues as advertising, the provision of information, the issuing of statements and the arrears process.

Tracker Mortgages

We believe that financial institutions are in a fundamental conflict of interest when is comes to tracker mortgages. Institutions should not be allowed to recommend to customers that they should move off what is a valuable product for a customer and a less attractive one for the institution. We totally reject the assertion by some commentators that trackers should be abolished or that holders of trackers are being cross-subsidised and that this is unfair to variable rate mortgage holders. We are concerned that the only reason this is even being discussed is because consumers are the weaker party and therefore an easy target.

Anyone canny or well advised enough to have taken out a tracker mortgage has a contract and is entitled to be assured that the institution, the other party to that contract fulfils it. The decisions that institutions take in order to return to profitability and the overarching structural changes that may need to be made are separate to this. It would be the greatest injustice to suggest that these valuable contracts are in any way 'to blame' for the complex issues facing our banks. It is further outrageous to suggest that consumers holding these contracts should have their contractual rights undermined or their protections watered down. Any attempt to do this regardless of the 'greater good' argument would remove any residual trust consumers have in the financial services system and their rights within it.

We have made some specific suggestions within our submission including that the Code should unambiguously set out that firms are not allowed to get around the overarching principle that they must act in the best interests of their customers. Further, that where alternative rate offers (e.g. fixed rates) are being promoted,

institutions should offer tracker mortgage holders an independent review (for example via a regulated broker) before making a decision. We have also made a suggestion below regarding an extension of the 'Know the Customer' and 'Suitability' requirements to cover important post-sale advice and recommendations.

Review of the Intermediary Market

We have a number of concerns about the above as set out below:

- The apparent lack of consumer representation on the working group;
- The exclusion from this consultation of the recommendations. (We have nonetheless made some comments as this is an important and potentially high-risk area for consumers); and
- The lack of clarity as to how some of the recommendations can work in practice. (We have commented within our submission on some of the provisions.)

We appreciate that the Central Bank is acting in good faith having regard to the agreement reached with the industry and that some of the new provisions are consistent with EU directives (such as the IMD and Mifid). Further, we welcome the increased transparency in relation to non-life disclosure of remuneration and the restrictions on the use of the term 'independent'. However, we have concerns about some of the provisions – namely those that refer to 'fair analysis'. Without any definition of what constitutes 'fair analysis' it is difficult to see how either the industry or consumers can judge what it means and when it should be used. We will be commenting on this term in our submission to the reviews of Mifid and the IMD.

We would suggest that due to the factors above, the passage of time since the review and the significant market changes that have taken place, along with the challenges facing consumers and the industry, it is necessary to re-look at this important channel and also consider how consumers seek and pay for advice.

Remuneration

We are of the view that there should be complete transparency for consumers in relation to how much they are paying for financial services and advice. For some products and channels that information is easily accessible and we welcome the provisions in the draft Code that improve transparency. We remain concerned about several industry practices, namely:

- Trail commission (in particular where the commission affects the value of investments) where there is no subsequent service provided.
- New business commission rates applying to index-linked premium increases (again, in particular where these impact on the value of investments).
- The payment of commission / bonuses without due regard to persistence rates (how long a person keeps an insurance/investment product) and the extent of commission claw backs.

We believe that these areas should be examined to assess how appropriate and fair the practices are, whether consumers are aware of them and their impact and what is the effect of them on the sales process. With regard to persistence rates – as these

can be an indicator of mis-selling or churning - we would recommend that the Central Bank seek data on them from insurers.

Unregulated Activity by Regulated Firms
There is potential for significant detriment arising from consumers being misled as to the nature and status of a business, whether deliberate or unintentional. Examples include intermediaries operating from the premises of estate agents or regulated intermediaries offering debt management services.

We would strongly suggest a requirement for 'clear blue water' between regulated and unregulated businesses. This should include provisions to ban regulated entities from engaging in unregulated activity and to further require separate companies, premises, branding and communications (websites, printed material and stationery) where directors are involved in other businesses.

The Extension of 'Know the Customer' and 'Suitability' Requirements
We would argue that any material change to a person's contract or any decision that would result in a material commitment by the consumer should be subject to the 'Know the Customer' and 'Suitability' processes in the same way that applies for selling. This should include any advice given to customers with tracker mortgages that may result in them losing the tracker.

Section 2: Response to certain views sought by the consultation

Vulnerable Consumers
The NCA welcomes the Central Bank bringing attention to the issue of vulnerable consumers. We note that all consumers are vulnerable by virtue of the power and information imbalance between them and financial services firms. However, some are more vulnerable than others – due to their personal characteristics and circumstances. The existing Code and the proposed Code sets out in the General Principles that customers should be treated honestly and fairly in their relationship with regulated entities. It is a poor reflection on the industry that the important areas of 'Know the Customer' and 'Suitability' in the original code have not proved adequate to provide the protections that a vulnerable customer needs.

With this in mind we have concerns about how the proposed definition[2] and the prescriptive list of examples - as it stands - would work in practice. An unintended

[2] Vulnerable consumer means a consumer that is vulnerable because of mental or physical infirmity, age, circumstances or credulity. These can include, but are not limited to, the following:
- those with a low level of educational attainment;
- those with a low level of income;
- those with a high level of indebtedness;
- those with a poor credit history
- those who do not have English as a first language;
- those suffering from a long term illness or disability or episodic illness;
- those with mental capacity to make a decision diminished;

consequence of the definition could be the denial of retail financial services to consumers and this would need to be carefully monitored post implementation.

We also have difficulties in understanding how the proposed vulnerable consumer approach would work in practice, as the draft Code does not outline how it would link into several important areas. For example:

- Know the customer. Although the consultation sets out the intention of changes to the details to be gathered (page 6) there is no mention of vulnerability in chapter 5, provisions 1-9 (pages 53, 54). It would be reasonable to expect the information gathering exercise to result in the categorisation of vulnerability at this point, as this should steer the search for suitable products.
- Staff training for the selling of products. We would like to see more emphasis on training of sales staff within regulated entities not only on products, but also on new code provisions such as the inclusion of a definition of a vulnerable customer. We would welcome the inclusion of 'training' in the General Principles (Chapter 2, provision 4).
- Product design, marketing and information provision and the new responsibilities proposed in the code. All of these are relevant where a consumer is vulnerable and the code does not set out specifically what it expects regulated entities to do differently where a customer is vulnerable.

In terms of the indicative list we would suggest that educational attainment should be replaced by 'low literacy'. While we are aware that the Financial Regulator's Financial Capability Study found that those with lower educational attainment were more likely to have low levels of financial capability, this finding was not in isolation. There are many consumers with low educational attainment who are successful and experienced in terms of financial services. However, those with literacy difficulties are likely to experience particular problems engaging with financial services with everything from filling forms to reading statements a challenge. We think this is a more specific, identifiable and defined vulnerability.

We also recognise the challenge for financial services firms in identifying vulnerabilities (some of which may be temporary). However, the majority of the indicative list contains features that should be discovered in a thorough 'know the customer' fact find.

Power of attorney[3]

If a third party presents themselves to a regulated entity as acting on behalf of an existing account holder or investment owner then it is always good practice to ensure that the power of attorney documentation is viewed and copied for the

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- those that are near, or over the statutory retirement age, are retired from their occupation or are retiring soon;
- those who are recently bereaved;
- those with a substantial sum to invest who have little or no investment experience

[3] Chapter 3, Common Rule, Provision 8 – Page 32

records. Limitations should be noted and recorded on the systems that allow access to the account/investment to ensure the power of attorney is complied with.

We appreciate that the intention of this provision is good but it would depend on the practice operated by regulated entities in whether it followed the Code's intention or other interpretations might be applied to it. An unintended consequence of this provision could be the insistence that a power of attorney was executed giving the receiver additional powers in the account holder's life that the giver does not need and had not intended.

There are many daily life situations where an account holder gives a third party access to their accounts to make deposits or withdrawals for convenience or necessity. These types of transactions can be accommodated by a joint account with limitations or access to a single account with limitations.

Equally the NCA would like the same recording of information requirements to be applied to these types of arrangements to ensure that the wishes of the account holder are complied with and protected. In short, there needs to be a process that protects vulnerable consumers that is short of the full 'power of attorney' status.

Product Producer Responsibilities

We welcome the new proposals to enhance the responsibilities of product producers. We agree with the approach that identifying a target market and then examining how it has been sold is sound. It also provides clearer guidance to intermediaries when assessing suitability. We would like to see a closer link between the review process and persistence rates which could indicate a performance issue with a product. It should also be clear that intermediaries cannot rely solely on this 'suitable target market' when assessing suitability as the 'know the customer' process is equally important in this regard.

Unsolicited Contact

Provision 8[4] covers regulated entities and disclosure of their regulated status. It is noted that SMS/Text messages are specifically excluded from the provision. What is not mentioned in the Code is in what circumstances it is appropriate for a regulated entity to send a text message to a consumer? We believe that text messages are only appropriate where there is a benefit to a consumer – for example: an alert for renewal of insurance premiums or to keep the consumer informed of the progress on a claim.

Our responses to other new specific proposals are in Section 3.

[4] Chapter 4 – Page 41

Section 3: provision specific comments

Opening of joint accounts

We note that in Chapter 3, Provision 39[5] instructs regulated entities to warn the consumer of the consequences of opening and operating a joint account. They are also asked to capture the limitations attached to the operation of the account. The NCA would like to see the Code require regulated entities to capture the **intention** of the real account holder (where funds are not jointly or equally owned) when opening an account - with regard to the funds on the account and what happens if circumstances change.

We have set out suggestions below in this regard.

Banks, Building Societies and Credit Unions should be (1) capturing the intentions of the main account holder and (2) making it very clear what the dangers and implications are for people – especially if something happens to the real owner of the account. This impacts on the older or vulnerable customer who wishes to give someone access to their account for a specific reason, such as depositing a pension, paying bills, and purchasing groceries. It should be very clear that a joint account does not imply ownership over the remaining balance in the account if the individual dies.

There are two scenarios regarding the set-up of a joint account –

1. Where a person has an existing current/deposit account and they decide to add a second person onto the account for a specific reason; and
2. Opening a new joint current/deposit account with another person.

Firstly, regulated entities should be required to capture the "intention" of the person who owns the account (of funds) in both scenarios and record:

- Is it merely for convenience to allow, say, a family member to operate the account, but the intention is that monies would go into the general estate on the death of the original account holder?
- Is the intention to make a gift, that the second joint account holder will indeed get the monies, either immediately or on the death of the original account holder?

Secondly, current and deposit accounts should be captured and covered by the Code in terms of suitability and know your customer requirements - this would ensure that the true intention and needs of the customer are recorded and complied with.

Knowing the consumer [6]and suitability[7]

We note the changes to the 'know the customer' (KTC) requirements but as mentioned above, we would also welcome more clarity on how regulated entities

[5] Chapter 3 – Page 45
[6] Chapter 5, Page 53
[7] Chapter 5, Page 54

are expected to apply the KTC principle to the formal identification of vulnerability and also to the assessment of suitability.

In informing people of their rights and on how to become more aware of financial products and services it is very difficult to explain to consumers how the KTC should translate into a suitability recommendation in an ideal 'compliant' sale. For example, should a regulated entity recommend a unit-linked investment to someone with an outstanding high interest loan?

We are concerned that the way in which regulated entities sell products (often with specific targets or in silos where one division sells investments and another loans) acts against a consumer-centred, advice driven outcome. With this mind we also have concerns about the separation of KTC and suitability as processes, how this is presently working and how it will continue to work under the new Code.

We note the changes and new provisions setting out information that must be provided to consumers about products. In particular, we note "before offering a product to a consumer, a regulated entity will be required to provide information about the main features of a product, including the risks attaching to a product and the extent of a guarantee." [8] We also note that the Central Bank is considering the introduction of a traffic light system in relation to risk disclosure for investment products by product producers.

What is unclear is how the new traffic light system for investment products -which will highlight the risk attached to a product – is intended to link into KTC and suitability process? For example, if a KTC identifies someone as having a medium risk appetite – does this automatically mean that the only compliant sale would be medium risk or amber? We have made some suggestions for the 'risk rating' system on page 21.

Knowing the customer[9]

The level of information to be gathered [(a) to (d)] from a consumer before offering, arranging or recommending a product or service should be more prescriptive – e.g. how does a regulated entity assess and measure a consumer's attitude to risk? In informing people about financial products and services it is a challenge to explain risk and return, and the relationship between them. In our experience most people would have a poor understanding of this and would naturally be risk averse but sometimes without a corresponding understanding of why you would take some risk for a higher potential return (in relation to investments).

Provision 1 states that in the case of a mortgage, a regulated entity must use a Standard Financial Statement (SFS) to obtain financial data from the consumer – there is no example of the SFS in the draft Code.

[8] Information about products - Page 8
[9] Chapter 5 – Page 53

We would like to see the inclusion of a template SFS for a mortgage in the Code as an appendix document. We suggest producing a separate SFS for other loans to gather the information mentioned in Provision 1 [(a) to (d)] – this would show regulated entities what information the Code expects them to gather and use when assessing customers for future products – it would ensure that a consistent approach was taken by all lenders. It should of course be proportionate to the size and type of loan required (for example small overdrafts could be excluded).

We suggest that:

(a) Needs and objectives - also needs to include 'need for accumulation of funds/capital';
(b) Personal circumstances – also needs to include 'employment status and prospects';
(d) Attitude to risk – explain how a regulated entity determines a consumer's attitude to risk e.g. by way of a standard questionnaire or other objective method?

Consumers also need to be made aware if investment products are subject to inflation risk, return risk, capital risk, and currency risk, along with the risk that charges could eat into capital if returns are low or negative.

We would also like to see a requirement for products where the risk of consumer detriment is high (such as for investments and pensions), which ensures that the regulated entity provides a copy of the KTC information to consumers. This would afford the consumer the opportunity to verify accuracy of the information and would ensure that all relevant information was used to determine the appropriateness of the product or service provided. The customer should be given the chance to take away and digest the information before signing it and a signed copy should be retained by the regulated entity on the consumer's file.

Provision 3[10] – in relation to this provision a distinction needs to be made between consumers who "refuse" and consumers who are "unable" to provide the necessary information. The regulated entity should also refer the consumer to the internal process if they wish to make a complaint. Should a consumer decide that they do not wish to divulge certain information to the regulated entity - perhaps the purpose of a loan or the needs relating to an investment – we would question whether it is reasonable to require a regulated entity to refuse access to a service or product in all instances.

Without strict guidance on the level of appropriate information gathered in provisions 1 and 2 – this provision could have unintended consequences and could result in blanket refusals for services and products when a consumer feels that the level of information required is unnecessary. Very often (for marketing purposes)

[10] Chapter 5 – Page 53 – Provision 3 – "A regulated entity must ensure that, where a consumer refuses to provide information sought in compliance with Provisions 1 and 2, the refusal is noted on that consumer's records and that it advises the consumer that it does not have the information necessary to assess suitability and cannot offer the consumer the product or service sought."

consumers are asked for a huge amount of information and a clear distinction needs to be drawn between an appropriate level of information in order for the regulated entity to be in a position to make a suitability determination and information requests that are intrusive and unnecessary.

In relation to the opening of accounts – where a consumer is unable to provide the information sought,[11] the Code should require the regulated entity to advise the consumer of the relevant bodies that can assist in gathering the required information e.g., Department of Social Protection, Revenue Commissioners, etc.

Provision 6[12] asks the "mortgage intermediary to submit a signed declaration to the lender, for each mortgage application, to confirm that he has had sight of all original documentation listed in provision 5". Since all mortgages regardless of the sales channel must go through the lenders underwriting process – copies of original documentation should be submitted and examined by the lender's own underwriters and originals should be submitted once the loan offer is accepted.

Suitability[13]

As already stated we would like to see a closer link between KTC and suitability. It would be reasonable to assume that the information gathered in the KTC – which is critical to reaching a decision – will be reflected and more strongly linked into (1) the actual suitability of the product and (2) the statement of suitability that is given to the consumer. We would like to see the written suitability statement that outlines how the product meets the consumer's needs and objectives also specifically address suitability in terms of the requisite information gathered in accordance with provision 1 [(a) to (d)]. We are aware that some regulated entities produced standard suitability statements in the past that were product and not customer based. We would see some merit in considering whether the 'KTC' and suitability assessment should be the same document to stress the importance of the link and to ensure that there are no further attempts to 'standardise' suitability.

The regulated entity should also be required to compare the type of risk with the potential return the consumer can expect. This will give some context to the consumer in aiding an understanding of risk and potential return – this should be explained in writing and form part of the consumer's records. This should also include information on the impact of charges on return of investment income.

In relation to interest-only mortgages[14], the Code does not state what measures a regulated entity should take to be satisfied that the consumer would be able to repay the principal/increased mortgage repayments at the end of the interest only mortgage term or period – when they are selling this mortgage to the consumer at point-of-sale. The Code should state that due consideration should be given to

[11] Proof of identification or proof of address
[12] Chapter 5 – Page 54
[13] Chapter 5 – Page 54
[14] Chapter 5 – Page 55 – Provisions 14 and 15

information contained in the SFS e.g. life insurance, endowment policies, savings, credit history etc.

Provision 16[15] refers to the taking of a contemporaneous record of the advice given by the regulated entity and the decision of the consumer to proceed with the transaction. In the context of the Code – greater clarity is needed on what would actually be recorded on this note - for instance would it record the date, the information discussed, the conclusions reached, the risks being identified by the regulated entity? Would the consumer have to sign it or receive a copy and where would the record be held? If the approach is taken that the consumer signs this note it would confirm that the information recorded there is an accurate reflection of what took place but we would argue that the customer should be given a copy of the note along with enough time to read and digest it before signing and returning it.

In relation to provisions 12 and 13 [16] - the NCA is of the belief that all lenders should have a clear lending process and set of underwriting procedures and it should be approved at Board level. These set of procedures should clearly outline the underwriting and decision making process and list all relevant criteria such as loan-to-value, disposable income, income multiples, credit history, ability to repay and applicable interest rates for various categories of risk.

Exceptions to the lending policy should be clearly identifiable and notes on breaches of lending policies for business reasons should be attached to the consumer's file. The provision of key information is already given to the consumer with the mortgage offer letter in the form of the European Standardised Information Sheet (ESIS). The disadvantage to the current ESIS approach is that this information is only given on a voluntary basis. We would like to see the inclusion of the ESIS document in the Code. This would put ESIS on a statutory footing and ensure that updates and developments from a European perspective (which are already subjected to a working group approach) are rolled out to benefit Irish consumers in a streamlined approach.

In response to the following questions: (Page 8 of the consultation document)

3. Do you think the inclusion of these provisions will result in a greater level of responsible lending or is more needed? If you think more is needed, what additional requirements would be appropriate?

The NCA fully supports the concept of responsible lending and borrowing. We would like to see transparent lending procedures that are approved at board level and complied with by the management of the lender. We would like to see greater

[15] Chapter 5 – Page 55 – Provision 16 – " A regulated entity must not advise a consumer to carry out a transaction, or a series of transactions, with frequency or in amounts that, when taken together, are deemed to be excessive and/or detrimental to the consumer's best interests. The regulated entity must make a contemporaneous record that is has advised the consumer that in its opinion the transaction(s) is/are excessive, if the consumer wishes to proceed with the transaction(s).

[16] Chapter 5 – Page 55

responsibility being placed on the internal and external auditor functions of the lenders to ensure that approved procedures are being complied with.

We would like to see a clearer link between the SFS, KTC and suitability – this would increase the transparency of the lending process and more strongly link in the information requirements - being sought from consumers - with the decision making process.

4. Do you agree with our proposal that the SFS should be used when assessing whether a mortgage is affordable for a consumer?

Yes – we do agree that the SFS should be used when assessing mortgages – but we would like to see what format the SFS is going to take. Will it be similar to the financial statement being used in the mortgage arrears process – capturing all the income and expenditure of the borrower? The final format should be attached to the Code by way of Appendix.

We would like to see a separate SFS format for unsecured lending and would welcome examples of how this again would link in with KTC and suitability.

Information about products

Chapter 4 covers the provision of information to consumers – it is broken down into the following headings:

- General information
- Information about regulatory status
- Information about the firms and its services
- Information about products:
    - Investment products
    - Banking products
    - Credit
    - Insurance products
    - Lifetime mortgages and home reversion agreements
    - Tracker bonds
    - Personal retirement savings accounts (PRSAs)
    - Information about remuneration

This chapter is very detailed and covers one of the most important areas in the relationship between regulated entities and consumers – information. This is a key factor in decision-making and it should be simple and easy to understand. We have the following comments to make in relation to this area:

General information

Provision 1[17] identifies key items that should be brought to the attention of the consumer. It would be beneficial for both the regulated entity and the consumer if a definition for key items were put forward by the Code. This would follow the

[17] Chapter 4 – Provision of Information - Page 40

approach the Code has taken in relation to Advertising rules and "key information"[18] that should be included. This approach would also be enhanced if better training was provided by regulated entities to all staff that provide information to consumers and, where relevant, intermediaries.

Provisions 3 and 4[19] cover the information a consumer should receive if a regulated entity decides to alter, amend, cease trading or transfer their business to another entity. These provisions would be enhanced if it was specified that notice must be given 'in writing' to consumers.

Provision 5[20]covers the recording of telephone calls. There is an opportunity here to provide the consumer with more information as to why the telephone conversation is being recorded:

- Keep a record of the telephone recording;
- Have a policy on the retention of telephone recordings (which is in accordance with data protection legislation)
- Explain that a regulated entity must provide the consumer with a copy or transcript of the telephone recording (if a reasonable request is made – complaint, dispute about instructions etc.) on request and within a specific timeframe.

The NCA recommends that where a consumer is sold a product over the phone – the telephone recording is retained and forms part of the customer record. In relation to verbal interactions this would be a better and more efficient way of recording the contemporaneous note. We are not advocating that recordings of all telephone calls are retained – only those that formed part of the sales process or where important commitments are entered in to.

Provision 7[21] covers the legibility of printed information provided to consumers by regulated entities. There is a lack of clarity as to what is legible and this provision would be strengthened if a font size – such as font size 12 – were specified in the Code. However, we accept that this is difficult and subjective – depending on the format of the document.

Provisions 9 and 10[22] should be extended to include information about regulatory status in advertising.

Provisions 10 and 11[23] sets out the rules in relation to unregulated activity. Consumers often find this area difficult to understand – i.e. that a regulated entity is authorised by the Central Bank, governed by the Code but may also participate in

[18] CP – Page 20 – Advertising and key information – "to include criteria for availing of a product, exclusions, minimum or maximum investment, operating balance, restrictions on access or withdrawals, penalties/charges, fixed or variable rates and rates applicable after promotional rates."
[19] Chapter 4 – Provision of Information – Page 40
[20] Chapter 4 – Provision of Information – Page 40
[21] Chapter 4 – Page 40
[22] Chapter 4 – Page 41
[23] Chapter 4 – Page 41

unregulated activities - such as debt management. As set out in Section 1 we believe that there should be a clear distinction between regulated and unregulated business and firms.

Information about firms and services

Provision 15[24] sets out information about terms of business and that each consumer should be provided with a copy at the outset of its relationship with the consumer. We would welcome greater clarity in the Code of when the relationship begins.

Provision 16[25] highlights the requirements that should be contained in the terms of business document. In the context of our earlier comments about the review of the intermediary market we strongly believe that there is a need for greater clarity on the terms "fair analysis of the market" and "limited analysis of the market" in relation to the types of regulated entities they refer to. Since these terms are also closely linked to a later section on remuneration (commission) there is a possibility they may create confusion for consumers in relation to the type of firms they are dealing with which were formerly known as authorised advisors, multi-agency intermediaries or tied agents.

These same terms are used in Provisions 24 and 25[26] - if you intend to use the term "broker" to cover an intermediary who offers a consumer "a fair analysis of the market" for a particular product or service – what term is intended for an intermediary who offers "a limited analysis of the market"? And how will consumers appreciate the differences between both types of firms? Also, it is unclear how consumers will be able to distinguish between an entity that provides a 'fair analysis' for one type of service and a limited one for another on the basis that the regulated entity may have a different number of appointments for different product types.

Provision 18[27] covers new terms of business that should be issued in the event of a material change in the existing terms of business. We note that regulated entities are asked to provide affected consumers with the revised terms of business as soon as possible – we would like to see this section strengthened with the following "as soon as possible and inform the ***consumer*** of the effective date prior to the execution of the change."

Information about products[28]

Provisions 27 to 31 outline general information requirements and we would suggest that consideration should be given to placing these general provisions in Chapter 3 Common Rules under the heading of Provision of Information – this would make them easier to locate in the Code and link them to the Common Rule area.

[24] Chapter 4 – Page 42
[25] Chapter 4 – Page 42
[26] Chapter 4 – Page 43
[27] Chapter 4 – Page 42
[28] Chapter 4 – Page 44

Provision 27 – is it envisaged that the information being provided under this provision – main features and restrictions etc should come from the product provider or will be based on own analysis?

Provision 30[29] – we would like to see a similar wording as set out in Provision 42[30] - in relation to publishing the old and the new rate.

Investment products

Provision 32[31] outlines the relevant information a regulated entity must provide to the consumer before offering, arranging or recommending an investment product. We would like to see this information given in writing to consumers and a clear link between it and the product that is being sold – for example this is what we need to tell you about Product XYZ.

We would also like to see how this document fits into the proposed traffic light system on product risk, KTC, suitability and the new product producer responsibilities. We would suggest that a standard risk rating system - which we welcome – should be incorporated here as part of the pre-sale investment product information that is specific to each consumer. The Code needs to set the framework of a system of risk disclosure including capital risk, return risk, currency risk, guarantees and underlying assets of the investment product. But also the impact of charges, particularly on investment returns.

Banking products

Provision 37[32] covers the information that should be provided to a consumer in relation to a basic banking product. We would like to see credit institutions advising the consumer in writing. In addition, there seems to be no requirement to record the refusal of access to a basic financial product or service in writing. A regulated entity should be required to record in writing a refusal to provide a basic financial product or service and the reason(s) for this refusal. A copy should be provided to the customer and the original retained by the institution. We understand that the Financial Services Ombudsman can investigate complaints in relation to the refusal of a service and it would seem consistent with the responsibilities of his office if records of refusals and reasons for same were retained and not only for banking products.

[29] Chapter 4 – Page 44 – Provision 30 – "When announcing a change in interest rates, a regulated entity must publish a notification which states clearly the date from which the charges will apply."

[30] Chapter 4 – Page 46 – Provision 42 – "A regulated entity must notify affected customers in writing in advance of any change in the interest rate. This notification should include:
(a) the date from which the new rate will apply;
(b) details of the old and new rate;
(c) the revised payment amount; and
(d) an invitation to the consumer to contact the lender if he/she anticipates difficulties meeting the higher repayments."

[31] Chapter 4 – Page 44

[32] Chapter 4 – Page 45

Credit

Provision 44[33] refers to a regulated entity that wishes to move a consumer from a tracker rate to an alternative rate and the information that must be provided to the consumer at least 2 months before the proposed change. In the current economic climate a tracker mortgage product is a valuable asset for any consumer to hold – notwithstanding that ECB rates may rise in the foreseeable future. The NCA would like to see any provision that refers to the movement of tracker mortgages free of ambiguity.

> *"Where a consumer is not in arrears and a regulated entity is seeking to move a consumer from a tracker rate to an alternative rate, for any reason, the lender must provide the consumer with the following information in writing at least two months before the proposed change, where applicable:*

As this provision reads at present – it looks like a regulated entity is free to contact their tracker mortgage customers (who are not in arrears) with the aim of asking them to move to an alternative mortgage product and rate. The warning that is referred to – **Warning: By switching to an alternative rate, the tracker rate option will be terminated** – infers consumers have a choice while the provision itself does not.

The Central Bank has already noted the concerns made by tracker mortgage customers who are in arrears and has reached out to protect these consumers by ensuring they continue to hold their tracker mortgage products. We would like to see this protection expanded to capture all tracker mortgage holders and not only those in arrears.

Information sent out to consumers in relation to variable and fixed rate mortgage rates should show the predicted cost of switching – not just in monthly repayments – but also over the whole life of the loan.

This is a real example of where a customer is owed a duty of care and to be treated honestly and fairly by regulated entities not just at the point of sale, but also during the lifetime business relationship that usually occurs during a mortgage.

We are very concerned that further questionable practices may emerge. For example, where a financial institution sends letters to tracker mortgage holders giving them options to move off trackers on an 'execution only' basis, thereby attempting to avoid any code provisions that may apply. We would welcome a clear and unequivocal provision that this (or a similar) practice would constitute a serious regulatory breach.

We would further like to see institutions required to offer people an independent review (for example via a regulated broker) before taking any decision on moving off a tracker mortgage. Specifically, we would like the warning to be strengthened - it

[33] Chapter 4 – page 46

should also show that if the consumer decides to switch – they would not have the option of reverting back to a tracker product.

Provision 48[34] - we welcome this new provision in relation to mortgage offer letters – it covers the amount of the mortgage and the length of time that the mortgage offer is valid. However, we would like to see this provision capture what the consumer has to do, to avail of this offer and also what interest rate will apply to the mortgage at the offer stage or draw down – if this has an impact on the applicable interest rate.

Insurance products

Provision 58[35] requires a regulated entity to record reasons in writing for a refusal of motor insurance cover only after the consumer has made a request. Following this approach may lead to difficulties such as how does the consumer know he has the right to ask for the refusal in writing?

Since motor insurance is a statutory requirement needed to drive a car in Ireland we would like the regulated entity to issue all refusals for motor insurance cover in writing. This provision would ensure that consumers receive the information they need from the regulated entity at the time of refusal.

We would also like to see this provision extended to consumers who have been refused home insurance cover.

Blanket bans on home insurance cover

We are aware that in the recent bad weather some home insurance providers have imposed blanket bans on insuring certain areas. In some instances these bans are arbitrary, do not take into consideration the exact location of the property in relation to say an event like flooding and remedial works planned and completed. The impact of these bans is to restrict competition in the market and make it more difficult for consumers to seek value by shopping around for cover.

While we appreciate that insurers are entitled to accept and price risk on the basis on their commercial appetites, we believe that blanket refusals of cover with no clear rationale or robust risk assessment should be challenged by the Central Bank through the Code or other regulatory interventions. For example, banks are required to consult the community and give three months notice of branch closures and also to give notice to customers of the withdrawal of services. This does not appear to apply to insurers where it would appear that one can withdraw service from a whole area with very little notice or consideration.

Suggested information that should appear in home insurance renewal notices

We would like to see a warning appearing on the renewal notice issued by insurance companies in relation to home insurance policies. This warning should prompt the consumer to check the reinstatement value of their home and to ensure that they

[34] Chapter 4 – Page 47
[35] Chapter 4 – Page 48

have the correct rebuild and contents cover. Many insurers automatically increased re-instatement values in the past and we have no evidence that these have been reduced although the cost of rebuilding has dropped.

Lifetime mortgages and home reversion agreements

Provision 63[36] places responsibility on regulated entities to 'ensure that consumers are made aware of the importance of seeking independent legal advice."

These provisions need to be strengthened to reflect the required knowledge needed to:

- Sell these products;
- To offer independent legal advice; and
- To offer independent financial advice to the consumer.

Provision 62 should include additional information on the "breaking out costs" attached to early repayment of long term fixed rate mortgages. The information at point of sale should highlight costs at 3, 5, 7 and 10 years based on the amount of the lifetime mortgage the consumer is drawing down. This moves the consumer away from an abstract figure based on a formula to a real figure they will have to pay if they decide to terminate the lifetime mortgage.

In relation to home reversion agreements the implications for a consumer in drawing down an increased amount for their home is based on a variable agreement – the percentage owned by the home reversion company will increase by a percentage for each year the person continues to live – this should be highlighted at point of sale.

The area of lifetime mortgages and home reversion agreements is targeted at an older and potentially vulnerable consumer audience. We would like to see how potential vulnerability, KTC and suitability of products will work with these types of products and what impact it will make on the existing provisions.

Information about charges

Provisions 71 to 73[37] refer to the above area. Since they relate to charges and costs - a significant issue in the decision making process.

We have concerns in relation to Provision 71 (b) which instructs the regulated entity – where applicable to "advise affected consumers of changes in charges, specifying the old and new charge, or the introduction of a new charge, at least 30 days before the charge takes effect."

A new charge being introduced creates the impression that there has been a change to the existing terms and conditions attached to the consumer's product. If this is so – at what point is the consumer given information about the change in terms and conditions, the introduction of the new charge and perhaps a change in the original contract? Consumers should be supplied with additional information about charges

[36] Chapter 4 – Page 49
[37] Chapter 4 – Page 51

if their introduction comes from a change in the original contract entered into by the regulated entity and the consumer. For example – on what contractual basis is the new charge being introduced? This would give the consumer the opportunity to challenge or complain about (1) the change in terms and conditions, (2) the introduction of a new charge, or (3) the increase in an existing charge.

Information about remuneration

We welcome the progress made in this area and the efforts shown by the Central Bank to bring transparency to information about remuneration. One area of concern relates to Provision 76[38] (b) "prior to the sale of a product, a regulated entity must either inform the consumer of the amount of remuneration receivable in respect of that sale or that details of remuneration are available on request." We believe that consumers should get full disclosure about how providers are paid and how much, in particular where commission impacts on the value of investments and pensions. We therefore suggest that "or that details of remuneration are available on request" be deleted from this provision. We would also suggest that the terminology used in information given to consumers be considered as not everyone will understand what the term 'remuneration' means or refers to.

5. Do you think the proposed requirements in relation to the provision of information about products are adequate? If not please set out how you think the requirements could be strengthened?

We have highlighted important areas and requirements that should be considered for change and amendments in our response above.

6. In light of developments at European level, do you think we should introduce requirements in relation to the presentation of information on investment products in a short 'Key Facts' Document?

There is a 'key facts' document in place in the original Code for tracker bonds and it would seem consistent to develop this across the board – especially for more complex products like investments and pensions. It would also be useful to assess the effectiveness of the current key features document for trackers both from the perspective of consumer use and understanding of it but also from the point of view of the industry. For example – do advisors find it useful and have they any feedback from their customers?

8. Do you have any ideas about how to disclose risk in the case of investment products in a way that would be consistent enough to be useful for consumers?

There is a definite argument for a standardised and clear description of risk in relation to investments. Many of the problems that we hear about are in relation to poor understanding or communication of risk at the point of sale. There is also a strong connection between communication about risk and any 'risk appetite'

[38] Chapter 4 – Page 52

assessment that is done by a regulated entity but also the new product producer responsibilities in relation to product design and target market.

If the risk appetite of a consumer is correctly assessed then the next step is to recommend from a suitability perspective (consistent with the identified target market), the appropriate product, taking that (and other factors) into account. At that point, full and clear communication should be given to the consumer about the risk profile of the investment and how it corresponds to their risk appetite, the suitability test AND the product producer target market. These cannot happen in isolation. In the first instance the seller needs to understand the product and be able to communicate clearly to the consumer so training and competence are more important here than in any other part of the sales process.

See below for a specific suggestion.

9. In a system such as a 'traffic light' system, how to do you think the different categories of risk, i.e. red, amber and green, should be determined?

Ideally a risk rating would be made up of two parts; likelihood and impact. These could be combined (e.g. multiplied) to form a score from which a scale can be developed. It is possible that a traffic light system is too simplistic and that a sliding scale ranging from 1-10 but also using graduated traffic light colours might work. This would allow for a more robust a nuanced risk rating to be applied. The other issue is who would assess and apply the risk rating? Is it envisaged that the regulated entity would decide on the rating based on prescribed criteria or would an external party approve it? This will be a key factor in consumers trusting the risk rating and in ensuring objective and fair presentation of risk across firms.

Given the relationship between risk and return it should also be considered that a 'potential return' rating should be developed in parallel so that consumers can better understand this concept. Using the impact and likelihood approach would also allow consumers to see the probability of achieving returns and not only that high returns are possible. This also puts risk into the right context for both the seller and the buyer.

Example: Product XYZ unit-linked fund

Risk rating:	Low									High
	1	2	3	4	5	6	7	8	9	10
Potential return rating	Low									High
	1	2	3	4	5	6	7	8	9	10

In addition to the risk / return rating scale consumers should get information about what types of risks apply to investment products – capital (already included in provision 32, page 44), return, inflation and currency along with information about the risk that charges can eat into capital if returns are low.

Notwithstanding the suggestion above, we believe it would be necessary to conduct further research to determine what criteria should be applied to the risk rating of products and to recommend a suitable system and presentation. Further, the outcome would need to be tested on consumers for ease of use and understanding.

Statements – banking products

Provision 4[39] covers the requirements placed on credit institutions to issue statements.

We have concerns that "agreed with consumers in writing" might be interpreted as agreement by the consumer to the non-issuing of statements when they may only have received a letter telling them that their credit institution will no longer be issuing statements every quarter or annually. The issuing of a letter by the credit institution does not imply the consent of the consumer, who should be given the opportunity to receive statements on their accounts on a regular basis without any costs attaching.

In relation to savings and deposit accounts it would benefit consumers if their credit institution informed them when the interest rate on their savings account was changing in any way, for example, if there was an introductory offer – they had availed of - that was coming to an end.

A consumer should be given at least one month's notice that the interest rate on their deposit account is due to change in writing or electronically (if they prefer).

In addition, we note that credit institutions must now send consumers details of the interest rates being applied to the credit institutions other deposit accounts[40] - this will benefit consumers if information is also given on how to apply to avail of a better deposit rate on their own account, any charges that may be applied for switching accounts – e.g. closure of a fixed term account or a notice account.

Statements – credit

Provisions 8 to 10[41] relate to loans and credit cards. The issuing of statements on an annual basis is an approach that lacks transparency and we would like to see loan statements issued at six-month intervals.

Provision 9 specifically refers to credit cards – many of the requirements already appear on consumer credit card statements. The letter of closure – showing that Government stamp duty has been paid – should issue automatically to consumers allowing them ease of switching from one provider to another.

[39] Chapter 6 – Page 58 – " A credit institution must, at least annually issue statements of transactions on all deposit accounts with a balance in excess of €20, and on all current accounts, unless otherwise agreed with the consumer in writing."

[40] Chapter 12 – Statements – Provision 6 (a) – Page 58

[41] Chapter 12 - Statements – Page 59

Making payments on your credit card should be more transparent and statements should detail how long it will take a payment to reach your account especially if the credit card provider does not have their own branch network.

We would like to see an annual statement issued on credit cards – similar to provisions 7 and 8 that refer to current accounts and loans – which would show all the transactions for one year, including purchases made, cash withdrawals, charges applied, payments made and interest applied. This would allow consumers to assess their needs and examine other products that may be suitable for their needs, such as switching to another credit card provider or availing of a loan facility.

Transfer of residential mortgages

It would seem that this area is referring not only to the securitisation of mortgages but also to other arrangements that may be entered into by regulated entities.

It is noted that the lender must seek the written consent of the borrower but Provision 1 (e) –

> "*The lender must also provide the borrower with the following information: confirmation that, in the absence of the borrower's specific consent, the existing arrangements will continue to apply."*[42]

Does this mean that a lender can transfer a mortgage without the borrower's consent or does it mean that the mortgage can be transferred – without consent – but the existing terms and conditions will still apply?

There are potentially serious implications for consumers in relation to Provision 3 [43]

> *"The lender must advise the borrower if the transfer would result in the lender no longer having control in relation to the setting of interest rates, and/or the handling of arrears."*

This seems to be a departure from the existing approach to securitisation and leaves it open for a third party acquiring the mortgage to change fundamentals attached to the original mortgage offer letter and contractual relationship. This could impact on mortgage arrears and begs the question – would the entity acquiring the mortgage have to comply with the Consumer Protection Code, the Code of Conduct on Mortgage Arrears, the MARP process and the protection of tracker mortgage products?

[42] Chapter 7 – Page 61
[43] Chapter 7 – Page 61

Rebates and claims processing[44]

Premium rebates
Provision 5[45] outlines the options the regulated entity may offer the consumer in relation to premium rebates of less than €10. The regulated entity must maintain a record of the consumer's decision in relation to the choice that is taken (b) reduction in renewal premium and (c) the making of a charitable donation but no record of (a) the issuing of a payment is required. This requirement should be extended to all the options.

Provision 6[46] deals with the issuing of rebate cheques by insurance intermediaries to consumers. It is stated that following '*a reasonable period of time'* the insurance intermediary must issue a reminder if the cheque is not cashed. Reasonable period of time should be replaced with a more specific timeline to ensure ease of clarity for all parties.

Claims processing
Provision 9 deals with the written procedures that should be in place for dealing for effective and proper handling of claims. Section (e) states:

> *"As a minimum, the procedure must provide that: details of conversations with the claimant in relation to the claim are noted."*[47]

This provision is stating that details of conversations should be noted but it seems inconsistent with the provision in a later chapter, which states:

> *"Where there is a verbal interaction with the consumer to assist the consumer in understanding the product or service on offer, a regulated entity must keep a contemporaneous record of the detail of such verbal interactions.*[48]

A consistent approach to recording conversations with consumers would ensure the creation of an industry standard that would be followed in relation to important interactions such as discussing insurance claims.

Guidance on the payment of cheques in relation to insurance claims
The payment of an insurance claim cheque is typically made out in the name of the insured (the consumer) and the bank holding an interest (through the mortgage) in the property. The aim of this cheque is to cover the insurance claim and reinstate the property to its former condition. The cheque being issued to two payees has in our

[44] Chapter 8 – Page 63
[45] Chapter 8 – Page 63
[46] Chapter 8 – Page 63
[47] Chapter 8 – Page 63
[48] Chapter 12 – Records and compliance - Provision 1 – Page 78

experience, caused confusion and difficulty for consumers. It has also resulted with one consumer having his claim cheque being offset against the arrears on his account rather than going towards the cost of repairing damage.

We would suggest that issue of payment cheques for insurance claims and the details of the payees appearing on that cheque need further clarification. Further consideration should be given to potential solutions that protect the interests of all the parties involved.

Arrears handling[49]

The proposed development in the area of arrears handling is welcomed.

Provision 1 outlines *'that a regulated entity must have in place procedures for the handling of arrears cases.'*[50] We note that this section does not apply to mortgage accounts covered by the Code of Conduct on Mortgage Arrears but it would be beneficial if it actually referred to the areas of lending it did cover. For example overdrafts, term loans, credit card facilities, hire purchase consumer credit and all unsecured lending.

The term 'arrears'[51] is not defined in relation to unsecured lending – it would be beneficial if the same approach outlined by the Code of Conduct on Mortgage Arrears was followed – which is 3 months missed payments.

Provision 3[52] sets out the information that should be given to consumers as soon as the regulated entity becomes aware of the account being in arrears. We suggest that following the guidance set out in MARP[53] for dealing with mortgage arrears is a good one to follow, in relation to information and approach. MARP has removed surcharge interest on arrears and since unsecured lending already carry typically carries a higher rate of interest than secured mortgage loans – the removal of this additional charge might enable consumers to address the issue of arrears in a more effective way. Consumers pay more for unsecured lending through the interest rate that applies at the point of sale. Lenders have long argued that this pricing reflects the higher risks involved where there is no asset to back the loan. So in effect all borrowers pay a surcharge for risk where loans are unsecured.

The issue has not been addressed of what happens to customers who have already entered MARP in relation to their mortgage and who have unsecured lending with the same institution. There is an opportunity here for the Central Bank to ensure that regulated entities take a more joined-up approach to dealing with secured and unsecured lending and this would ensure that all contacts to the consumer are coming from the same area within the regulated entity. This issue links in with

[49] Chapter 9 – Page 66
[50] Chapter 9 – Page 66 – Provision 1
[51] Chapter 9 – Page 66 – Provision 1
[52] Chapter 9 – Page 66
[53] MARP – Mortgage Arrears Resolution Process

Provision 15[54], which outlines that, *the level of contact and communications should be appropriate and not excessive*.

The Code is outlining how unsolicited contacts should be made with suggested timeframes and restrictions it would seem appropriate that dealing with consumers in arrears should also have objective guidelines rather than subjective ones. The preferable approach is to follow the contact procedures outlined in MARP. Is Provision 16[55] confirming that only 3 unsolicited contacts can be made in respect of arrears – if so, what is the aim of Provision 15, which refers to the level of contact being appropriate and not excessive?[56]

It is noted that if the arrears situation persists that the regulated entity should issue information on a monthly basis to the consumer.[57] It is important that the Code outlines that the costs attached to issuing this information should be reasonable – if the consumer has to pay – and these communications confirming you are still in arrears does not add to that burden of those arrears.

Provision 5[58] is a good approach. This connects the payment protection insurance (PPI) product sold to the consumer while they were entering into the loan facility agreement into the needs element of being able to make a claim if the circumstances of the arrears entitle them to make a claim. However there is an opportunity to strengthen this further by clarifying what options the consumer has if they are unable to make a claim on the PPI product. In particular we would welcome clarity about what should happen if it emerges that the PPI may have been unsuitable for their needs and potentially mis-sold? Consumers who have PPI claims rejected should receive information on their options for addressing this issue in relation to the policy and the premiums that have been paid (such as compensation, the complaints process and FSO, etc).

Provision 10[59] states:

> *"A regulated entity must give a consumer three months notice in writing where it intends to offset any credit balances in other accounts held by the consumer with that regulated entity, against any arrears outstanding."*

The NCA has concerns with this provision. By suggesting that a bank must give 3 months notice before offsetting the balance on one account against another - it seems to be inferring a right upon the bank they may not have in the contractual relationship with the consumer.

Some loan facilities give the bank the contractual right of set off or to combine the balances on accounts but others do not. There are other customs and practices that

[54] Chapter 11 – Page 68
[55] Chapter 11 – Page 68
[56] Chapter 11 – Page 68
[57] Chapter 11 – Page 66
[58] Chapter 11 – Page 66
[59] Chapter 11 – Page 67

have evolved over the years allowing banks to combine and set off the same type of accounts – for instance the balance on one current account against another.

We would like to see the issue of offsetting dealt with in the chapter that deals with arrears handling [60] since it is more likely that it is 'being in arrears' that will trigger the issue of offsetting or combining of accounts.

Where the provision appears in the Code - it needs to be more precise and the following issues need to be addressed to protect consumers:

- On what legal basis can banks offset or combine the balances on consumer's accounts?
- Do banks operate different approaches to offsetting and combining of accounts?
- What types of accounts can be offset against each other, if there is a contractual basis for offsetting or combining balances?
- Could the provisions to offset or combine in these contracts be in breach of the Unfair Terms in Consumer Contracts legislation SI 27/1995?
- How would the 3 months notice work in practice? The natural reaction of a consumer might be to remove funds or to move accounts to another bank to prevent the balances from being combined or offset against each other.
- Is it envisaged that this provision will lead to accounts being frozen until the 3 months has passed?
- What approach will be taken to a consumer's current account that is in receipt of social welfare payments? These payments are made to cover necessities such as food and utilities and should be protected from combining and offsetting.

The questions above highlight the need for greater discussion and consideration in this area. If this provision is moved to the arrears handling chapter it would again assist in a more joined up and consistent approach to dealing with both secured and unsecured lending.

Advertising

The NCA agrees with Provision 1 that *"a regulated entity must ensure that all its advertisements are fair and not misleading."*[61] The definition for advertising is outlined later[62] and is comprehensive but brochures and sales literature should also be included in this definition. We would like to see the scope of this heading extended to include marketing (including printed and on-line material).

Provision 26 states:

> *"An advertisement must not describe a product or service as free where only a proportion of the charges for the service or product are free of charge."*[63]

[60] Chapter 9 – Arrears handling
[61] Chapter 10 – Page 69
[62] Chapter 13 – Definitions - Page 80
[63] Chapter 10 – Page 72 – Provision 26

This provision is slightly confusing and perhaps could be reworded to:

> *"An advertisement must only describe a product or service as free where the total service or product is free."*

Provision 37[64] covers the description of products that are 'guaranteed' for advertising purposes and what should be included. This provision is taken from the existing Code but significant parts have been removed. We would like to see (a), (b), (c) and (d) reinstated in this provision due to the importance of the safeguards they cover and are outlined below.

"*An advertisement must not describe a product or an investment as guaranteed or partially guaranteed unless:*

- *(a) there is a legally enforceable agreement with a third party who undertakes to meet, to whatever extent is stated in the advertisement, the consumer's claim under the guarantee;*
- *(b) the regulated entity has made, and can demonstrate that it has made, an assessment of the value of the guarantee;*
- *(c) the advertisement gives details about both the guarantor and the guarantee sufficient for a consumer to make a fair assessment about the value of the guarantee; and*
- *(d) where it is the case, the advertisement states that the guarantee is from a connected party of the regulated entity."*[65]

In the event that a risk rating system is designed for specific products – there should be an obligation to include this in advertising and promotional material where appropriate.

Errors and complaints[66]

Errors

In relation to Provision 1[67] we would like to see the Code setting a more specific time frame – than on a regular basis – for reviewing, monitoring and testing its internal controls in order to identify errors. Again, this same issue arises in relation to Provision 3 (c)[68] and a more specific time frame than 'timely manner' should be put in place to ensure that customers are notified of errors and the resulting impact on them. Equally we would like to see Provision 5[69] strengthened and that the Central

[64] Chapter 10 – Page 74
[65] Consumer Protection Code – August 2006 – Provision 32 – Page 38
[66] Chapter 11 – Page 66
[67] Chapter 11 – Page 76 – "A regulated entity must review, monitor and test its control systems on a regular basis in order to provide reasonable assurance that the potential for errors is minimised and that any errors can be readily identified."
[68] Chapter 11 – Page 76
[69] Chapter 11 – Page 76 – Provision 5 – " A regulated entity must inform the Central Bank, in writing, of any errors that have resulted or may result in consumer detriment that have not been resolved in accordance with provision 3 or are not likely to be resolved within one month."

Bank should be notified about all errors, the progress made on resolving them and the owner of the problem.

Provision 3[70] sets out details on how regulated entities must correct errors that have resulted in consumer detriment. It is noted that consumers who have been affected should receive a refund with appropriate interest.

Errors by regulated entities in relation to consumer's accounts can result in different types of consumer detriment and different impacts on their accounts:

1. Overcharging and monetary loss (these consumers are protected in the draft Code[71]);
2. Non-monetary loss (perhaps the non-issue or delay in the issuing of statements) –this is not addressed in the draft Code;
3. Undercharging or errors that benefited the consumer – during the life of the error – and now result in the consumer owing the regulated entity money. We would like to see the Code cover how institutions can seek the additional monies owed in a way that is reasonable and fair to the consumer.

A consumer may be negatively impacted by the discovery of a regulated entity's error. They may have acted in good faith by making the repayments they were asked to make, based on an incorrect interest rate or repayment calculation being applied to their accounts. We are aware that some consumers are presented with demands for immediate repayment when a more reasonable long-term approach – without interest attaching – could remedy the situation.

There are also consumers who had a relationship with a regulated entity but that relationship has ended. The discovered error may also have benefited this consumer but the customer relationship has ended. What approach does the Central Bank intend to take in relation to former customers and the types of contacts that can be made by regulated entities in the pursuit of monies owed to them? Do regulated entities have the right to pursue these customers?

Complaints

The Code outlines what should happen in relation to errors and complaints – yet there seems to be a missed opportunity here to require regulated entities to also actively monitor and review consumer complaints. Apart from having an internal complaints process and the maintaining of records, is it unclear what senior management in regulated entities are actually learning from the customer complaints experience - about the service they provide and about emerging problems.

Complaints are an early warning about problems with systems and practices in an institution. Has the Central Bank considered seeking complaints data from firms in order to assist it in carrying out its functions?

[70] Chapter 11 – Page 76
[71] Chapter 11, Provision 3 – Page 76

Records and Compliance[72]

The NCA welcomes the proposal to capture for record purposes the verbal interactions that take place during the sales process between the regulated entity and a consumer. It is suggested that this will be done by the taking of contemporaneous notes, which will "record the nature of the information provided during such interactions."

We would appreciate greater clarity on how this might work:

- What does a contemporaneous note mean in these circumstances? Are we looking at a short handwritten note or a tick box exercise based on a number of areas the sales representative must cover with the consumer during the sales process?
- What guidance will be issued to regulated entities on what these notes should cover?
- How does the Central Bank intend to assess the accuracy of these notes? Will this record be seen and signed by the consumer if the interaction takes place face-to-face and will consumers be asked to verify that the note is a true reflection of what was discussed?
- Is it intended that the note should include phone conversations. Will the note form part of the customer records and be available to the customer and/or the Financial Services Ombudsman in the event of a dispute or to the Central Bank on inspection?
- We believe that where a recording of a telephone call exists between the regulated entity and the consumer – that covers part of the sales process or where an important decision has been taken - it should form part of the customer records. The regulated entity should have a clear policy on their retention policy of records – if the Central Bank does not issue guidance in this area.
- It is noted in Point 7 – that "records are not required to be kept in a single location but must be complete and readily accessible." It would be unreasonable for a regulated entity to hold records in one single location but we would suggest that each regulated entity hold a central database of customer records that captures the entire relationship with a consumer to ensure that they have up-to-date knowledge of all products held (mortgage, loans, credit cards, overdrafts and relevant insurance products linked to those lending products).

Other issues

Customer care contact facilities

The NCA is aware of a small number of regulated entities who do business in Ireland but who do not offer customer service facilities here. We believe that Irish consumers should not have to incur additional costs in contacting such an entity and that all those subject to the code here should be obliged to offer a customer case service that does not cost more due to the fact that it is located in another country.

[72] Chapter 12 – Records and Compliance – Page 78