

SAFEGUARDING IRELAND SEMINAR – 7 NOVEMBER 2024

Institute of Bankers, Chartered Accountants House 47/49 Pearse St, D02 YN40 Dublin 2

1.40-4.00pm

Remarks by Michael Hennigan, Head of Function in the Consumer Policy and Research Division of the Central Bank of Ireland.

***‘A REGULATORY FRAMEWORK THAT
SECURES CUSTOMERS’ INTERESTS’***

INTRODUCTION

Good afternoon.

I am very pleased to be invited here to talk to you today - thank you to Patricia and to Safeguarding Ireland for the invitation. Today, I am going to outline the work that we in the Central Bank are doing to improve the regulatory framework for consumers of financial services in Ireland, and in particular our work on the Consumer Protection Code. That work includes developing a framework to assist in the prevention of financial abuse.

In the Central Bank, our mission is clear: we exercise our powers to serve the public interest by maintaining monetary and financial stability while ensuring that the financial system operates in the best interests of consumers and the wider economy. In the area of financial regulation and supervision our aim is to achieve a resilient and trusted financial system that functions well to support the economy and the financial wellbeing of citizens.

It is essential to a successful financial system that consumers have confidence that financial firms will work in their favour and that their interests will be protected. This consideration is behind the significant work that we have done over the recent period to revamp, update and enhance the Consumer Protection Code. As you may be aware, we have identified an obligation to secure customers’ interests as being at the heart of financial institutions’ regulatory obligations. We consulted on this proposal in the first half of the year and we are in the process of finalising our Revised Code and we intend to publish the Revised Code in the coming months.

WHAT WE ARE DOING IN THE CODE

Let me outline some important features of the revised Consumer Protection Code that we hope to introduce in the coming months.

First, we are introducing a general duty on all regulated financial service providers, who I am referring to in these remarks as *financial institutions*, to secure their customers’ interests. This means putting customer interests at the heart of everything they do. Financial institutions are set up to be commercial operations, but this duty seeks to ensure that pursuit of commercial objectives is done in a manner that places customer-interests at the heart of culture, strategy, business model, decision-making and operations. This reflects the nature of financial services activities as complex, important and dependent on high levels of trust and confidence.

The standard of the Code will not prescribe what can or should be done by firms in every particular scenario or set of individual circumstances. The Code will articulate what is required of financial institutions generally so that financial institutions can determine for themselves what actions they should be taking to secure customers' interests.

Importantly this does not mean that a financial services firm is 'acting on behalf of' a customer, or in any way is taking responsibility for making decisions that could and should be made by the customer themselves. However, this recognises the role firms have to play in empowering customers to make well informed decisions and to take responsibility for their own actions and decisions.

Second, within this overarching duty comes the commensurate duty to ensure that the interests of consumers in vulnerable circumstances are protected. By that we mean that consumers in vulnerable circumstances do not experience poor outcomes because of those circumstances.

This duty towards those who find themselves in vulnerable circumstances is a duty on financial institutions to ensure that those customers who may be especially susceptible to harm where a financial institution is not acting with the appropriate degree of care, are protected from those harms.

The circumstances that give rise to vulnerability are being described in the revised Code in broad terms. This reflects the broad concept of vulnerability introduced in 2022 to the OECD/ G20 High Level Principles of Financial Consumer Protection. While this new broad definition of vulnerability includes many of the customers of financial institutions at risk of financial abuse, it is broader than that.

Let me explain. The term 'vulnerable' is not a personal adjective describing any particular person. It is not a label to be attached to someone. The word is used in the context of *risk*. If there is a risk of harm to a person (because of their circumstances), then that person is vulnerable to the harm if the risk materialises. *Some customers* are especially susceptible to harm because of their circumstances. Those are the consumers that we want institutions to protect beyond the normal course of business.

In the Revised Code we will be outlining that financial institutions must take care to design their business so that the risks to customers who are *especially susceptible* to a harm are identified in advance, and that controls and mitigants are put in place to reduce those risks, and thereby reducing the likelihood of the occurrence of harm.

In summary, a financial institution must ensure that its actions anticipate and protect against harm to customers in the normal course, but also to those customers who might be especially susceptible to harm.

For example, in the preparation and delivery of information to customers, firms must generally ensure that the information is fair, clear and not misleading. But for whom? There are many customers who will need special assistance in the perception of information. These customers must also be taken into account and accommodated. In this regard, the introduction of the European Accessibility Act which comes into force in mid-2025 will set out the precise requirements for this. This Act (which is a European Directive) will establish a framework whereby certain financial institutions must implement minimum design features that permit persons with disabilities to effectively engage with consumer banking services.

Another example might be the design of technology for use by, and to interact with, customers. We want firms to deploy a customer focus in the design and implementation of digital services and delivery channels which should include consideration of consumers in vulnerable circumstances.

In addition, we are introducing requirements to ensure that the transition to technology, specifically for banks, does not lead to the wholesale closure of the traditional branch network without proper assessments of the impact on those existing customers who are vulnerable to the harm such closures could cause, and without appropriate mitigating measures being implemented.

Third, prior to our consultation, the Consumer Protection Code did not mention financial abuse. However, it is clear that customers of financial institutions can often be victims of financial abuse; both from without - in the form of attempts to scam them out of their money – and from within – the form of domestic abuse whereby persons in close proximity to customers can control and divert customers’ money to their own use.

The Law Reform Commission’s report on a Regulatory Framework for Adult Safeguarding published earlier this year includes some recommendations around financial abuse that the Central Bank can implement in what we are doing to revise the Consumer Protection Code.

The OECD/ G20 High-Level principles on financial consumer protection also include reference to the concept of financial abuse. Those principles state that “*protection mechanisms should be appropriately developed and implemented by oversight authorities and by financial services providers ...[to] protect consumers’ ...assets, including against fraud, scams, misappropriation or other misuses*”.

Other stakeholders have also called for the Consumer Protection Code to include some aspect of protection for consumers against financial abuse.

In the revised Code, our first important proposal is a recognition that financial institutions have a duty towards their customers. This duty extends beyond simply providing an appropriate and suitable service. We want firms to recognise the broader responsibility that they have to secure their customers’ interests by considering how they, the financial institutions, can also use their expertise, their knowledge and their resources to protect their customers from the harm that those customers are vulnerable to. It is not sufficient for financial institutions to close their eyes to the threat of financial abuse simply because the abusers are outside their control. The risks are real, as we have seen. And the financial institutions can act.

We are considering requiring financial institutions to take certain steps towards fulfilling this duty to their customers. The draft revised Code stipulates that financial institutions should monitor abuse trends, including how abuse of their customers can arise within the ambit of the services that those financial institutions provide. Financial institutions will need to be prepared to act where abuse is identified and can be prevented. Staff of financial institutions must be trained to identify where financial abuse can arise, and also have somewhere to report their concerns should they have them. Financial institutions will have to communicate the risks identified to their customers in a timely way, and communicate to their customers the supports that might be available to customers, and the actions that customers can take to protect their own interests.

These obligations are drafted to cover both the risks from external bad actors who continually try to scam and defraud us, but also cover the internal abusive relationships to which adults-at-risk can be vulnerable.

Fourth, the revised Code also promotes the fulfilment of this duty in the context of the use of digital technologies. We are proposing to introduce requirements around the design and roll-out of digital platforms that allow customers to transact with their financial institutions without human intervention. As use of technology by financial institutions increases, so does the need for the design and implementation of that technology to be designed with the customer in mind. But not just easy to use, the technology must ensure that it protects the user against misuse. Technology provides huge benefits, but it also introduces new ways to make persons vulnerable to bad actors.

WHAT THIS WILL MEAN

We want to promote a culture whereby financial institutions actively seek to represent customers in their business decisions, and do the best that they can to secure their customers' interests in the provision of financial services. We are not starting from scratch, and see a lot of good practices in industry already, and so we are encouraged.

I think that the combination of a duty to seek to protect customers from the risk of financial abuse, coupled with the duty to ensure that technology serves the interests of customers, can lead financial institutions to seek to develop methods of design and use of that technology to either prevent or minimise abuse. We see developments already towards the more secure use of financial services technology.

The increased use of the much-vaunted artificial intelligence may present further opportunities to financial institutions to develop better ways to protect customers from financial abuse in ways that staff might never be able to. We might see the technology being able, for example, to signal that abuse is happening from the data available through technology. For example, I have read about design features of some interactive digital platforms that can identify consumers who are significantly hesitant or who are having difficulty using the technology. In these cases, the programming allows for the system to prompt the offer of assistance, or to direct customers to other options, such as the ability to discuss their needs with a person. The solutions in the area of financial abuse are beyond my personal expertise, but it is something I would expect to see develop in the future.

LIMITATIONS ON EXPECTATIONS

But I would like to give a word of caution about the expectation of this duty to secure customers' interests.

The Central Bank does not directly intervene in or control day to day transactions. Our role is to set the conditions within which financial institutions must secure their customers' interests. We try to foster an environment where financial institutions have the responsibility for, and take ownership of, the duty they have to their customers.

Also, I have been using the phrase financial institutions. This phrase is short for financial services providers. Financial institutions are commercial entities providing to their customers financial services that they have been set up to provide efficiently and profitably. Financial institutions, through their staff, will only ever see a partial glimpse of all the things that go on

in their customers' lives. We want financial institutions to do their best to fulfil their duty, but even their best will oftentimes not permit them to identify and/or intervene in instances of financial abuse. We can only ask financial institutions to do, to a high standard, what can be reasonably within their power to do.

HOPES FOR THE FUTURE

The challenge for financial institutions is also when to act and what to do. The Law Reform recommendations about the establishment of a safeguarding body and about including an immunity from liability for institutions when they do act, are recognised as good steps to foster an environment where financial institutions *will* act. The regulatory framework should not just make demands of financial institutions but must also provide a framework within which those demands can be reasonably delivered by financial institutions.

This is a very important but very challenging topic. Getting the outcomes right is important – but those outcomes are, to quote our Director of Policy & Risk, Gerry Cross, “inherently difficult and elusive”.

The Central Bank is a willing partner in collaborating with other stakeholders to meet that challenge.

Thank you.