Consumer Protection Code Review

Response to the Central Bank of Ireland

Discussion Paper October 2022

31 March 2023

Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí

Competition and Consumer Protection Commission

Introduction

The Competition and Consumer Protection Commission (CCPC) welcomes the opportunity to provide a response to the Central Bank of Ireland's (CBI) Consumer Protection Code (the Code) Review Discussion Paper (the Discussion Paper).

Under s.10 (1) of the Competition and Consumer Protection Act 2014, the CCPC has a statutory function to promote competition and to promote and protect the interests and welfare of consumers. The CCPC has specific functions to provide information on financial services, including the associated risks and benefits, and to promote the development of financial education and capability[1]. The response is divided into sections corresponding with the themes of the Discussion Paper and the CCPC acknowledges that many of the themes touch on one or more aspects of the CCPC's mandate.

As demonstrated by recent enforcement actions and interventions taken by the CBI, most notably relating to the tracker mortgage scandal, poor business conduct of financial service providers (FSPs)[2] causes harm to consumers. While the CCPC considers that the recent enactment of the Central Bank (Individual Accountability Framework) Act 2023 (IAF)[3] represents a positive step towards holding individuals with senior positions within FSPs accountable, it also acknowledges that the Code continues to play an important role in the protection of consumers of financial services and products, by setting out rules and principles that FSPs must follow when engaging with those consumers.

As noted in the Discussion Paper, the financial services sector has changed significantly since the current version of the Code became effective in 2012. Most significantly, digitalisation has changed not just the types of financial products and services that consumers have access to[4] but also how consumers access those products, how they obtain information on them and how they engage with FSPs. Within this context, the CCPC considers the CBI's review of the Code to be timely.

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[1] s.10 (3) (j) (I) to (ii) of the Competition and Consumer Protection Act 2014 (oireachtas.ie)

[2] While much of our response in this document will refer to 'FSPs' - Financial Service Providers - we realise that this is a very broad set of firms across numerous sectors. Within the scope of the Discussion Paper are diverse services such as banking, payments, credit, mortgages, insurance, investments and other products, often regulated but not always – where firms differ significantly in terms of size and consumer risk. Where we comment generally on FSPs rather than specific services, a degree of proportionality can be assumed – that our comments concern products of the most day to day significance to consumers, where firms are large players in the relevant market.

[3] See Central Bank (Individual Accountability Framework) Act 2023 (oireachtas.ie)

[4] Key pieces of European legislation are currently being reviewed to take account of digitalisation in the financial services sector, including the Consumer Credit Directive, which, in consideration of the increase in the number of consumers applying for online credit, proposes extending the scope of credit rules to include products such as buy-now-pay-later. See Council and European Parliament agree to improve protection for consumers applying for credit - Consilium (europa.eu).

This submission relates broadly to the following three key points:

- In this submission the CCPC has identified a number of issues which it believes the CBI should consider, in its regulatory approach and within the framework of its consumer protection mandate, in order to support competition in financial services and in turn availability and choice for consumers.

- Switching is a clear way to unlock greater competition in the market and empower consumer choice. In light of the traditionally low rates of switching for key financial products and services in Ireland, the CCPC is of the view that there is considerable work to be done in improving the conditions for and rates of switching in Ireland and has set out some considerations for the CBI in the section below relating to 'Availability and Choice'.

- Most financial products can be considered complex and many consumers struggle to navigate this complexity. 'Information overload', where consumers are overwhelmed by the volume of information, makes it even more difficult for consumers to understand the key features of financial products or services and choose the best financial products for their needs. This is a significant consumer protection issue, given that poor financial choices can cause serious harm to consumers.

These three key points have in turn informed a number of further observations and recommendations which the CCPC has made, the most significant of which are:

- The CCPC believes that existing and future research in the area of behavioural economics should provide an evidential basis for the introduction of specific rules into the revised Code and/or guidelines, which mandate FSPs to provide information in a way which has been shown to improve consumer outcomes.

- Consumer protection rules should aim to help consumers evaluate complex financial products. The CCPC Money Tools website[5], as a source of impartial comparison and calculator tools across a range of financial services products, can assist consumers in this way. The CCPC has therefore recommended that there should be additional requirements in the Code mandating FSPs with relevant products to include a link to the CCPC Money Tools website prominently on the homepage of their website and app.

[5] Money Tools (ccpc.ie)

- The CCPC identifies a cohort of consumers who are particularly at risk of experiencing harm when engaging with financial products and services, including those at risk of digital or financial exclusion and those who are otherwise in vulnerable circumstances.

- Given the complex nature of financial products and services and the potential for serious consequences for consumers should something go wrong with their financial affairs, consumers should have guaranteed access to customer support which can enable them to make informed decisions and deal promptly with any difficulties they have. The CCPC recommends that the Code include a requirement for FSPs to offer consumers a prescribed minimum level of human support for financial products and services provided online, at least where those services are fundamental financial services or related to significant transactions.

- Informed in part by the behavioural research which the CCPC has commissioned, the CCPC believes that FSPs should be subject to an obligation to consider how they can use behavioural insights to improve financial outcomes for consumers. As part of this recommendation, basic guidance for FSPs on utilising behavioural insights should be developed by the CBI and consideration should be given to when FSPs should be mandated to carry out testing on how interventions informed by behavioural insights will improve financial outcomes.

- The CCPC welcomed the recommendation in the Department of Finance Retail Banking Review[6] (the Retail Banking Review) for the Department of Finance to seek to ensure that all stakeholders work together for Ireland to meet the requirements of the Organisation for Economic Co-operation and Development (OECD) Recommendation on Financial Literacy[7] and the OECD High-Level Principles on Financial Consumer Protection[8], including through the development of a national strategy on financial literacy[9]. The CCPC is engaging with the Department of Finance and others in this context. It is expected that during 2023 progress will be made on a Department of Finance steered national strategy. The CCPC expects that the strategy would identify the CBI as a key stakeholder, given its roles both as Central Bank and as Financial Services Regulator.

- A lack of effective competition and new entry into financial services markets in Ireland will have significant negative impacts on availability and choice for consumers. It is therefore of

[6] Department of Finance (2022) 'Retail Banking Review' (gov.ie)
[7] See OECD/LEGAL/0461, (2020) (oecd.org)
[8] See G20/OECD (2022) 'High Level Principles on Financial Consumer Protection, G20/OECD High-Level Principles on Financial Consumer Protection' (oecd.org)
[9] Response to question 22.

vital importance to the interests of consumers that financial service regulation ensures that new entry into Ireland is facilitated and competition is effective. The CCPC notes the recommendation in the Retail Banking review that the Department of Finance should prepare heads of a bill in 2023 to amend section 50 of the Central Bank (Supervision and Enforcement) Act 2013 to require the Central Bank to carry out and publish assessments of the costs and benefits of proposed regulations. The CCPC considers that the successful implementation of this approach has the potential to greatly improve the compettive banking landscape in the medium term bringing significant consumer benefits.

- The CCPC has identified the mortgage market as a source of consumer detriment. It is particularly concerned about the practice of defaulting non-engaging mortgage consumers, at the end of a fixed term, on to a variable interest rate which may be higher than the fixed rates offered by that provider, which it believes may take advantage of high levels of consumer inertia and disengagement. The CCPC has recommended that the CBI examine the possible loyalty costs to consumers in the mortgage market and identify measures in the Code, or supplemental to it, to enhance consumer welfare.

- The Code should identify actions which FSPs must take in the best interests of the consumer in advance of the launch of a product or service. The CCPC has identified a number of specific recommendations in this regard, including that FSPs demonstrate that they have considered whether the price they are charging for a product represents fair value for consumers and that FSPs be required to conduct testing before launch on digital systems, channels and infrastructure. This is to ensure that they are designed in a manner which treats consumers fairly, focusses on empowering consumers and avoids adding complexity.

The CCPC welcomes discussion with the CBI on the observations and recommendations made in this submission and more generally looks forward to further engagement with the CBI in respect of the review of the Code.

Response to Discussion Paper themes

1. Digitalisation

Digitalisation can, in principle, benefit consumers in numerous ways[10], including by increasing the opportunities for FSPs to use digital interfaces to improve consumer outcomes[11]. It offers new opportunities for innovation which facilitates greater consumer choice and allows FSPs to develop and distribute products and services to a wider consumer base, potentially faster and at a lower cost[12], the benefits of which can be passed on to consumers.

However, digitalisation can also create new, and increase existing, risks for consumers. The CCPC identifies key risks as[13]:

a) The financial exclusion of those who may not have the digital skills, confidence or access to internet or digital devices that are needed to use digital financial services[14,15].

   Digitalisation can also impact on financial exclusion in other, more direct, ways. For example, excessive use of data profiling and increased use of algorithmic decision-making could lead to denial of access to services[16];

[10] Response to question 9.
[11] See OECD (2018), G20/OECD INFE Policy Guidance on Digitalisation and Financial Literacy (oecd.org)
[12] See, European Supervisory Authorities (2022) 'Joint European Supervisory Authority Response to the European Commission's February 2021 Call for Advice on digital finance and related issues: regulation and supervision of more fragmented or non-integrated value chains, platforms and bundling of various financial services, and risks of groups combining different activities' (europa.eu)
[13] Response to question 9.
[14] In the 'Adult Literacy for Life' strategy it was noted that 47% of adults in Ireland report not having basic digital skills. See, Government of Ireland, 2021, 'Adult Literacy for Life, A 10-year Adult Literacy, Numeracy and Digital Strategy' (adultliteracyforlife.ie)
Research commissioned by the Department of Finance in connection with the Retail Banking Review showed that those over 55 and in particular those aged over 65 are significantly less confident in using online banking services. C2DE respondents were also shown to be less confident. See, the Department of Finance/B&A (2022) 'Consumer Banking Survey April 2022' (gov.ie) CBI research showed that around 1 in 5 consumers are uncomfortable searching for and purchasing insurance products online. See Byrne., S & Kelly, J. & Singh Pratap, A. (2022) 'Engagement, switching and digital usage in consumer insurance markets: who does it and why it matters' (centralbank.ie)
[15] The risk of digital exclusion is heightened where in-person services, such as in the retail banking sector, are no longer accessible due to a reduction in services available in-branch. Consumers struggling with online services may seek to rely on the help of others, creating a risk of dependency that could lead to financial abuse. Department of Finance (2022) 'Retail Banking Review' (gov.ie)
[16] The OECD raise both the risk of 'excessive use of digital profiling to identify potential customers and exclude unwanted groups' and 'the increasing use of algorithms, which can affect decisions about credit or insurance and can lead to denied access to certain services or inappropriate charges based on inaccurate or wrong correlations made without human interpretation'. See OECD (2018), 'G20/OECD INFE Policy Guidance on Digitalisation and Financial Literacy' (oecd.org)

b) Facilitating new types of fraud, which can seek to exploit consumer uncertainty in accessing digital services, and increased exposure to fraud such as phishing, account hacking and data theft[17]. The types of fraud which are facilitated by increased digitalisation are of such scale[18] and sophistication that all consumers can be at risk;

c) Increased transfer of risk and liability for fraud on to consumers. 'Authorised push payment fraud'[19] is one example of how digitalisation, by enabling consumers to authorise payments without direct engagement with their payment account provider, has resulted in the risk and liability for detecting fraudulent activity being increasingly passed from the FSP to the consumer[20];

d) Facilitating market practices which seek to exploit behavioural bias[21];

e) Increased risk of insufficient disclosure of risks and features of financial products[22];

f) Rapid access to short term credit and speculative products leading to poor consumer outcomes including over-indebtedness[23];

g) Risks of misuse and unlawful access to data, as well as lack of privacy, confidentiality and security of data[24];

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[17] See, OECD (2018), 'G20/OECD INFE Policy Guidance on Digitalisation and Financial Literacy' (oecd.org)

[18] In respect of an identification of the scale, the report of FraudSMART, the fraud awareness initiative led by Banking and Payments Federation Ireland, states that fraudsters stole nearly €45m through frauds and scams in the second half of 2021, up 50% on previous years. See Banking & Payments Federation Ireland (2021) 'FraudSMART Payment Fraud Report' (bpfi.ie)

[19] 'Authorised push payment fraud' is where consumers are tricked into authorising the transfer of money to an account controlled by a scammer. See OECD (2020) 'Financial Consumer Protection Policy Approaches in the Digital Age' (oecd.org)

[20] The call for evidence for an evaluation and impact assessment of the Second Payment Services (PSD2) provides that the review of PSD2 may include authorised push payments. See European Commission, 'Payment services – review of EU rules' (europa.eu)

[21] This could include price discrimination based on consumer habits. See, OECD (2018), 'G20/OECD INFE Policy Guidance on Digitalisation and Financial Literacy' (oecd.org)

The European Securities and Markets Authority, in its response to the European Commission's consultation on the digital finance strategy, pointed to the potential for increased digitalisation to lead to detrimental price optimisation/discrimination and harmful sales practices. For example, where consumer data is used to systematically exploit consumers' biases or constraints, such as limited time or lower financial knowledge, or making access to financial products contingent on purchasing another product from the financial services provider. ESMA (2020) 'ESMA's response to the European Commission's Consultation on a New Digital Finance Strategy for Europe' (europa.eu)

[22] See, European Supervisory Authority (2022) 'Joint European Supervisory Authority response to the European Commission's February 2021 Call for Advice on digital finance and related issues: regulation and supervision of more fragmented or non-integrated value chains, platforms and bundling of various financial services, and risks of groups combining different activities' (europa.eu)

[23] See, OECD (2018), G20/OECD INFE Policy Guidance on Digitalisation and Financial Literacy (oecd.org)

[24] See, OECD (2018), G20/OECD INFE Policy Guidance on Digitalisation and Financial Literacy (oecd.org)

h) Increased use of algorithms widening the information and power asymmetry between FSPs and consumers and impeding consumers' ability to make informed decisions[25];

i) Technical issues and failures of online financial services, resulting in unavailability of financial services;

j) The use of influencers to promote financial products on social media, particularly where they have no experience of the financial product, which may cause consumers to make worse decisions than they might otherwise make[26].

For those consumers who stand to benefit from digitalisation, whether they meaningfully do so depends to a significant extent on the way in which digitalisation is employed by FSPs and how those consumers are supported in using digital services. In respect of increased digitalisation, FSPs should ensure that they[27]:

a) design digital systems, channels and infrastructure in a manner which treats consumers fairly, focusses on empowering consumers and avoids adding complexity and FSPs should document their testing of systems in this regard before launch;

b) provide adequate customer support to consumers using digital financial services;

c) take measurable steps to assist consumers at risk of financial exclusion due to increased digitalisation, including providing test environments of online services[28]; and

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[25] European Consumer Organisation (BEUC) (2018), 'Automated decision making and artificial intelligence – A consumer perspective' (europa.eu)

[26] The CCPC's market study on influencers suggested that although promotion of financial products (so called 'finfluencing') is not yet a major factor amongst Irish influencers, it may still be affecting Irish consumers who consume financial content produced by international influencers. CCPC (2022) 'Online Behaviour, Influencer Marketing' (ccpc.ie)

[27] Response to question 9.

[28] These test environments would include, for example, offline websites and apps which consumers can access. Test environments would allow consumers to gain confidence with the functionality of the digital service in a risk-free way and enable them to assess, in advance of selecting a provider, whether the design and functionality of the digital service meets their needs. This is important in particular for those financial products such as investments and current/deposit accounts where frequent use by consumers of the digital environments are expected. The National Adult Literacy Agency (NALA), in their recent report on financial literacy in Ireland, identified several difficulties which consumers have with using digital services. NALA (2021) 'Financial Literacy in Ireland, Challenges and Solutions' (nala.ie)

d) provide high levels of assurance in respect of cybersecurity[29], availability of service and protection from scams, data abuse and any other types of fraud[30].

The CCPC recommends that the CBI incorporates these general principles relating to digitalisation into the updated Code[31].

Given the complex nature of financial products and services[32], all consumers should have guaranteed access to customer support which can enable them to make better informed decisions and deal promptly with any difficulties they have[33]. Two prominent pieces of proposed financial services legislation include a right for the consumer to request and obtain human intervention[34, 35]. The CCPC recommends that the CBI require FSPs in the revised Code to offer consumers a prescribed minimum level of human support for financial products and services provided online, at a minimum where those services are fundamental financial services or related to significant transactions[36]. The CBI should ensure, in considering prescriptive requirements for minimum levels of customer support, that it evaluates the impact of such measures including the risk that they might act as a barrier to entry or

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[29] The CCPC notes the inclusion of financial services firms in the scope of the Network and Information Security (NIS 2) Directive. See Directive (EU) 2022/2555 on measures for a high common level of cybersecurity across the Union (europa.eu)
The CCPC also notes that the Digital Operational Resilience Act (DORA) will promote operational resilience in the European digital finance sector. See, Regulation (EU) 2022/2554 on digital operational resilience for the financial sector (europa.eu)
[30] Principle 10 of the OECD High-level Principles on Financial Consumer Protection relates to the protection of consumer assets against fraud, scams and mis-use. See, OECD (2022) 'G20/OECD 'High-Level Principles on Financial Consumer Protection 2022' (oecd.org)
[31] In making this suggestion, the CCPC is aware that the CBI has issued 'Cross Industry Operational Resilience Guidelines' (2021), 'Outsourcing Guidance' (2021) and 'Cross-Industry Guidance on Information Technology and Cybersecurity Risks' (2016)
[32] See paragraph 9.1 of European Commission (2016) 'Consumer vulnerability across key markets in the European Union, Final Report' (europa.eu), which recognised that even those consumers who may be considered highly capable in other sectors may be considered vulnerable when engaging with financial services and products.
[33] The comment in the Retail Banking Review that 'It is also true that for certain queries, even the most digitally enabled customers will visit their branch for assistance', is relevant. Department of Finance (2022) 'Retail Banking Review' (gov.ie)
[34] The right to human intervention is set out in Article 16d(3) of the European Commission's (2022) Proposal for a Directive amending Directive 2011/83/EC concerning financial services contracts concluded at a distance and repealing Directive 2002/65/EC (europa.eu). Recital 26 of the same Proposal links this right to an obligation on FSPs to provide assistance to consumers to enable them to understand the effects of the financial services contract on their economic situation.
[35] The right to human intervention is set out in Article 18(6)(a) of the European Commission's (2021) Proposal for a Directive of the European Parliament and of the Council on Consumer Credits (europa.eu), which provides that where a creditworthiness assessment involves the use of profiling or other automated processing of personal data, Member States shall ensure that the consumer has the right, amongst other rights, to 'request and obtain human intervention on the part of the creditor or the provider of crowdfunding credit services to review the decision'.
[36] A prescribed minimum customer service standard would broadly align with the recommendation made in the Retail Banking Review that all FSPs of retail banking products and services be required, under the revised Code, 'to develop and publish comprehensive customer charters'. Department of Finance (2022) 'Retail Banking Review' (gov.ie)
ComReg are empowered, pursuant to section 37 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, to specify minimum quality-of-service standards to be met by providers of internet access services or publicly available interpersonal communications services, which includes the power to specify available customer service channels. ComReg are further empowered pursuant to section 38 to require those regulated entities to prepare, publish and keep updated a document known as a 'customer charter'. See Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 (irishstatutebook.ie).

prevent new beneficial business models from emerging. This should also take account of the potential for FSPs to provide innovative customer support solutions as part of their business model.

Personalisation and individual targeting of ads[37]

Research commissioned by the European Commission has identified that personalisation can benefit consumers by facilitating more accurate product matches, lower prices and reduced search costs for consumers[38]. However, these practices can also harm consumers, by pushing them towards products with the highest prices and cause detriment to those less digitally savvy or willing to shop around. In line with the general comments above regarding digitalisation, it would appear that whether consumers can gain any benefit from the practices of targeting and personalisation depends on how FSPs undertake these commercial practices. The CBI should include within the proposed guidance on best interests, or otherwise within the Code, rules relating to the practices of personalisation and targeting of advertisements.

These rules could require, for example, FSPs to assess the potential negative outcomes which consumers, including those with vulnerable characteristics, could experience on receipt of targeted advertising and personalisation. The rules could also require FSPs to monitor advertisement click-through and management information, to assess whether consumers subject to targeted advertising are, in fact, achieving positive outcomes. In regard to personalisation and targeted advertising, the CCPC notes the general objective of new and proposed EU legislative measures for increased transparency in relation to these practices[39] and the CCPC recommends that the CBI consider including measures in the revised Code to make these practices more transparent to consumers of financial products and services.

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[37] Response to question 10.

[38] European Commission (2019) 'Behavioural study on the digitalisation of the marketing and distance selling of retail financial services, Final Report' (europa.eu)

[39] The 'Digital Services Act' places obligations on providers of online platforms to ensure that recipients of the service can identify the main parameters used to determine the recipient of adverts and the main parameters used in their recommender systems, where applicable, see Articles 26 and 27, Regulation (EU) 2022/2065 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (europa.eu)

In addition, the proposed directive on consumer credits and the proposed amendment to the consumer rights directive would require FSPs to disclose the existence of personalised pricing based on automated decision making/processing, at the pre-contract stage. See, Article 11(2)(m) and Article 13 of the Proposal for a Directive of the European Parliament and of the Council on Consumer Credits (europa.eu) and Article 16a(1)(h) of the of the European Commission's Proposal for a Directive amending Directive 2011/83/EC concerning financial services contracts concluded at a distance and repealing Directive 2002/65/EC (europa.eu)

2. Vulnerability

Consumer vulnerability is a fluid concept that can manifest in a number of ways[40] and be driven by a multitude of causes[41]. Consumers can move in and out of states of vulnerablity and may be vulnerable in respect of certain transactions but not others[42].

All consumers can be, or become, vulnerable and there are certain characteristics of vulnerability that increase the risk of a consumer experiencing harm. The introduction of fluidity into the concept of vulnerability should not result in a concept that is so broad that it undermines protection for those consumers who are at the greatest risk of suffering detriment[43].

In considering the concept of vulnerable consumer in the Code, Article 5(3) of the Unfair Commercial Practices Directive (UCPD)[44] recognises 'a clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product'. The characteristics of vulnerability set out in the UCPD are 'mental or physical infirmity, age or credulity'. However, guidance from the European Commission provides that these characteristics are 'indicative and non-exhaustive' and that the concept 'covers also context-dependent vulnerabilities'[45]. The European Commission, as part of the 'Digital fairness – fitness check on EU consumer law' has specifically sought feedback on whether the concept of vulnerable consumer 'could be adapted or complemented by additional benchmarks or factors'[46], suggesting an appetite at EU level for regulation to continue to set at least a non-exhaustive list of recognisable characteristics of vulnerablility.

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[40] See principle 6 'Equitable and Fair Treatment of Consumers' of the OECD (2022) 'G20/OECD 'High-Level Principles on Financial Consumer Protection 2022' (oecd.org)

[41] For a detailed analysis of the potential causes of vulnerability, see European Commission (2016) 'Consumer vulnerability across key markets in the European Union, Final Report' (europa.eu)

[42] European Commission (2016) 'Consumer vulnerability across key markets in the European Union, Final Report' (europa.eu)

[43] The European Commission Report on vulnerability states that 'in some policy contexts, it may be important to recognise that some personal characteristics can imply that vulnerability remains an enduring characteristic for particular groups of consumers', European Commission (2016) 'Consumer vulnerability across key markets in the European Union, Final Report' (europa.eu)

[44] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (europa.eu)

[45] European Commission (2016) 'Commission Staff Working Document: Guidance on the Implementation/Application of Directive 2005/29/EC on Unfair Commercial Practices…' (europa.eu)

[46] European Commission, Digital fairness – fitness check on EU consumer law (europa.eu), noting that the questionnaire is no longer available.

Acting in the best interests of consumers in vulnerable circumstances[47]

The CCPC agrees that the needs of vulnerable consumers should be 'reflected in the design and delivery of products and services, as well as policies and procedures' and that 'acting in the best interests of consumers requires firms to understand vulnerability'[48]. The CCPC would support the development of specific rules in the revised Code, setting out how FSPs can meet this standard.

The CCPC recommends that these rules should require FSPs to have an internal policy on consumers in vulnerable circumstances[49]. As a first step in designing such a policy, FSPs should be required to identify the drivers, dimensions and indicators of vulnerablility[50] in their target market[51]. The target market analysis could inform, as set out in the internal policy, how the FSP will integrate the needs of vulnerable consumers into all stages of the customer journey in order to deliver good outcomes for those consumers.

Requiring the consideration of vulnerability at a group/target market level, in combination with the existing requirements of the Code[52], could address the need for FSPs to not only take steps to assist individual consumers when they are identified as being in vulnerable circumstances, but also potentially mitigate the risk of those consumers experiencing detriment by pre-emptively building their needs into the business strategy of the FSP[53].

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[47] Response to question 19.

[48] As quoted from the Discussion Paper.

[49] Response to question 20.

[50] For a detailed analysis of the drivers, dimensions and indicators of vulnerability, see European Commission (2016) 'Consumer vulnerability across key markets in the European Union, Final Report' (europa.eu)

[51] Both the European Banking Authority (EBA)'s and European Insurance and Occupational Pensions Authority (EIOPA)'s product and oversight governance guidelines require manufacturers and distributors of certain products to ensure that the product is appropriate for the interests, objectives and characteristics of the identified target market. On that ground there may be overlap between the suggested consideration of vulnerability in the target market here and those product and oversight governance guidelines. However, the CCPC is aware that those guidelines are not applicable to all FSPs and do not expressly require consideration of vulnerability. The suggestion that FSPs consider vulnerability at target market level here is also intended to ensure that FSPs consider vulnerability in its business strategy more broadly than just in respect of the product itself. Accordingly, the CCPC recommends that the CBI consider introducing such a requirement. See EBA (2015) 'Final Report, Guidelines on product oversight and governance arrangements for retail banking products' (europa.eu) EIOPA (2023) 'EIOPA's approach to the supervision of product oversight and governance' (europa.eu)

[52] Namely, section 3.1 of the CBI Code: CBI (2012 and revised in 2015) 'Unofficial Consolidation of the Consumer Protection Code' (centralbank.ie)

[53] It may be instructive to consider guidance issued by the Financial Conduct Authority (FCA), which expects FSPs to take actions to achieve good outcomes for vulnerable customers, including: understanding the needs of the target market and asking themselves what types of harm or disadvantage their customers may be vulnerable to; taking vulnerable consumers into account at all stages of the product and service design process to ensure products and services meet their needs, ensuring all communications are understandable for consumers in the target market and implementing appropriate processes to evaluate where they have not met the needs of vulnerable consumers. FCA (2021) 'Final Guidance - FG21/1: Guidance for firms on the fair treatment of vulnerable customers' (fca.org.uk)

The internal policy should further identify the steps which the FSP has taken to ensure that frontline staff have the skills needed to recognise and support consumers in vulnerable circumstances. This includes identifying the systems and processes that allow appropriate staff to access and record information[54] needed to respond to vulnerable consumers in the future[55].

Integrating a more fluid concept of vulnerability into the Code could make it more difficult for vulnerable consumers to be identified by FSPs. Increased digitalisation couldheighten this risk, because it lessens the opportunities to pro-actively identify those in vulnerable circumstances[56]. In consideration of these issues, the CCPC suggests[57] that FSPs should be required, as documented in their internal policy on consumers in vulnerable circumstances, to identify the points in their customer journeys at which they can gather information on consumer needs[58], including by inviting a consumer to notify FSPs of a change of circumstances impacting their use of the financial service or product[59].

This invite to the consumer should take into consideration the barriers which consumers in vulnerable circumstances may face in contacting a FSP[60]. As part of this obligation FSPs should conduct testing to identify what type of interventions help to identify vulnerability and help vulnerable consumers gain support, within the scope of their business model and customer journey.

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[54] The CCPC agrees that, as set out in the Discussion Paper, the focus of FSPs should be on business processes rather than a compliance exercise involving the labelling and categorisation of individuals. However, the CCPC also considers that recording and providing access to relevant staff to information relating to vulnerability is key to ensuring that the needs of consumers in vulnerable circumstances are met promptly in all interactions with the FSP, noting that consumers may not deal consistently with one staff member who is aware of their circumstances. In addition, consumers should not be required to disclose the same vulnerable circumstances on multiple occasions, as this can cause distress.

[55] The FCA sets out its expectation regarding the recording and accessing of information about consumers' needs at section 3.17 and 3.18 of FCA (2021) 'Final Guidance - FG21/1: Guidance for firms on the fair treatment of vulnerable customers' (fca.org.uk)

[56] The CBI noted the increased difficulty for firms to identify vulnerable consumers and engage with them accordingly due to the loss of direct human interaction, in CBI (2017) 'Discussion Paper: Consumer Protection Code and the Digitalisation of Financial Services' (centralbank.ie)

[57] Response to question 19.

[58] The FCA provides that firms should 'consider whether there are touchpoints in the customer journey they can use to gather information on customer needs'. See paragraph 4.37 of FCA (2021) 'Final Guidance - FG21/1: Guidance for firms on the fair treatment of vulnerable customers' (fca.org.uk)

[59] Example points in the customer journey could include closing an account, renewing an insurance product, making a complaint or taking out a new product. FSPs could develop specific scripts for frontline staff, when assisting a consumer at these points, to help them to identify vulnerability or could build relevant questions and prompts to contact the FSP into the documentation which a consumer has to engage with. See paragraph 4.37 and 4.38 of FCA (2021) 'Final Guidance - FG21/1: Guidance for firms on the fair treatment of vulnerable customers' (fca.org.uk)

[60] These barriers include the potential aversion consumers may have to identifying themselves as 'vulnerable'. In addition and as an example, a study conducted by Savanta ComRes on behalf of Citizens Advice in the UK, found that twice as many people with mental health problems avoided asking a provider for extra support because of a long wait time on the telephone helpline, compared to those with no mental health problems. Therefore, only offering consumers an option to contact an FSP by phone, for example, could constitute a barrier to that customer advising the FSP of their vulnerable circumstances. Citizens Advice, 2019, 'Counting on it – Cross-Sector minimum standards of support for people with mental health problems' (citizensadvice.org.uk)

In addition to specific interventions to identify vulnerability, the CCPC considers that its recommendation that FSPs be required to have a minimum level of human support[61], as detailed above in respect of 'Digitalisation' is relevant here, as such support would enable consumers to discuss their vulnerable circumstances and obtain support from FSPs, without having to go through any special 'vulnerable consumer' procedure which they may be reluctant to do for various reasons[62].

In the context of switching, which is discussed at greater length below, the CCPC is concerned that consumers who may be more vulnerable or require more assistance with switching their current account are channelled into self-service options that may not be appropriate for their needs[63].

In any discussion relating to external support measures to protect consumers in vulnerable circumstances, privacy and autonomy should indeed be considered, as identified in the Discussion Paper, but equally the risks of financial abuse, duress or undue influence should be assessed[64].

3. Firms Acting in Consumers' Best Interests

The development of guidance on what it means for a firm to act in the best interests of its customers should, by providing clarity to FSPs of the CBI's supervisory expectations, positively impact consumers[65]. However, such guidance will not address all of the issues facing consumers of financial services and products and the CCPC welcomes the CBI's proposal to consider revisions to the provisions of the Code itself.

In respect of the suggested outline of 'customer best interests' guidance, the CCPC has a number of recommendations[66]:

a) FSPs should be required, when acting in their customers' best interests, to take into account the needs, objectives, knowledge, experience, level of risk tolerance, financial capability, vulnerable characteristics and financial situation of customers in their target market (the

[61] Response to question 20.
[62] One such reason may be stigma. In its report on financial literacy in Ireland, NALA identified that customers will not always want either to be labelled as a 'vulnerable customer' or to declare their identity in accessing support, due to stigma. NALA (2021) 'Financial Literacy in Ireland, Challenges and Solutions' (nala.ie)
[63] CCPC (2022) 'Retail Banking Review - Submission to Department of Finance Public Consultation' (ccpc.ie)
[64] Response to question 20.
[65] Response to Question 4.
[66] Response to Question 5.

Target Market Characteristics) and ensure that their actions further the interests of, and deliver good outcomes for, those customers[67].

b) The CBI should consider setting out its expectations for how FSPs should, as part of the duty to act in best interests, support customers making informed decisions[68].

c) The guidance should be future-proofed, so that harmful practices and behaviour driven by future technological or market developments do not fall outside its scope.

d) The guidance should focus on empowering consumers to make their own decisions about what is in their best interests[69,70].

e) The guidance should identify clear actions which a FSP is expected to take when acting in a customer's best interests. Acknowledging that the Discussion Paper seeks only to set out an outline form, the CCPC would be concerned that, as drafted, certain of the obligations[71] on firms may not sufficiently identify concrete and measurable actions which FSPs must take in order to meet the standard set.

In making this comment, the CCPC acknowledges that the guidance cannot and should not seek to set out an exhaustive list of the actions FSPs should take in order to meet the obligation of acting in the best interests of its customers and that FSPs must retain responsibility for how they meet the obligation. However, the CCPC suggests that the CBI consider identifying a non-exhaustive list of actions which put obligations on FSPs to take identifiable measures to act in the best interests of its customers.

[67] This may mean, for example, that where a FSP intends on selling a product to a wide target market, the FSP would be required by the obligation to act in its customers' best interests, and to consider simplifying the product terms and conditions, whereas it would be reasonable for a FSP marketing a product to a niche and experienced market, to take a different approach.
[68] The Discussion Paper states that acting in the 'best interests' of customers means supporting those customers to make informed decisions. This suggestion is aimed at providing clarification on that proposition.
[69] One way in which the guidance could identify ways in which FSPs can empower consumers, is to require FSPs to demonstrate that they have enabled consumers to access and evaluate important information and supported them in making decisions in their best interests. Feedback on question 22 of the Discussion Paper may also inform.
[70] Such an approach, which re-frames what might be perceived as a paternalistic obligation on FSPs to act in a manner which they consider to be in a customer's best interests, would be in line with the objective of the Assisted Decision Making (Capacity) Act 2015 (lawreform.ie), as amended, which aims to support decision-making and maximise a person's capacity to make decisions.
[71] The CCPC would refer in particular to the requirement that 'The culture, strategy and approach of the firms should centralise the interests of customers', or 'The firm must maintain an appropriate balance between the interests of shareholders and the interests of customers'.

f) Guidance on how to determine customers' legitimate interests should require FSPs to assess the legitimate expectations of the ordinary consumer in the target market of that FSP, considering the Target Market Characteristics[72].

The Discussion Paper identifies relevant factors in the assessment of legitimate expectations as including how an 'ordinary time-constrained consumer' would have understood information provided and 'what an ordinary consumer in the relevant market would have expected'. FSPs may face difficulties in assessing what an 'ordinary' consumer is, having regard to the heterogeneous nature of consumers of financial services and products and focussing on an 'ordinary' consumer may mean that the legitimate expectations of consumers with vulnerable characteristics are not accurately represented.

Clarity could be provided on the concept of an 'ordinary' consumer by considering adopting an approach such as that set out in the UCPD which provides in Article 5(2)(b) that when a practice is directed at a particular group of consumers, its impact should be assessed from the perspective of the average member of the relevant group.

The CCPC therefore recommends that FSPs be required to assess the legitimate expectations of the ordinary consumer in the target market of that FSP, taking into account the Target Market Characteristics.

g) The guidance should identify the outcomes which the CBI expects FSPs will deliver for consumers where they are acting in the best interests of its customers and centralising the interests of customers within their culture, strategy and approach[73]. This ensures that there is clarity for FSPs and consumers as to what positive outcomes the CBI expects should be achieved, that those outcomes are measurable and delivering 'real-world' outcomes and that the guidance establishes a general high standard of positive outcomes regardless of an individual FSP's assessment of good outcomes.

It important that FSPs are subject to an obligation to monitor whether their customers are in fact achieving the expected outcomes and where sub-optimal customer outcomes are

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[72] The FCA has adopted an approach, following stakeholder input, that asks firms to consider the needs of customers in their target market, including characteristics of vulnerability. FCA (2022) 'A new Consumer Duty, Feedback to CP 21/36 and final rules. Policy Statement PS 22/9' (fca.org.uk)

[73] The FCA, in introducing a new 'Consumer Duty' that aims to set higher and clearer standards of consumer protection across financial services, identifies 'four outcomes'. These 'four outcomes' relate to products and services, price and value, consumer understanding and consumer support: FCA (2022) 'A new Consumer Duty, Feedback to CP21/36 and final rules', Policy Statement PS22/9 (fca.org.uk)

identified, FSPs should be under an obligation to take remedial action[74]. This monitoring obligation should include an obligation to incorporate customer feedback[75].

h) The guidance should include an over-arching requirement on FSPs to demonstrate, through monitoring, that the outcomes experienced by consumers with characteristics of vulnerability are on par with those experienced by consumers without characteristics of vulnerability[76].

i) It could provide valuable clarity to include a non-exhaustive list of practices or behaviours which the CBI determines will always be contrary to the obligation to act in the best interests of customers and a list of practices or behaviours which will presumed to be contrary to the obligation to act in the best interests of customers. The Consumer Rights Act 2022 adopts such an approach in respect of unfair contract terms[77].

j) An effective over-arching requirement for FSPs would be to consider whether they are applying the same standards and capabilities to delivering positive consumer outcomes as they are to generating sales and revenue[78].

k) A requirement for FSPs to ensure that financial products are of a high quality, that they meet the interests and objectives and aim to contribute to the financial well-being, of consumers, should be incorporated[79].

l) The requirement for FSPs not to take 'undue advantage of customer behaviour or habits' is welcomed. The statement in the Discussion Paper that FSPs must only integrate behaviour or habits into their approach in a way that is designed to enhance customer outcomes, is an important clarification as to what it means for a FSP to take 'undue' advantage and should be included in the guidance. The provision of examples of behaviour which would constitute

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[74] The FCA's new 'Consumer Duty' sets out a general obligation on FSPs to monitor the outcomes that retail customers are experiencing from their products. FCA (2022) 'A new Consumer Duty, Feedback to CP21/36 and final rules', Policy Statement PS22/9 (fca.org.uk)

[75] The consideration of customer feedback is particularly valuable in evaluating whether FSPs have acted in the best interests of their customers when designing products and customer communications.

[76] This concept of parity of outcomes is part of the FCA's guidance on the fair treatment of vulnerable customers, see paragraph 1.3 of FCA (2021) 'Finalised guidance FG 21/1 Guidance for firms on the fair treatment of vulnerable customers' (fca.org.uk)

[77] See sections 132 and 133 of the Consumer Rights Act 2022 (irishstatutebook.ie). The CBI is empowered to enforce these provisions alongside the CCPC and Consumer Association of Ireland.

[78] The FCA has included a similar clarification in its guidance in FCA (2022) 'Finalised Guidance, FG 22/5 Final non-Handbook Guidance for firms on the Consumer Duty' (fca.org.uk)

[79] This approach would follow the OECD (2022) 'Updated G20/OECD High-Level Principles on Financial Consumer Protection' (oecd.org)

taking 'undue advantage' of customer behaviour or habits would be particularly helpful in assisting FSPs and consumers to understand this obligation[80].

m) Guidance should include a pro-active obligation on FSPs to consider how they can utilise behavioural insights to improve financial outcomes for consumers. Having regard to the power and information asymmetry between FSPs and consumers, such an obligation is necessary in order for FSPs to meaningfully deliver on acting in the best interests of their customers. As part of the obligation consideration should be given to when FSPs should be mandated to carry out testing on how interventions informed by behavioural insights willimprove financial outcomes.

   Research, such as that commissioned by the CCPC in conjunction with the Economic and Social Research Institute (ESRI) relating to savings[81], and conducted by the CBI relating to mortgage refinancing[82], illustrates how financial providers can apply behavioural insights to communications and improve financial outcomes. Future CBI research in behavioural economics will assist FSPs in using behavioural insights to enhance financial outcomes. The CBI should also consider developing basic guidance for FSPs on the issue, as the Dutch Authority for the Financial Markets have done[83].

n) Guidance relating to contract interpretation should be consistent with existing consumer protection law. The outline of the guidance provides, in respect of contract interpretation, that where 'material ambiguity arises, this must be interpreted in favour of customers'. Section 135 of the Consumer Rights Act 2022[84] does not require ambiguity about the meaning of a term to reach a threshold of materiality before being interpreted in favour of a

[80] The CCPC would suggest including example practices such as communications designed to manipulate consumer choice to the benefit of the FSP and taking advantage of consumer inertia or status quo bias.
[81] For example, this research indicated positive consumer outcomes from reframing the 'rainy day' goal on a savings application form to an 'unexpected need' savings goal. Timmons, S, Robertson, D & Lunn, P (2022) "Combining nudges and boosts to increase precautionary saving: A large-scale field experiment" See also the guide produced by the CCPC in conjunction with the ESRI (2022) 'Improving Financial Well-being through Short-term Savings - a guide for providers on how they can use the recommendations to help their customers save' (ccpc.inventise.ie)
[82] Byrne, S, Devine, K & McCarthy, Y (2022) 'Interrupting inertia: evidence from a mortgage refinancing field trial', Economic Letter Vol. 2022, No. 9, (centralbank.ie)
[83] Dutch Authority for Financial Markets (2021) 'Consumer behaviour: understanding, guiding and measuring. The behavioural insights that are most relevant to financial firms' (afm.nl)
[84] Section 135(1) of the Consumer Rights Act 2022 provides: "Where there is doubt about the meaning of a term of a consumer contract, the interpretation that is most favourable to the consumer shall prevail".

consumer[85]. In the interests of the consistency and success of the overall consumer protection framework, the guidance should avoid creating any conflict.

o) Guidance should, to ensure consumer autonomy is respected, acknowledge that FSPs are not expected to prevent a resolute customer from making a decision which the FSP considers is contrary to that customer's interests, so long as the FSP has taken steps to ensure that the consumer understands the risks attaching to that decision[86].

Clarification should be provided on how the proposed guidance on FSPs acting in the best interests of its consumers would interact with the Central Bank (Individual Accountability Framework) Act 2023 and more specifically, what the responsibility individuals identified within the Act will have to ensure compliance with the obligations set out in the guidance.

4. Informing Effectively

The CCPC recognises the significant challenges relating to the regulatory objective of informing effectively. These include 'information overload', identifying what is and is not 'key' information, consumers' lack of experience of financial products, the increasing complexity of financial services, constraints on consumer attention[87], the differing effects of disclosure from consumer to consumer and situation to situation[88] and and the potential for information disclosure and warnings to have unintended consequences[89].

An increasing body of research evidences how the application of behavioural economics to information disclosure, design and presentation can assist consumers in making better and more informed decisions, by considering how consumers process information, what common mistakes they make and how habits and biases can materially affect their choices[90].

Existing and future research in this area should provide an evidential basis for the introduction of specific rules into the revised Code and/or guidelines which mandate FSPs to provide information in a way which has been shown to improve consumer outcomes[91]. For example, research conducted by

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[85] Section 10(2) of the Consumer Insurance Contracts Act 2019 (irishstatutebook.ie), similarly to section 135 of the Consumer Rights Act 2022, does not apply a materiality threshold.
[86] The FCA has included a similar clarification in its guidance in FCA (2022) 'Finalised Guidance, FG 22/5 Final non-Handbook Guidance for firms on the Consumer Duty' (fca.org.uk)
[87] Australian Securities and Investments Commission (ASIC) & the Dutch Authority for the Financial Markets (AFM) (2019) 'Disclosure: Why it shouldn't be the default' (asic.gov.au)
[88] Ibid.
[89] Ibid.
[90] FCA (2013) 'Applying behavioural economics at the Financial Conduct Authority, Occasional Paper No.1' (fca.org.uk)
[91] Response to question 16.

the CBI in respect of mortgages[92] identified how setting out personalised euro estimates of savings and sending reminder letters could overcome consumer behavioural biases and improve mortgage re-financing rates. The revised Code should require FSPs to set out personalised euro estimates and send reminder letters when contacting a consumer pursuant to section 6.5(g) of the Code[93, 94].

It is acknowledged that any new rules in the revised Code should be based on a solid evidential basis of what solutions can drive optimal consumer outcomes, particularly as consumer behaviour can deviate from what could be considered rational[95] and consumer behaviour may only be part of any identified problem[96].

In relation to 'smart' disclosures, an evidential basis for the effectiveness of such types of disclosure is needed and testing should be conducted. Subject to such testing, 'smart' disclosures could potentially aid consumer comprehension and improve financial literacy. However, such disclosures will not be accessible to those with low levels of digital literacy[97].

The CCPC acknowledges that it is not possible to identify specific rules in the Code relating to information provision which will deliver better consumer outcomes across all regulated products, FSPs, consumers and situations, as they are too numerous and diverse.

For this reason, FSPs should be subject to an express obligation, not only to refrain from taking advantage of consumer behaviour or bias when providing or presenting information[98], but also be subject to a positive obligation to use behavioural insights to improve consumer understanding[99] and contribute to positive financial outcomes[100].

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[92] Byrne, S, Devine, K & McCarthy, Y (2022) 'Interrupting inertia: evidence from a mortgage refinancing field trial', Economic Letter Vol. 2022, No. 9, (centralbank.ie)
[93] Response to question 18.
[94] A behavioural study conducted by the European Commission also offers some potential evidenced-based insights which could be considered for inclusion in the revised Code. For example, experiments showed positive outcomes from the use of side-by-side comparisons and colour coding, when offering alternative products. European Commission (2019) 'Behavioural study on the digitalisation of the marketing and distance selling of retail financial services, Final Report' (europa.eu)
[95] S, Byrne, Devine, K & McCarthy Y (2022) 'Behavioural Economics and Public Policy-Making' (centralbank.ie)
[96] The FCA recognises in its examination of behavioural economics that '… consumers' behaviour are only part of the story, albeit essential. We need to consider other factors that shape market outcomes and firms' business models – structural and other competition issues, information problems and misaligned objectives'. FCA (2013) 'Applying behavioural economics at the Financial Conduct Authority, Occasional Paper No.1' (fca.org.uk)
[97] Response to question 17.
[98] For example by emphasising benefits over risks or making prices structures intentionally difficult to understand.
[99] Response to question 16.
[100] The European Supervisory Authorities (ESAs) state that 'providers should be required to use behavioural insights to create effective product and service information, and should include communications to consumers as an integral part of the product or service design process, taking into account the needs of all type of consumers including vulnerable consumers', ESAs (2022) 'Joint European Supervisory Authority Response to the European Commission's February 2021 Call

In line with the general proposition that the effectiveness of information provision should be assessed based on evidence, consideration should be given to when FSPs should be mandated by the revised Code to test information disclosed, including timing of disclosure and format, to ensure that consumers in the target market can understand, access easily and make informed decisions[101,102]. CBI should collect the data which FSPs generate on testing and make it public in a collated and anonymised form. The data can then be used to inform best practice in effective information disclosure and where appropriate, future rules in the Code relating to provision of information.

CCPC Money Tools

The CCPC Money Tools website provides consumers with impartial comparison and calculator tools to aid consumers in managing their money across a range of financial products[103]. The comparison tools available are particularly important in aiding switching.

Consumers could greatly benefit from increased awareness and use of the CCPC Money Tools website[104]. The CCPC recommends that the existing regulatory requirements relating to the CCPC website[105] be extended by additional requirements in the Code for FSPs with relevant products to include a link to the CCPC Money Tools website prominently on the homepage of their website and apps.

for Advice on digital finance and related issues: regulation and supervision of more fragmented or non-integrated value chains, platforms and bundling of various financial services, and risks of groups combining different activities' (europa.eu)

101 See paragraph 204, ESAs (2022) 'Joint European Supervisory Authority Response to the European Commission's February 2021 Call for Advice on digital finance and related issues: regulation and supervision of more fragmented or non-integrated value chains, platforms and bundling of various financial services, and risks of groups combining different activities' (europa.eu), for comments of the ESAs in support of testing of consumer information by FSPs.

102 Response to question 17.

103 Money Tools (ccpc.ie)

104 The findings of the 2017 mortgage switching research showed that despite limited awareness in advance of the CCPC mortgage comparison tool, respondents were positively surprised by and interested in the tool. Central Bank of Ireland, 2017, 'Mortgage Switching research', CBI (2017) 'Mortgage Switching Research' (centralbank.ie)

105 The Code and Central Bank (Supervision And Enforcement) Act 2013 (Section 48(1)) (Insurance Requirements) Regulations 2022 require FSPs to provide consumers with relevant links to the CCPC website in certain mandated communications relating to loans and insurance. Additionally, the Code requires mortgage providers to include a link to the relevant section of the CCPC's website relating to switching lenders or changing mortgage type, on their website and the Code of Conduct on Mortgage Arrears includes reference to the CCPC website in the Industry Standard Financial Statement. S.I. No. 126/2022 – (irishstatutebook.ie)

Early repayment charges in the mortgages market[106]

Given the complexity of early repayment charges[107], the increased prevalence of longer fixed rate mortgages[108], and the identification of uncertainty regarding the costs of switching as a barrier to switching, it is vital that consumers are provided with greater transparency on early repayment charges.

Although provision 4.25 of the Code and the European Union (Consumer Mortgage Credit Agreements) Regulations 2016[109] set out certain rules in respect of informing consumers about early repayment charges, FSPs are not required under these provisions to offer consumers worked examples of the early repayment charges payable at representative intervals during the term of the fixed rate, before consumers enter into a fixed rate[110]. Adoption of this approach could, in contrast to providing a worked example for redemption at a non-specified point in time, provide consumers with a greater understanding before entering into a fixed term of the range of early repayment charges which might apply[111]. The CBI should consider adopting this approach in the revised Code, while retaining the obligation from the Code on FSPs to set out example early repayment charges in monetary terms and specific to the consumer.

The CCPC notes that the Mortgage Credit Directive included an option for Member States to provide that early repayment compensation does not exceed a certain level. Ireland chose not to set a monetary ceiling for early repayment charges in transposing the Directive, unlike those that exist in other jurisdictions[112].

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[106] Response to question 18.

[107] Many early repayment charges are calculated based on a number of factors set out in a mathematical formula, which compounds consumer difficulty in assessing the amount of early repayment charge that may apply at any given time.

[108] For example, Finance Ireland were first to offer 20-year fixed rate mortgages – The Irish Times (2021) 'Finance Ireland first to offer 20-year fixed rate mortgages' (irishtimes.com)

[109] European Union (Consumer Mortgage Credit Agreements) Regulations 2016 (the Mortgage Credit Regulations): S.I. No. 142/2016 - (irishstatutebook.ie).

[110] Based on the wording which refers to a single example only, i.e. 'a worked example' in provision 4.25 of the Code and 'an illustrative example' in Schedule 2, Part B of the Mortgage Credit Regulations.

[111] The FCA utilises a similar approach in the FCA Handbook. MCOB 5.6.84 requires the provision of 'example cash amounts of any early repayment charges indicating the range of charges that apply over the period during which such charges apply'. MCOB 5.6.86 requires that, where application of the rule would result in more than three cash amounts being shown, the examples can be restricted to three examples which 'must be representative of the full range of charges that apply and not be limited to the lowest charges that apply'. The FCA also sets out rules on how FSPs should calculate the example cash amounts in MCOB 5.6.88, including what interest rates should be used for the calculation of the examples, which may be instructive for the CBI to consider.

[112] For example, in Luxembourg, subject to conditions, the early repayment compensation may not exceed the value corresponding to six months interest on the capital repaid, calculated at the borrowing rate applicable to the mortgage credit agreement on the day of early repayment. See Commission de Surveillance du Secteur Financier (CSSF) (2020) 'Mortgage credit agreements'

Credit cards, minimum repayments and new forms of credit

Research by the Irish League of Credit Unions indicated that 18% of credit card consumers will only make the minimum repayment each month[113]. Considering that personal credit card spending is increasing in Ireland[114] and in 2020 some 26.8% of all households had credit card debt[115], this is a significant issue. Minimum repayments might only be a little higher than the interest each month, so repeatedly making minimum repayments on credit card debt means that the amount owed will reduce very slowly and the total interest costs are higher, potentially leading a consumer into spiralling levels of indebtedness[116], [117].

Research indicates that when people are shown the minimum repayment amount at the point of choosing a repayment option, it leads them to pay less than they otherwise would[118]. It has been suggested that the presence of the minimum repayment option leads them to 'anchor' their repayment decision on that amount[119]. The FCA has conducted research on this issue and is considering consulting on changing rules to mandate the removal of 'the minimum repayment anchor'[120].

The CCPC is aware that Bank of Ireland have recently published findings from a campaign in which they contacted customers who were only making minimum payments to suggest alternative ways to manage credit card debt[121]. The findings showed that customers who received the advice were twice as likely to improve their finances.

The CCPC recommends that the CBI consider building on the existing body of research on the negative impacts of the presence of credit card minimum repayment amounts on credit card statements and repayment journeys, to potentially inform new rules in the revised Code. The CCPC further

[113] Irish League of Credit Unions (2023) 'Imagine More - Monster Loans - The Irish League of Credit Unions' (credit union.ie)
[114] As noted in the Retail Banking Review, by reference to CBI Credit and Debit Card Statistics, personal credit card spending during the month of September 2022 was up 25.2% from spending in September 2017. See Department of Finance (2022) 'Retail Banking Review' (gov.ie)
[115] See Central Statistics Office (CSO) 'Debt and Credit' - CSO - Central Statistics Office. More recent research conducted by the Irish League of Credit Unions suggests that this figure may be higher, as its survey found that 51% of Irish adults own credit cards, 'Imagine More - Monster Loans - The Irish League of Credit Unions' (credit union.ie)
[116] For context, credit card providers will usually provide consumers with a monthly statement which sets out the full balance and the minimum amount which must be paid. Consumers then decide each month how much of their credit card debt to repay.
[117] Research by the Irish league of Credit Unions also indicated a significant lack of understanding amongst credit card customers of how interest is applied. 'Imagine More - Monster Loans - The Irish League of Credit Unions' (credit union.ie)
[118] Stewart, N., (2009) 'The cost of anchoring on credit card minimum payments', Psychological Science, 20, 39-41, (warwick.ac.uk) and FCA (2018) Research Note, 'Helping credit card users repay their debt: a summary of experimental research (fca.org.uk)
[119] Ibid.
[120] See FCA (2018) 'FCA publishes outcome of testing behavioural remedies to address under repayment of credit card debt' (fca.org.uk)
[121] See Bank of Ireland (2021) 'Irish consumers take action on long-term credit card debt' (bankofireland.com)

recommends that the CBI consider introducing rules in the revised Code which mandate FSPs to engage with consumers with long-term credit card debt to advise them of ways to reduce their indebtedness.

The CBI should consider the changing landscape of new, and particularly online, forms of credit provision. These are often easy to access and could result in over reliance by consumers. Consumers should be informed about the risks of taking rotating credit facilities and digitally provided short-term credit.

Provision of information in hyperlinks

One relevant practice which has come to the attention of the CCPC is that of providing consumers with a hyperlink, supposedly to mandatory disclosures but which opens into a further menu of options from which the consumer has to select. In line with the 'Opinion on Disclosure through Digital Means' issued by the European Banking Authority (EBA)[122], FSPs should be required to ensure that hyperlinks are 'referring consumers directly to the relevant information on the click-through page' and that clarification regarding use of hyperlinks will be increasingly important as the proposal to amend the rules on distance marketing of financial services provides that FSPs can 'layer' pre-contractual information[123]. The CCPC recommends that the revised Code include best practice guidance on utilising hyperlinks in the mandatory disclosure of information[124].

5. Pricing

Pricing should be fair and transparent for consumers. The considerations which the CCPC has set out above in relation to the theme of 'Informing Effectively' apply equally to a consideration of how FSPs can improve the transparency of pricing for consumers. The CCPC identifies price as one of the key attributes of a financial product or service which consumers should be empowered to understand and evaluate, so that they can choose a financial product which is affordable to them not just at the moment of purchase, but in the case of products such as mortgages or investments, over an extended period. In addition, FSPs should not be permitted to exploit consumer behaviour, habit or

[122] EBA (2019) 'EBA publishes Opinion on disclosure to consumers buying financial services through digital channels' (europa.eu)
[123] See European Commission's (2022) Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/83/EC concerning financial services contracts concluded at a distance and repealing Directive 2002/65/EC (europa.eu) - 'Layering' is not defined in the operative text, but described in Recital 22 of the Proposal as 'the possibility to present detailed parts of the information through pop-ups or through links to accompanying layers'.
[124] Response to question 16.

vulnerabilities to employ unfair pricing practices and, as noted above, this should be reflected in the guidance on what it means for FSPs to act in a customer's best interests[125].

The Code should consider price in the context of value for money and obligate FSPs, when acting in the best interests of its customers, to demonstrate that they have considered whether the price they are charging represents fair value for consumers[126].

The practice of defaulting non-engaging mortgage consumers, at the end of a fixed term, on to a variable interest rate which may be higher than the fixed rates offered by that provider, may take advantage of high levels of consumer inertia and disengagement in the mortgages market and lead to unfair outcomes for consumers. The CCPC understands that the results of the recent CBI mortgage refinancing research project conducted by the CBI, as noted above, which trialled interventions to overcome behavioural biases may be used to update guidance in respect of mortgages. It is noted that the Department of Finance has commissioned the ESRI to trial interventions in a range of banking products, including mortgages. The outcomes of these experimental trials may provide a basis for enhanced measures to boost the capacity of consumers to refinance their mortgage. However, it is recommended that the CBI examines the possible loyalty costs to consumers in the mortgage market and identifies measures in the Code, or supplemental to it, to enhance consumer welfare in the mortgage market[127]. The CBI should also, as part of this examination of loyalty costs in the mortgages market, consider the differentials between offers made to new and existing mortgage customers and whether they are appropriate.

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[125] Response to question 14.

[126] Such an approach would align with one taken by the FCA pursuant to which the regulator expects FSPs to assess whether there is a reasonable relationship between the price paid for a product or service and the overall benefit which that product delivers to a consumer, considering factors such as the potential pay-out or return, quality of the product or service and how well it meets the consumers' needs. FCA (2022) 'A new Consumer Duty, Feedback to CP 21/36 and final rules. Policy Statement PS 22/9' (fca.org.uk)

[127] The CCPC previously recommended, in the Retail Banking Review, that the CBI examine the loyalty costs arising from consumers rolling over onto higher mortgage interest rates at the expiry of a fixed term and identify measures to address this in the revised Code on the basis that the application of default interest rates in this manner can lead to unfair consumer outcomes, particularly for those who are unable to engage with their bank on expiry of a fixed rate period, for reasons which may include a lack of knowledge or understanding of the benefits of such engagement or low financial literacy. Those consumers may pay more for their mortgage where their risk profile and the cost to the provider of servicing the mortgage has not changed. That additional cost to the consumer may, considering the long-term nature and high value of many mortgages, be significant.
CCPC (2022) 'Retail Banking Review - Submission to Department of Finance Public Consultation' (ccpc.ie)

6. Financial Literacy

The CCPC has a statutory role in financial education in the Competition and Consumer Protection Act 2014[128]. The CCPC also has obligations under the Payment Accounts Regulations 2016[129] to provide an online comparison of personal current accounts.

The CCPC carries out these functions in a variety of ways[130], including by providing consumers with impartial information, comparison and calculator tools relating to financial products on its website[131], carrying out public awareness campaigns on personal finance topics, developing a number of financial education initiatives including junior cycle and leaving cert applied school programmes and workplace programmes, carrying out advocacy in the area[132] and conducting and commissioning research[133].

The responsibility and risk for financial decisions can have a major impact on an individual's life. This response discusses a number of challenges which consumers face in making these decisions, including complexity of financial products, increased digitalisation and lack of experience or knowledge. Financial education, as well as digital financial literacy, plays an important role in helping consumers overcome these challenges and ultimately, achieve a state of financial well-being, which should include the ability to have financial comfort now and into the future[134].

The CCPC welcomed the recommendation in the Retail Banking Review for the Department of Finance to seek to ensure that all stakeholders work together for Ireland to meet the requirements of the OECD's Recommendation on Financial Literacy[135] and the OECD High-Level Principles on Financial

[128] Section 10(1)(j) of The Competition and Consumer Protection Act 2014 provides that the CCPC shall promote the interests of consumers by '(i) providing information in relation to financial services, including information in relation to the costs to consumers, and the risks and benefits associated with the provision of those services, and (ii) promoting the development of financial education and capability'.
[129] European Union (Payment Accounts) Regulations 2016 S.I. No. 482/2016 - (irishstatutebook.ie)
[130] Response to question 21.
[131] See Money Hub - CCPC Consumers (ccpc.ie)
[132] For example, the CCPC has made submissions to the National Council for Curriculum and Assessment, see CCPC (2021) 'CCPC submission to the NCCA in response to updating Aistear' (ccpc.ie)
[133] For example, see Timmons, S, Robertson, D & Lunn, P (2022) "Combining nudges and boosts to increase precautionary saving: A large-scale field experiment" Papers WP722, Economic and Social Research Institute (ESRI)
[134] In 2018, the CCPC published 'Financial Capability and Well-being in Ireland' (ccpc.ie) which found that most consumers in Ireland have the means to cover day-to-day costs and their current financial commitments. However, financial well-being includes the ability to have financial comfort now and into the future. A significant number of consumers had little financial resilience beyond meeting current commitments and 52% of people meeting their commitments have little provision against financial shocks. In addition, while most consumers were doing reasonably well in terms of their over financial well-being, they had low levels of resilience for the future, including in retirement. The report found a positive effect of having received financial education as a child.
[135] See, OECD (2020) 'OECD/LEGAL/0461' (oecd.org)

Consumer Protection[136], including through the development of a national strategy on financial literacy[137]. As recommended by the CCPC in its submission to the Retail Banking Review[138], such a strategy should ensure coordination between the various agencies with a role in supporting the development of financial literacy and education and should be designed to promote financial inclusion as well as broader financial education outputs. The CCPC is engaging with the Department of Finance and others in this context. It is expected that during 2023 progress will be made on a Department of Finance steered national strategy.

The CCPC expects that the strategy would identify the CBI as a key stakeholder, given its roles both as Central Bank and as Financial Services Regulator. By virtue of these broad and important roles, the CBI inevitably furthers financial education as it engages with a multitude of stakeholders, and this is recognised. Consumer protection will work best when consumers are both educated and empowered in their engagement with financial services. The Code today helps to inform and educate consumers through disclosure, suitability assessment and other requirements. It is recognised that the imprint of the CBI in financial education is defined by its functions and the necessity to balance its broad set of legislative and supervisory roles. Others, such as the CCPC, may directly as a core activity seek to develop financial education. An appropriate and well-co-ordinated national strategy can identify the space where CBI has significant financial education impacts today, and possible further steps by CBI.

The CCPC does not see the Code as directly engaged with financial education per se, but it furthers an environment in improved financial capability which will produce societal benefits. Improving the regulatory landscape for instance in relation to vulnerability, digital navigation or behavioural insights will contribute in this regard. The concept of 'Acting in the Best Interests' of consumers by definition implies a consideration of financial capability in the target market. In the broadest sense the Code can set its expectation that FSPs should contribute positively in this regard to the financial capability of their customers.

7. Availability and Choice

Competitive markets are essential to deliver availability and choice of financial services for consumers. Due to the significant risks inherent in many financial services, the objective of competitive markets must be achieved within the framework of prudential regulation. Strong consumer protection

[136] See G20/OECD (2022) 'High Level Principles on Financial Consumer Protection, G20/OECD High-Level Principles on Financial Consumer Protection' (oecd.org)
[137] Response to question 22.
[138] See, CCPC (2022) 'Retail Banking Review - Submission to Department of Finance Public Consultation' (ccpc.ie)

regulation can, in addition, ensure that consumer interests are protected and that there is a level playing field for providers to compete on[139]. A lack of competition and new entry into financial services markets in Ireland will have significant negative impacts for consumers.

There are a number of key indicators of a competitive market. The greater the degree of concentration in a market the higher the risk that incumbent firms will not actively compete with a result that there will be less innovation and higher prices. Markets that have little or no new entry are likely to become uncompetitive over time.

In its submission to the Retail Banking Review[140], the CCPC set out its concern that increased concentration in the retail banking sector in Ireland is likely to have a detrimental effect on competition, leading to poorer outcomes for consumers of retail banking services. The CCPC noted that although there has been entry into many of the product markets in which retail banks are active, by credit unions, non-bank lenders and fintechs, these entities have generally competed to date in respect of a limited range of products or services. Accordingly, their ability to constrain incumbent full service banks is limited. On foot of its concerns, the CCPC recommended that the mandate of the CBI be amended to include competition objectives and that the revised Code should set out the CBI's approach to promoting fair competition in financial services.

As the Central Bank noted in its submission to the Retail Banking Review in 2022, 'Concentration concerns can arise at a consumer level in terms of access and choice to the range of products and services they need, as well as the number and mix of firms. Concentration considerations can also arise in terms of the levels of diversification in firms' business models and asset exposures.[141]' It is clear that increased concentration in financial services markets can lead to significant negative outcomes.

Concentration concerns relating to availability and choice can be mitigated in part by consumer protection rules. The *Review of Differential Pricing in the Private Motor and Home Insurance Markets* led to the imposition of new regulations on insurance firms in part due to concerns regarding unfair pricing practices. The CCPC supported these measures due to the likely negative impacts arising from the practice of firms 'price walking' consumers over time. The CCPC also welcomed the CBI's decision

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[139] The OECD states 'Fair, efficient and competitive markets should be promoted in order to provide consumers with greater choice amongst financial products and services, create competitive pressure on providers to offer quality and competitively priced products, enhance innovation, foster inclusion and maintain high service quality'. See G20/OECD (2022) 'High Level Principles on Financial Consumer Protection, G20/OECD High-Level Principles on Financial Consumer Protection' (oecd.org)

[140] See, CCPC (2022) 'Retail Banking Review - Submission to Department of Finance Public Consultation' (ccpc.ie)

[141] CBI (2022) 'Perspectives on the Evolution of Retail Banking in Ireland' (centralbank.ie)

to retain new business discounts as a means to encourage competition in those insurance markets while ending the practice of price walking. These regulations provide a recent example of how the CBI can support availability and choice through its regulatory activities.

Financial services legislation, such as the Payment Services Directive (PSD2), has sought to facilitate new entry into the banking market to bolster innovation and consumer choice while maintaining a level playing field for firms. The CCPC understands that the forthcoming Open Finance framework will similarly seek to ensure entry into a wider range of financial services.

Although the CCPC maintains that the decision not to include the CCPC's recommendation that the mandate of the CBI be amended in the Retail Banking Review[142] is a missed opportunity, the CCPC notes that a number of the recommendations in the Retail Banking Review seek to strengthen the CBI's focus on competition. In particular, the CCPC notes the recommendation that the Department of Finance should prepare heads of a bill in 2023 to amend section 50 of the Central Bank (Supervision and Enforcement) Act 2013 to require the Central Bank to carry out and publish assessments of the costs and benefits of regulations it proposes to make under section 48 of the 2013 Act, where appropriate. The assessments will consider the potential impacts of the proposed regulations on consumers and fair and sustainable competition, amongst other issues.

Within the context of this proposed strengthened focus and the acknowledgement by the CBI in the Discussion Paper of the important role of competition in offering consumers' greater choice, fostering innovation and driving better service quality across all financial services, the review of the Code offers an important opportunity to consider how regulation can support competition in financial services, and in turn, availability and choice for consumers.

Consumer engagement

Consumer engagement is key to securing effective competition in markets. Active, engaged and reasonably well-informed consumers can drive competition by frequently shopping around and switching providers to find the financial products and services that best suit their needs[143]. As a result of this exercise of consumer choice, FSPs should have to improve their offerings to stay competitive and in principle, consumers are rewarded by the supply of innovative products, that are of good quality and are offered at the lowest appropriate price[144]. It is key to this process that consumers are

[142] Department of Finance (2022) 'Retail Banking Review' (gov.ie)
[143] Lowe, J. (2017) 'Consumers and competition: Delivering more effective consumer power in retail financial markets (fs-cp.org.uk)
[144] Ibid.

capable of comparing and judging alternative financial products and services[145] and it follows that promoting the accessibility and clarity of information, and the empowerment and engagement of consumers, are key to driving competition[146] and fostering consumer choice.

The CCPC has identified some specific issues relevant to consumer engagement which it believes can negatively impact on availability and choice and should be considered in the revised Code:

a) High search costs: Certain features of financial products, including complexity, profileration of products and lack of transparency in pricing and quality tend to make searching for financial products more difficult and possibly more costly for consumers than for certain other products[147]. These higher search costs in turn make exercising consumer choice more difficult[148] and can impede consumers from shopping around and switching.

   The revised Code can consider ways to make it easier for consumers to search for financial products, thereby reducing search costs and aiding consumer choice.

b) Complexity/difficulty understanding information about financial products: The capability of consumers to obtain substantial benefits from competition can be reduced where they are faced with more complex products[149]. Research indicates that consumers with high levels of numeracy and educational attainment performed only slightly better than those without when judging such products[150].

   Complexity can also disincentivise consumers from even trying to judge or compare products, because, as noted by the FCA, complexity can make consumers 'feel that financial decisions are 'beyond them' and so they follow the path of least resistance'[151], which may include staying with an existing provider that does not meet their needs or is not competitive on price.

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[145] Vickers, J. (2004) 'Economics for Consumer Policy', in Proceedings of the British Academy (Vol. 125, pp. 287-310). Oxford: Oxford University Press/British Academy (thebritishacademy.ac.uk)
[146] Lowe, J. (2017) 'Consumers and competition: Delivering more effective consumer power in retail financial markets (fs-cp.org.uk)
[147] OECD (2010) 'Consumer Protection and Financial Innovation: A Few Basic Propositions' (oecd.org)
Bikker, J. A. & Spierdijk, L (2009) 'Measuring and explaining competition in the financial sector' (uu.nl)
[148] OECD (2010) 'Consumer Protection and Financial Innovation: A Few Basic Propositions' (oecd.org)
[149] Lunn, P., Bohacek, M., Somerville, J., NíChoisdealbha, Á., & McGowan, F., (2016) 'Price Lab: An Investigation of Consumers' Capabilities with Complex Products (esri.ie)
[150] Ibid.
[151] FCA (2017) 'FCA Mission: Our Approach to Competition' (fca.org.uk)

It is clear that most financial products can be considered complex. Disclosure of the features of financial products alone may not be sufficient to assist consumers in making good decisions and in line with the recommendations made by the CCPC above, testing and monitoring is needed to understand whether disclosures in fact enhance consumer outcomes[152]. Research provides support for the promotion of policies that help consumers identify better deals in complex markets and more specifically supports high-quality independent choice engines, including price comparison sites[153]. This further supports our recommendation that FSPs be required to include a link to the CCPC Money Tools website prominently on the homepage of their website and/or app.

c) Consumer inertia and other behavioural biases which may impede consumers from actively engaging in financial services

There is a growing awareness of how consumer behavioural traits, including status quo bias, inertia, inattention and choice overload, can prevent or impede consumers from engaging in markets[154]. This can be exploited by FSPs making it more difficult for the consumer to know whether they are getting a good or bad deal, to shop around and compare, or to switch. These practices can weaken competition in the market. Such exploitative practices could include price discrimination where existing customers pay higher prices than new customers[155] and increasing the complexity of products to reduce competitive pressure[156].

Consumer behavioural biases and the commercial practices which seek to take advantage of them must be considered within the context of promoting greater availability and choice for consumers in financial markets. This consideration includes, as referred to above, clarifying that the obligation on FSPs to act in the best interests of its customers includes not only an

[152] ASIC & AFM (2019) 'Disclosure: Why it shouldn't be the default' (asic.gov.au)
[153] Lunn, P., Bohacek, M., Somerville, J., NíChoisdealbha, Á., & McGowan, F., (2016) 'Price Lab: An Investigation of Consumers' Capabilities with Complex Products (esri.ie)
[154] See Lowe, J. (2017) 'Consumers and competition: Delivering more effective consumer power in retail financial markets (fs-cp.org.uk) table 4.1, which sets out a list of consumer behavioural traits that contribute to firms' market power.
Byrne, S, Devine, K & McCarthy, Y (2022) 'Interrupting inertia: evidence from a mortgage refinancing field trial', Economic Letter Vol. 2022, No. 9, (centralbank.ie), and
Byrne., S & Kelly, J. & Singh Pratap, A. (2022) 'Engagement, switching and digital usage in consumer insurance markets: who does it and why it matters' (centralbank.ie)
[155] See Lowe, J. (2017) 'Consumers and competition: Delivering more effective consumer power in retail financial markets (fs-cp.org.uk)
[156] Lunn, P., Bohacek, M., Somerville, J., NíChoisdealbha, Á., & McGowan, F., (2016) 'Price Lab: An Investigation of Consumers' Capabilities with Complex Products (esri.ie) In addition, as noted above, the CBI (2021) 'Review of Differential Pricing in the Private Car and Home Insurance Markets' (centralbank.ie) demonstrated the extent to which consumer inertia can be exploited by FSPs.

obligation not to take advantage of consumer behaviour or habits, but also an obligation to consider how FSPs can use behavioural insights to improve financial outcomes.

<u>Switching</u>

Barriers to switching can impede a consumer's ability to access the financial products and services that best meet their needs and can dis-incentivise FSPs from lowering prices, innovating or improving the quality of their products or services. In addition, barriers to switching can constitute barriers to entry, as new entrants to a market face difficulties growing their customer base and thereby generating a sustainable return on investment. Switching is therefore a clear way to unlock greater competition and choice in the market.

Backed up by the traditionally low rates of switching in Ireland, despite evidence showing that consumers can, in certain cases, stand to make significant savings[157], the CCPC is of the view that there is considerable work to be done in improving the conditions for, and rates of, switching in Ireland.

The Department of Finance, in the Retail Banking Review, recommended that it would work with the CBI in 2023 to identify measures and initiatives to build consumer knowledge and confidence in the switching process for mortgages and other retail banking products, including taking actions that make switching easier.

To the extent it is not already planned, the CCPC recommends that the CBI should consider new options in relation to mortgage transfer or switching between FSPs, where different interest rates are offered. In reality today there is no mortgage 'switching' – rather consumers refinance, pay off one loan and obtain a new one. The consumer journey is complex, confusing, drawn out and frustrating, as identified in research. We recognise that the Code has been amended in the past to encourage switching, through greater information requirements on available choice required of lenders at certain times in the year. However the CBI should examine each step of the mortgage journey and consider options to remove frictions in the process.

One option may be to regulate for where an existing and performing mortgage is in place, that a direct transfer of the mortgage to another lender may happen, without any new credit worthiness assessment. This would be where certain criteria are met - for instance a clear record of full payments

[157] For example, Central Bank research found that 3 in 5 consumers could save €10,000 over the lifetime of their mortgage by moving to the best available rate in the market. See, Byrne, S., Devine, K., and McCarthy, Y (2020) 'Room to improve: A review of switching' Vol. 2020, No. 12. (centralbank.ie)

to date by the borrower. Facilitating ease of switching in straight forward 'performing' scenarios should become a more straight forward process.

The CCPC believes that the CBI should consider in its regulatory activities how the full range of conveyancing activities can act as a barrier to switching. This would allow the potentially signifcant consumer benefits from reduced barriers in this area to be fully factored in to measures intended to better facilitate e-conveyancing services such as eRegistration as introduced by the Property Registration Authority, developments in the mortgage market itself as well as with a view to any reform of the legal professions in Ireland[158].

In order to further support customer choice, the CCPC also recommends that the CBI reviews how mortgage providers pass the cost of a re-valuation of the mortgaged property on to consumers when switching or topping up their mortgage (this is a charge unrelated to a separate surveyor service which consumers can avail of when buying a property and is of consumer value). The re-valuation is of limited or no value to the customer, and such often hidden costs are likely to constitute a barrier to switching[159]. Mortgage providers could absorb the valuation fee as a cost of obtaining the business of that customer and be incentivised to find more innovative and efficient ways to confirm a house value.

The stated goal of any policy measure relating to switching must be that the average consumer will switch where a significant financial benefit exists, recognising that the priority focus should be on products where consumers can realise the greatest benefits from switching, such as mortgages. The CCPC recommends that the CBI monitor the outcome of actions taken to improve rates of switching, by reference to that goal.

Although in recent times it could be said that consumers are unlikely to experience significant financial benefit from switching current accounts, the consumer's choice of current account provider can influence their choice of provider for other, more high-value financial products and as consumers rely on current accounts for day to day transactions, it is important that they can switch when dissatisfied with their provider's current account offering. After a long period of very low rates of switching in that market, the withdrawal of KBC and Ulster Bank has led to mass migrations in current accounts. Research carried out by the CCPC in 2022 relating to current account switching, indicated low levels

[158] The CCPC has advocated for the introduction of a new profession of conveyancer to introduce greater competition into the market. The CCPC has also advocated for the introduction of multi-disciplinary practices which could in time allow for 'one stop shop' delivery of services such as conveyancing transactions.

[159] In the 2017 mortgage switching research carried out by the CBI, 26% of all mortgage holders who had switched identified that a lower cost process would make the switching experience smoother. The recommended prohibition on the cost of valuation being passed on to a consumer, could go some way towards addressing this improvement. CBI (2017) 'Mortgage Switching Research' (centralbank.ie)

of awareness and intended usage of the statutory Code of Conduct on the Switching of Payment Accounts with Payment Service Providers (the Switching Code)[160] by consumers. The research also found that 60% of customers identified a challenge that they have experienced in switching, with transferring direct debits and payments being the key challenge[161].

The CBI will wish to reflect on the role and value of the Switching Code and the broader issues that arose during the Ulster Bank and KBC migrations, as recommended by the Department of Finance in the Retail Banking Review. As part of that reflection, the CCPC recommends that the CBI considers extending the scope of the Switching Code to include current account providers other than those regulated by the CBI, such as credit unions, An Post and fintechs and to support consumers switching regular banking transactions including re-occuring card payments. Further, the Switching Code should offer the possibility for switching to be conducted digitally, in order to make the process more efficient for those consumers who opt to engage digitally.

Digitalisation can, for those with the skills to engage digitally, facilitate greater ease of switching. The CCPC notes that Ireland will be required to submit a national roadmap to the European Commission by October 2023, which will, amongst other things, set out the main planned, adopted and implemented policies for achieving the EU wide-target for 80% of those aged 16-74 to have at least basic digital skills[162] and that this target is also set out at national level[163]. In the meantime, having regard to the significant cohort of consumers who report not having basic digital skills[164], the financial services environment must support their access to switching mechanisms.

The CCPC study on the public liability insurance market[165] found that the level of transparency in the market, as well as buyer confidence and understanding as to why premiums change, could be improved and recommended that the approach used by insurers when implementing and communicating premium increases should be reviewed by the CBI to ensure insurers are adhering to disclosure requirements, assessments of suitability and presentation of information that are in place as part of the conduct supervision regime. Acknowledging that section 12 of Consumer Insurance

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160 CCPC (2022) 'Current Account Switching Wave 2' (ccpc.ie)
161 Ibid.
162 Decision (EU) 2022/2481 of the European Parliament and of the Council of 14 December 2022 establishing the Digital Decade Policy Programme 2030, (EU) DECISION 2022/2481 of the European Parliament and of the Council of 14 December 2022 establishing the Digital Decade Policy Programme 2030 (europa.eu)
163 Government of Ireland (2022) 'Harnessing Digital. The Digital Ireland Framework' (gov.ie)
164 In the 'Adult Literacy for Life' strategy, it was noted that 47% of adults in Ireland report not having basic digital skills. See, Government of Ireland (2021) 'Adult Literacy for Life, A 10-year Adult Literacy, Numeracy and Digital Strategy' (adultliteracyforlife.ie)
165 CCPC (2020) Public Liability Insurance Market Study (ccpc.ie)

Contracts Act 2019[166] has bought about certain changes in this area for consumers of public liability insurance falling within the scope of that Act, the CCPC maintains that this recommendation remains relevant. CBI may want to consider how effective disclosures can best support buyers of commercial insurance.

Digital and financial exclusion and reduced choice

In light of the increased digitalisation of the financial services sector and decreased availability of in-person and non-digital services, consumers with low levels of digital literacy are at risk of financial exclusion and of having less choice than consumers with greater digital literacy. The CCPC recognises the importance of continued access to cash services and the currently ongoing work of the Department of Finance, on foot of the Retail Banking Review, to develop legislation on the issue[167].

The use of technology by FSPs can also operate to exclude consumers from the market or limit their access or choices they can make, for example through excessive data profiling or very granular segmentation of target markets[168]. The Code review should consider how rules and interventions can, or can fail to impact, consumers with low levels of digital literacy, so that their continued access to and choice of financial services are considered in an increasingly digitalised environment. It is particularly important to ensure continued access and choice for those with low levels of digital literacy and the recommendation set out in the section above on 'Digitalisation' regarding a minimum level of human customer support is relevant.

Legislative and market developments

A number of market and legislative developments including InsurTech[169], 'Open Insurance'[170], 'Open Finance'[171] and the European Digital Identity Wallet[172] are relevant to the theme of 'Availability and Choice'. The CCPC recommends that the CBI consider the potential for these developments to support

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[166] Section 12 of the Consumer Insurance Contracts Act (2019) (irishstatutebook.ie) which requires insurers, when issuing a renewal notice to a consumer, to outline any premiums paid by the insurer in the preceding five years and any claims paid on foot of the insurance contract in the preceding five years.
[167] Oireachtas (2023) Banking Sector – Tuesday, 7 Mar 2023 – Parliamentary Questions (33rd Dáil) (oireachtas.ie)
[168] As noted by respondents to the Joint Committee of the ESA's (2018) 'Discussion Paper on the use of Big Data by financial Institutions' (europa.eu), the use of Big Data could lead to the financial exclusion of consumers with higher risk profiles or those about whom there is limited available data because of their limited online profile. In addition, it was noted that the use of Big Data to segment the market on a very granular level may limit choice of products and services offered to some consumers.
[169] InsurTech can be understood to refer to 'technology-enabled innovation in insurance that could result in new business models, applications, processes or products'.
[170] EIOPA (2022) 'EIOPA reacts to stakeholder views on open insurance' (europa.eu)
[171] See European Commission 'Open finance framework – enabling data sharing and third party access in the financial sector' (europa.eu).
[172] See European Commission (2021) European Digital Identity (europa.eu)

more informed consumers, facilitate easier switching of financial services and result in greater levels of competition. The CCPC recommends that the CBI evaluate the revised Code in light of future changes to impacted markets arising from the implementation of these developments.

Data Availability

A key means of monitoring the competitive dynamics in markets is by accessing information on market trends over time, including market share data. The CCPC has previously set out its views on the value of more granular market share data being made available by the CBI in relation to the public liability insurance market [173]. There is a lack of data on other markets such as high cost credit providers or newer markets such as 'buy-now-pay-later'. While the Code is not the vehicle to address this, these observations are made with a view to the wider functions of the CBI.

8. Innovation

The CCPC acknowledges that a major challenge for financial regulators is finding the right balance between allowing firms to innovate, while at the same time protecting consumers from any potential harm. International research has found that programmes that bring together regulators and market participants to clarify how innovation fits into the existing regulatory framework can be very effective[174]. Therefore, we welcome initiatives, such as the establishment of the Innovation Hub by the CBI. The CCPC notes that the CBI intends to consult on proposed enhancements to the Innovation Hub this year and looks forward to such review and consultation[175].

New technologies and concepts, such as Open Finance, will spur further innovation and it is encouraging that the CBI is considering this as part of its review of the Code. The CCPC's observations on how to support innovation while ensuring consumer best interests are protected[176] are:

a) A well-informed consumer will be better placed to make good choices when using financial products and services. FSPs should be expected to develop early guidance for consumers on

[173] CCPC (2020) Public Liability Insurance Market Study (ccpc.ie)
[174] The Pew Charitable Trusts examined the regulatory approaches taken by several governments with a notable interest in financial technology and found that regulators worldwide have generally adopted common strategies for outreach and regulatory modification. See the Pew Charitable Trusts (2018) 'How Can Regulators Promote Financial Innovation While Also Protecting Consumers?' (pewtrusts.org)
[175] Response to Question 6.
[176] Response to Question 7.

a new product or service and ensure it is widely shared as early as possible into the product launch[177]. This requirement should be made explicit in the revised Code.

b) The CBI currently provides guidance to FSPs on how to comply with regulatory requirements. The CCPC support this, as general guidance, such as frequently asked questions could be very helpful, particularly to smaller FSPs or new entrants, to allow them to better understand existing regulations and therefore improve their ability to protect consumers. As the CCPC is aware is currently the case, guidance should be regularly updated and FSPs should have an opportunity to provide feedback and ask questions.

c) Open Banking demonstrated that innovation in the financial sector can be accompanied by principles such as better consumer protection. Open Finance is viewed as expanding on the concept of open banking and it is important that regulators ensure that consumers are adequately protected while the concept is being designed. While the benefits for all parties in open finance are potentially great, the potential risks to consumers must always be kept in mind. These risks, such as the risk of exclusion, data misuse, overcharging, financial crime and/or fraud[178], need to be addressed. If consumer protections are in place then Open Finance, as we saw with Open Banking, will be another demonstration of how consumers can be given more powers and protection at the same time as new innovations in finance are rolled out.

Innovation and FSP advantage[179]

A competitive advantage exists where one firm is able to deliver the same benefits as competitors, but at a lower cost, or is able to deliver greater benefits to its customers than those of competing products[180]. The competitive advantage which a firm achieves, independently and on its own merits, can drive effective competition, as rival firms strive to even the advantage, or achieve their own, and the firm with the advantage aims to maintain it. Firms might seek to do this through innovation such

177 An OECD paper from 2010 on financial innovation and consumer protection concluded that the best way to avoid situations in which retail investors become involved with unsuitable products, is for firms to be "encouraged" to develop sufficient measures for client protection as part of their product development. See OECD (2010) 'Consumer Protection and Financial Innovation: A Few Basic Propositions' (oecd.org)
178 The Expert Group on European financial data space (2022) 'Report on Open Finance' (europa.eu)
179 Response to Question 8.
180 Wang, W. C., Lin, C. H., & Chu, Y. C., (2011) 'Types of competitive advantage and analysis'. International Journal of Business and Management, 6(5) (d1wqtxts1xzle7.cloudfront.net).

as designing a product which better meets consumer needs, improving its customer service or offering a better price.

The regulatory principle of "same services, same risks, same rules, same regulation" is intended to ensure a level playing field in financial services[181]. Applying consistent regulation and setting consistent conduct expectations across regulated firms is an important means to ensure that no firm, or firms, gain an unfair advantage in any market. For example, non-bank lenders have significantly grown their market share for new mortage lending in the past 15 years. These firms do not have the advantages of incumbent lenders but have been able to provide competition and choice as well as comply with the requirements of the Code. The Discussion Paper suggests that there may be concerns that Big Tech firms could use unfair advantages from their scale and size if they enter financial services markets. It is noted that the European Supervisory Authorities have proposed reforms intended to ensure effective prudential supervision of 'mixed activity groups' which could include Big Tech firms[182]. The proposal for a Data Act will ensure that any such firms designated as 'gatekeepers' for the purposes of the Digital Markets Act will be restricted from availing of certain of its measures to enhance access to data generated by products and services. Further, it is understood that the Open Finance framework will be modelled on the Data Act and it may be that similar restraints on Big Tech firms would be imposed in future legislation. The CCPC believes that financial services regulation should operate to ensure a level playing field and facilitate the entry of new providers and business models.

9. Climate Matters

Banks and other financial institutions are exposed to significant climate and transition risks that could impact their safety and soundness and that of the financial system. There are a number of EU policy initiatives which aim to facilitate the identification of these risks and to ensure that climate-related and environmental risks and their short-term and long-term effects are reflected in financial institutions' business models and strategy[183].

Consumer preferences are shifting away from carbon-intensive goods and services and this is increasingly reflected in legislation and regulatory practice. In 2022, the European Commission proposed amendments to the UCPD and Consumer Rights Directive which will support consumers to

[181] Berrigan, J. (2023) Speech at Consob conference "The new frontiers of digital finance" (europa.eu)
[182] Recommendation 7 of Joint European Supervisory Authority (ESMA) (2022) 'Joint European Supervisory Authority Response to the European Commission's February 2021 Call for Advice on digital finance and related issues: regulation and supervision of more fragmented or non-integrated value chains, platforms and bundling of various financial services, and risks of groups combining different activities' (europa.eu)
[183] Relevant policy initiatives include the European Central Bank (ECB)'s (2020) 'Single Supervisory Mechanism and its Guide on climate-related and environmental risks' (europa.eu)

make greener choices as well as a regulation establishing a general framework for setting eco-design requirements for sustainable products[184]. In the financial sector there is strong consumer demand for products and services which have positive environmental, social and governance (ESG) impacts[185]. To support this, sustainability disclosures should be meaningful and accurate and based on reliable parameters that are consistently applied both at national level and across Europe[186].

There are initiatives that aim to address 'greenwashing' specifically in the financial sector[187]. In the Sustainable Finance Roadmap 2022-2024, the ESMA indicates that there are diverging applications of the rules on what constitutes a 'green' financial product across the EU. This could lead to investor protection challenges such as lack of comparability, transparency and even mis-selling, for instance when products with a similar or even the same naming convention do not share the same underlying characteristics[188].

While the legislative framework at a European Union level does not currently fully allow for consumers to compare financial products and services across Member States as regards to sustainability, the CCPC believes that it is still important that consumers understand ESG terminology and the effects of greenwashing. The CCPC recommends that the CBI set out its expectations in the Code on how such services are marketed, including through advertising, and encourage the use of behavioural insights to inform consumers effectively on sustainable disclosures[189].

The CCPC agrees that a common definition of greenwashing across the European Union and across sectors would be beneficial, and would help to ensure consistent application of laws and certainty for consumers and traders around how ESG claims can be made[190]. The CCPC would welcome the

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[184] Proposal (2022) for a Directive amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information (europa.eu)

[185] CBI (2022) 'Information note - Sustainable finance and the asset management sector: Disclosures, investment processes & risk management' (centralbank.ie)

[186] For example, in March 2022, the European Commission published a package of proposals in relation to the European Green Deal which includes a proposal to update consumer protection rules to empower consumers in the green transition so that consumers are better informed about the environmental sustainability of products and better protected against greenwashing. European Commission (2022) 'New proposals to make sustainable products the norm' (europa.eu)

[187] Greenwashing is defined in Taxonomy Regulation EU/2020/852 as "the practice of gaining an unfair competitive advantage by marketing a financial product as environmentally friendly, when in fact basic environmental standards have not been met".

[188] In its 2023 report on 'Greenwashing in Retail Financial Services' (beuc.eu), the European Consumer Organisation (BEUC) also highlights that regulatory shortcomings, insufficient standardisation, and the use of relatively new and vague terms facilitate greenwashing in financial services, especially in the investment funds industry.

[189] Research carried out for the FCA in 2022 found that behaviourally informed sustainability factsheets improved consumer comprehension of important sustainability information. See C.Gilchrist, L.Hayes, C.Ng, P.Sholl & J.Spang (2022) 'Matter of fact-sheets: improving consumer comprehension of financial sustainability disclosures' (fca.org.uk)

[190] For example, the ESMA has recommended that there should be a common definition of the greenwashing phenomenon to help drive supervisory work in a coordinated and efficient manner across sectors and across the EU based on clear rules. See ESMA (2022) 'Sustainable Finance Roadmap 2022-2024' (europa.eu)

opportunity to exchange information, knowledge and understanding around greenwashing with the CBI.

10.Unregulated activities

The CCPC welcomes the focus on unregulated activities in the Discussion Paper. The considerable risks to consumers if they invest in an unregulated financial product or service, whether aware or unaware of the regulatory status, have been clearly demonstrated in other jurisdictions in recent years.[191] New technologies have seen the emergence of a range of unregulated financial products and services that are heavily promoted to consumers.[192] It is timely to explore how consumer protection regarding unregulated products and services could be strengthened as part of the review of the Code.

The CCPC believes that the Code should be strengthened to incorporate the guidance included in the 'Dear CEO' letter from 2020[193,194]. A regulated FSP that engages in offering unregulated products and services should be left in no doubt what they can and cannot do when promoting and advertising their unregulated activities. In particular, the CCPC is of the view that it should be clearly stated in the Code that a FSP's regulatory status must not be used as a promotional tool, for example, when engaging in unregulated activities, a FSP should not include reference to being regulated by the CBI. The 'Dear CEO' letter sets out the CBI's expectation that, when providing unregulated products or services, the regulatory status must be clearly and effectively communicated in all dealings with clients, and at every stage of the sales process. The CCPC suggests that the CBI considering strengthening this obligation by setting out the text of a specific warning which regulated FSPs must communicate to consumers when promoting and selling unregulated products or services.

The CCPC believes that improvements to the CBI Registers website[195] would make it more user friendly and encourage consumers to use it to find information about FSPs and their regulatory status. We recognise the technical and legal requirements in maintaining and updating registers, especially in a busy authorisation pipeline. We have set out suggestions below that have been informed by our use

[191] See the review in the UK conducted into the collapse of the London Capital and Finance and the losses suffered by investors. Rt. Hon. Dame Elizabeth Gloster DBE (2020) 'Report of the Independent Investigation into the Financial Conduct Authority's Regulation of London Capital & Finance plc' (publishing.service.gov.uk)
[192] Crypto assets are one recent example that is a cause of concern and we welcome measures at the EU level to address this. We note the preparation by the CBI for the implementation of Markets in Crypto-Assets (MiCA) Regulation and how it will integrate MiCA into the its supervisory and authorisation processes.
[193] CBI (2020) 'Central Bank of Ireland's expectations of investment firms when engaging in unregulated activities' (centralbank.ie)
[194] Response to Question 12.
[195] For clarity, see CBI webpage Central Bank of Ireland's Registers (centralbank.ie)

of the register and by comparisons we have carried out with registers in other jurisdictions.[196] The changes to the register that we propose the CBI consider are:

- Having only one search box which allows consumers to search all fields across all FSPs, thereby simplifying the presentation of the search function for consumers.
- Information on an FSP's head office and where they have branches should be provided and consumers should be allowed to search for a specific service in their location.
- The CBI Registers website should provide consumers with information on how they can contact the FSP if they have a complaint. This is a useful option available on the FCA register in the UK.
- The FCA register also gives details on how a consumer can contact the FCA directly if they have been the victim of fraud or if they have concerns about a registered FSP. They also include a link to the Financial Ombudsman Service. The CBI Registers website does not currently provide this information and it would be helpful if the equivalent information was included in it.

ENDS

[196] As part of our research the CCPC reviewed the UK and New Zealand's financial registers. See FCA webpage for its Financial Services Register (fca.org.uk) and New Zealand Companies Office's webpage for its Financial Service Providers Register (companiesoffice.govt.nz)