Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

Consumer Protection Code Review

Age Action Response

Response Information

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Age Action

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Charity

Broad Theme A – Availability and Choice

Q.1 What are your views on availability and choice of financial services and products for consumers?

There are over one million people in Ireland aged 60 or older, most of whom are customers of the mainstream banks and financial institutions. There is huge diversity in the characteristics and lived experience of older persons. Some are very proficient with digital technology and are highly financially literate, but others are not. Some older persons are affected by disadvantage that they have experienced in their lives, and they may require additional support from financial institutions. While most older persons are in good health, some are affected by illness, frailty or disability, including cognitive decline.

Inclusive banking hinges on informed and compassionate staff and the suitability and availability of an appropriate range of products reflecting the diversity of customer needs. Negative or stressful interactions with staff can be the most distressing element of a person's experience with an inaccessible bank, whereas positive experiences with staff can mitigate distress in navigating and overcoming barriers. Limitations on suitable products or suitable means of accessing products can exclude people from critical financial services and expose those people to significant distress and risk of financial exploitation, in particular where they seek other means of managing their finances outside of financial institutions. There have been seismic changes in the Irish retail banking sector over the last 3 years including consolidation, book transfers, market exits, branch closures and shifts to digital first platforms, each of which has heightened the exclusion risk for vulnerable users of financial services and we continue to see the negative consequences of how these changes have been implemented and been overseen. We are hopeful that the proposed overhaul of the Consumer Protection Code will reflect learnings from this recent experience, in terms of both the regulation and oversight by the Central Bank of these changes and the attitude of the banking sector to the measurement and mitigation of the risks arising.

The following is our response to the first question under Broad Theme A.

· Government policy is to support people to age in place, which may mean renovating their homes to make them accessible or it may mean buying a smaller property in the same community that is better insulated and/or more manageable. Older persons have told us that they cannot access mortgage finance due to age limits, and they find it difficult (or impossible) to access affordable bridging loans to facilitate them to sell a wholly owned property to purchase a cheaper one. There is a significant gap in the market for affordable loans to support 'rightsizing' for those older persons who want it. There is also a lack of loans for major home renovation. In both cases, lenders only look at older persons' incomes and age, not their savings or the value of their home (often owned outright). Blanket age caps on financial products should be outlawed. Lending decisions should be made on other grounds, such as ability to repay a loan, but not based on a person's age.

· If financial institutions cannot offer appropriate, affordable home loan products, another option that Age Action supports is extending local authorities' ability to engage in mortgage lending to provide 'rightsizing' loans and 'ageing in place' loans in parallel to their grants to older persons.

· Access to credit products is extremely limited for older persons with a fixed income. Following the closure of their Ulster Bank accounts, older persons told us that they could not access a 'seniors account' with the same features as Ulster Bank offered. Similarly, people were concerned that they were not given the same overdraft facilities nor a credit card, when they had been using these products safely and in a financially prudent manner for many years. The consolidation ofthe mainstream banking market and the commercial terms on which it is occurring is narrowing the range of available products and resulting in a withdrawal or limitation of their existing credit products, through no fault of their own. Older customers reasonably have the expectation that a credit card or overdraft facility will not be withdrawn where they are in compliance with its terms. These expectations have not been reflected in the recent market exits and book transfers. Acknowledging that the products used by older persons have often travelled with them from their younger years and that financial institutions will have differing policies on credit for older persons, Age Action believes that the Central Bank's oversight of market exits and book transfers should incorporate protective conditions which require the acquiring institution to ensure the continued availability of equivalent financial products for older person customers of the transferring institution, where those products were in place before the transfer. Age Action believes that this is a core component of the obligation on financial institutions to act in customer's best interests and a core component of the Central Bank's supervisory role in the protection of all consumers, including older persons and those in vulnerable circumstances.

· Greater signposting and warnings should be required when financial products are not regulated, especially when regulated entities provide some products that are not regulated. The distinction between a regulated entity and a regulated product may not obvious to many older persons.

· An area of particular concern is when equity release loan products are targeted at older persons (see box). Our analysis is that these products offer very poor value for money due to the application of compound interest on the loan. The Competition and Consumer Protection Commission gives quite a vague assessment of equity release schemes, home reversion schemes and lifetime mortgages, noting that they are not something to be entered into lightly, are not suitable for everyone, and essentially suggest a person ought not be concerned about passing on the value of their home as part of their estate. (https://www.ccpc.ie/consumers/money/mortgages/equity-release/) According to the CCPC, lenders and advisers in respect of home reversion schemes and lifetime mortgages must meet the requirements of the Central Bank's Consumer Protection Code. However, this does not appear to be the case for equity release schemes. In the UK, more than half of people taking equity release loans use them to pay off debt, (https://moneysherpa.ie/equity-release-ireland/) which means that they may not improve people's level of income adequacy in older age. Safeguarding Ireland caution that older persons should not feel pressurised by anyone to borrow against the equity in their homes.

(https://www.safeguardingireland.org/wp-content/uploads/2021/06/Equity-Release-Schemes-FINAL.pdf)

The Central Bank should require lenders and advisers of equity release schemes to meet the requirements of the Central Bank's Consumer Protection Code.

The Central Bank should require lenders to ensure that older persons have received robust legal and financial advice about these products before committing to them (i.e. service providers should be compelled to provide comprehensive and accessible information designed for the target consumer), and the Central Bank should play a greater role in raising awareness about their pros and cons. For example, people need to be aware that they may have contractual obligations under these loans to maintain their homes to a certain standard, which may become onerous in older age if they become ill or frail or may be impossible to satisfy based on their limited financial income.

Robust processes are needed to ensure that older persons are not being coerced or misled into taking these kind of loans, especially if they have dementia or other cognitive impairment that may mean they rely on others to help them make important decisions. The Code should include measures to strengthen adult safeguarding and to clamp down on financial abuse.

The Central Bank should oblige lenders to clearly warn older persons that these products may preclude them from accessing the HSE's Nursing Home Support ('Fair Deal') scheme and loan.

Research should be conducted to see whether these products are serving people's needs at a reasonable cost.

Other, better value options should be available to help older persons manage debt as they enter retirement.

Example of Equity Release Loans and Lifetime Mortgages for Older Persons:

- Spry Finance (the new retail division of Seniors Money Ireland) offer Lifetime Loans secured against the value of a person's home when they die. They currently charge 6.45% per annum. For example, a loan of €60,000 taken out at age 66 against a house valued at €300,000 would result in a repayment of €217,867 at age 86, at which point it is calculated that the property would be worth €445,784. Whereas the loan represented 20% of the value of the property, the amount to be repaid represents 49%. This scenario assumes a 2% growth rate in house prices, but if a person's house depreciates, the repayment of the loan could easily involve more than half the value of their home.

Lifetime mortgage products are similar, except that a person explicitly sells a percentage of their home for a certain price. One example given by Advice First Financial is of a 75-year old selling 70% of their €300,000 home for €75,000 in cash, which represents just 25% of its value. (https://advicefirst.ie/seniors-equity-release-ireland/)

· Digitalisation (discussed below) is a key concern in the category of availability of products and choice. Older persons often raise concerns about digital banking, the closure of bank branches and lack of access to cash. Age Action believes that there should be a regulatory requirement for a minimum public service obligation level of in-person service, to include counter services within reasonable distance of most customers, the availability of in-person service rather than over-reliance on machines for transactions, adequate opening hours, reasonable waiting times, and adequate staff training to provide a quality service for older customers.

Q.2 How important are new providers and new delivery channels to serving consumers' financial needs?

Q.3 In implementing its consumer protection mandate, how should the Central Bank reflect the importance of competition in its regulatory approach?

· Please see response to Q1 above in respect of the effect of recent consolidation and book transfers on access to credit products by older persons.

· A clear tension that arose in the documents published by the Retail Banking Review Board was the private and thus profit-motivated nature of the banking sector, and the vital role that sector has in ensuring the well-being of individuals and communities (given the intensification of financial services). The Central Bank should learn from international experience about managing the incentives for banks or setting standards, so that they deliver necessary services to communities. (https://www.oecd.org/finance/Financial-consumer-protection-and-ageing-populations.pdf)

· The Central Bank should ensure that the regulatory environment encourages banks to pursue sectoral collaboration which is in the interests of older person customers, in line with competition requirements, for example in the creation of banking hubs to retain public access to over-the-counter services, especially in rural areas. Irish retail banks are already acting collaboratively in other initiatives in respect of digital platforms (the Synch Payments project) and so Age Action expects that the same collaboration can be encouraged in a non-digital project.

Broad Theme B – Firms Acting in Consumers' Best Interests

Q.4 Do you agree that the Central Bank should develop guidance on what it means for a firm to act in the best interests of its customers?

· Agree

· Noting the obligation on the Central Bank to ensure "the best interests of consumers of financial services are protected" (Central Bank Reform Act 2010, Section 24), and noting the description of best interest provided in the discussion document on pages 29-33, we agree that the Central Bank should provide additional guidance on what is meant by best interests.

· Businesses have a duty to not discriminate (including on age) and to be ethical and honest in their dealings with customers. Guidance should reflect the spirit of the Assisted Decision-Making (Capacity) Acts, which require services to assume that a person has capacity to make decisions and should relate to the systemic behaviour of the firm in relation to all customers. It should not be a signal that firms are entitled to make decisions for their customers.

· All financial institutions need to balance best interests with autonomy and not restrict customers from taking risks or making unwise decisions where they have the capacity to make those decisions (in line with the Assisted Decision-Making (Capacity) Acts), and the guidance should reflect this balance. This becomes relevant in a situation where an older person might suddenly decide to withdraw their savings. There should not be a paternalistic assumption that an older person is not competent to make such a decision about their affairs, without needing to be second-guessed. That said, supporting customer autonomy must be balanced with adult safeguarding and preventing abuse or fraud, and this should be reflected in guidance on best interest.

Q.5 Does the suggested outline of 'customer best interest' guidance capture the essence of the obligation to act in customers' best interests? What other guidance would you suggest?

· The outline on pages 32-33 sets out some important statements, including recognising the holistic nature of best interests, the need to focus on customers' outcomes, and the need to counteract the power asymmetries involved by providing information that an ordinary, time-constrained consumer would reasonably understand.

· In relation to not taking undue advantage of customer behaviour or habits, firms must not in any way exploit cognitive decline or dementia but should have age-positive training and procedures in place to support the autonomy of people affected by these conditions. For example, one of the early effects of dementia can be difficulty with numeracy or working with figures, while otherwise being fully competent to make autonomous decisions. Staff will need sensitivity if they are serving a customer who is making mistakes with figures or who seems unaware of errors they are making, as that person may be unaware that they are experiencing an early symptom of dementia that often manifests years before formal diagnosis. (See, for example: https://www.aarp.org/money/credit-loans-debt/info-2020/bad-financial-decisions-may-be-dementia.html; https://www.nia.nih.gov/news/dementia-may-cause-problems-money-management-years-before-diagnosis) The guidance on best interest should include the requirement for this kind of training and practice, among other age-positive requirements.

Theme 1 – Innovation and Disruption

Q.6 Do you agree with our proposed approach to enhancing our Innovation Hub?

Q.7 What more should be done to support innovation while ensuring consumers' best interests are protected?

Q.8 How can regulators ensure that neither firms currently in the market, nor new entrants, have unfair advantages which could be a barrier to fair competition?

Theme 2 – Digitalisation

Q.9 Do you agree with our analysis of the benefits, challenges and risks around digitalisation in the area of financial services? What are the key issues for you?

· Age Action is concerned that many older persons are not using the internet and there is a growing problem of 'responsibilisation' among financial institutions, leaning that customers are expected to follow the business practice of the provider – including where that is 'online only' – rather than the provider having any responsibility to meet current customers' needs or preferences for modes of communication. Discussion about digitalisation includes a consistent narrative on the importance of financial literacy and education which carries the suggestion that customers, regardless of circumstance, should be able to change and adapt to digital means of accessing financial services. This narrative does not reflect the reality for some older persons, who, regardless of the availability of education and training programmes will never be able to safely access digital banking due to physical or cognitive impairments. It also fails to reflect that some older persons may simply not want to make this significant and difficult change in their financial world at a late stage in their lives and we question why, in those circumstances, should they be forced to do so to stay included or to transact for services or goods. Customers should have the choice as to whether to have a digital banking footprint or not.

· Based on the latest available data (2022), nearly 300,000 adults (29%) aged 60 or older are not using the internet and a further 340,000 (33%) are using the internet but have 'below basic' digital skills. As such, six in ten adults (62%) aged 60 or older are 'digitally excluded', while around 400,000 (38%) are using the internet and have 'basic' digital skills or higher. Many of those who are using the internet have a low level of skill or confidence, and many are reluctant to engage in financial transactions online.

· Two-factor authentication, text confirmation, voice recognition phonelines and other technology can be difficult or impossible for some older persons, and there is a risk of vulnerability to fraud among those who are not tech savvy.

· Cash has many values to older persons, including: privacy, social inclusion, contingency (not needing additional technology to use it), helping with budgeting, and the fact that it must be accepted as legal tender.

· The ability of mainstream shops and cafes to refuse cash should be made illegal for at least the next twenty years, given the large number of people not using the internet and not comfortable with cashless transactions.

· Informed and compassionate staff is a key component of inclusive banking. Negative or stressful interactions with staff can be the most distressing element of a person's experience with an inaccessible bank, whereas positive experiences with staff can mitigate distress in navigating and overcoming barriers.

· To ensure inclusive banking alongside the push for digitalisation, the following should be mandated by the Customer Protection Code:

O Ensure a physical location in which the full range of banking services are delivered is within a reasonable distance of customers.

O Ensure transport options are available to older persons so they can get to the banks, including having the banks, where needed, develop a transport service for older persons.

O Ensure premises are laid out in line with principles of Universal Design. Research demonstrates that everyone, of all ages and ability, find universally designed environments easier and more comfortable to navigate

O Ensure reading materials, physical or online forms, bank cards, and online banking services comply with the standards of Universal Design.

O Provide assistance and guidance to anyone who nevertheless struggles to access or avail of banking services.

O Phone services should not be automated and the people running them should be able to communicate with people who may be hard of hearing.

O Inclusivity needs to be baked into the customer experience and continually monitored, so subsequent revisions of websites or forms do not lose accessibility measures that had been working well.

O Alternate security measures for people with various disabilities need to be designed so that they aren't left in a position where they have to 'work around' these measures, thus putting themselves at increased risk of abuse and exploitation (e.g. sharing passwords with family members so they can enter them instead).

O Train staff and ensure they are kept up to date on the range of supports available to older persons, so older persons aren't given incorrect information or told that they are not allowed to do something that is in fact possible.

Q.10 How do you think the personalisation and individual-targeting of ads can be made compatible with the requirement for firms to act in the best interests of customers?

- Some regulation is needed to clearly identify ads as ads, for example large print notices identifying 'advertorials' as ads, large print notices identifying personalised communications as ads, etc. Higher risk loans – including equity release – should come with more onerous requirements for providing customers with clear information and warnings.
- Consent to the use of customer data for advertising or marketing purposes can be problematic for older persons, who may not appreciate the effect of the consent or what the consequences may be in terms of the subsequent targeting of ads to that person. Consent requests for this purpose should be required to have specific protections and highlight very clearly the consequences of the consent.

Theme 3 – Unregulated Activities

Q.11 The Code requires regulated firms to provide a statement indicating that they are 'regulated by the Central Bank'. Do you

think this is useful for consumers?

Q.12 How can the difference between regulated and unregulated activities be made clearer for consumers?

Q.13 Should there be additional obligations on regulated firms when they undertake unregulated activities?

Theme 4 – Pricing Matters

Q.14 What can firms do to improve transparency of pricing for consumers?

Q.15 In relation to pricing, are there examples of firms using unfair practices to take advantage of customer vulnerabilities?

Theme 5 – Informing Effectively

Q.16 How can regulation improve effectiveness of information disclosure to consumers?

Q.17 How can firms better support consumers' understanding – can technology play a role?

Q.18 Does the way in which firms approach disclosure in respect of mortgage products need enhancing? If so, how? - taking account of the wide variety of features of mortgage products, and borrowers' different circumstances and needs.

· As proposed under best interest, firms should communicate and provide information in a manner that an ordinary, time-constrained consumer would reasonably understand it.

· Plain English standards should be adhered to. (https://www.nala.ie/plain-english/) Numerical examples should be clearly laid out according to similar principles. NALA's guidance on financial literacy should be adhered to. (https://www.nala.ie/financial-literacy/)

Theme 6 – Vulnerability

Q.19 Given that vulnerability should be considered more as a spectrum of risk than a binary distinction, how should firms' duty to act in their customers' best interests reflect this?

· While the term vulnerability may be used due to underpinning legislation, it is nonetheless problematic to define anyone as "vulnerable" as this is too sweeping a statement and it is disempowering language that people do not identify themselves with. Instead, we propose using more specific terms that more clearly refer to specific issues rather than a generic, disempowering label: such as vulnerable to financial abuse, susceptible to a memory lapse, or at risk of social exclusion.

· As has been implemented by the Commission for the Regulation of Utilities (CRU), the definition of vulnerable customer should include those on low incomes who are financially vulnerable.

· The Customer Protection Code should reinforce the legal requirement for the Assisted Decision-Making (Capacity) Act provisions to be adhered to, and it should reinforce guidelines for financial institutions that will be provided by the Decision Support Service when it is fully operational. (https://decisionsupportservice.ie/public-consultation/public-consultation-phase-1/consultation-code-practice-financial-professionals-and-financial-service-providers)

· Financial institutions often have designated units for the support of customers in vulnerable circumstances and practices in customer service are often to simply refer a customer to that unit. This categorisation approach can be damaging for older persons and is not in the spirit of inclusivity, privacy or autonomy. Age Action believes that this approach is also problematic in terms of the culture it encourages in firms - where front line staff learn a practice that dealing with a particular vulnerability circumstance is “not their problem” and they pass the customer elsewhere. Age Action recognises that staff in designated centres or units can be highly trained and provide appropriate service and supports and outcomes for older persons, but we consider that the segregation of the service/supports is problematic and firms should instead be encouraged to have vulnerability supports embedded throughout their front line customer service, which will not result in a redirection of a customer to a designated unit.

· Financial fraud and abuse are significant issues facing older persons in Ireland and are likely to be under-reported, especially when family members are involved. In the last HSE National Safeguarding Office annual report (2021), over 800 cases of financial abuse of someone aged 65+ were reported. (https://www.hse.ie/eng/about/who/socialcare/safeguardingvulnerableadults/national-safeguarding-annual-report-2021.pdf) Unfortunately, it is most frequently family members who are accused of abusing older persons. Firms need to train their staff to be alert for situations where an older person may be making financial transactions under duress from family members, or where family members who do not have formal authorisation are making financial transactions using an older customers’ account.

Q.20 What other specific measures might be adopted to protect consumers in vulnerable circumstances while respecting their privacy and autonomy?

· Please see response to Q19 above in respect of the structure of supports for customers in vulnerable circumstances and the need to ensure that this is embedded in the front line of all firms, instead of redirection of the customer to specific units.

· Outline training, reporting protocols and the importance of rights-based approaches.

· Outline the importance of dementia friendly spaces in the built environment (i.e. the physical design and layout of space).

· Recognise the limits to which the financial institution can address elder abuse without unjustly impinging upon an older adult’s autonomy. Identifying a vulnerable situation is easier than cases of abuse requiring adult safeguarding. Responses taken in response to suspected abuse should be proportional, and escalation pathways for staff need to be clear for when they meet someone who is at risk of abuse or someone who may lack capacity.

· The Code should ensure that banking takes a proactive approach to being age-positive, not only removing barriers to access but providing additional supports and services to customers, for example, to improve their financial literacy or to protect them from financial abuse.

· Universal Design is key to the autonomy and opportunity of older persons in Ireland, not least the 35% of persons aged 65 or older in Ireland who are living with a disability or frailty, the 4% living in residential care settings, or the 48,000 people with dementia, a number which is expected to double by 2030. One of the strengths of Universal Design is that it can mainstream, and thus destigmatize, supports.

· To help prevent financial abuse:

O The Code should develop policies and standards that defines financial abuse, their responsibility in taking reasonable steps to preventing it, and what these reasonable steps can be.

O Institutions should ensure staff are trained to identify and respond to potential cases of abuse.

O Bank staff should provide information to older persons about enduring power of attorney (EPOA) and direct them to relevant legal services, or even provide free legal clinics in which they can draft EPOA documents or other legal documents (wills, trusts, etc.).

O Institutions should have a specific obligation to collect, analyse and act on data in respect of financial abuse of the institution's customers. Similar to the requirement for specific read across analysis where a consumer impacting error is identified, institutions should be required to take specific steps where financial abuse is identified, including positive obligations for root cause analysis which examines all interactions with the institution in respect of that incident and staff training.

O The Central Bank should collect data on financial abuse through its supervisory powers in respect of institutions and through engagement with CCPC and the FSPO.

O Institutions should educate older persons on the risks of financial abuse and fraud, and keep this entirely separate from attempts to sell them products. International research demonstrates many older persons prefer such education being delivered by banks rather than community organisations, as banks are perceived as holding a greater level of expertise.

O Institutions should give advice and support to family members to responsibly manage or assist with financial affairs.

O Institutions should have policies which acknowledge that older persons experiencing dementia are significantly more vulnerable to financial fraud and abuse.13 Therefore taking the recommended measures to prevent fraud and abuse will also serve to make banking more inclusive of persons with dementia.

O Institutions should provide security options that don't require memorization of numerical sequences.

O Institutions should allow older persons to elect someone who can be contacted if staff members have concerns that something isn't right.

Theme 7 – Financial Literacy

Q.21 What can the responsible authorities do to improve financial education?

Q.22 How can consumers be empowered to better protect their own interests when dealing with financial matters?

As set out above in response to Q9, discussion about financial literacy and education often carries the suggestion that customers, regardless of circumstance, should be able to change and adapt to digital means of accessing financial services. This narrative does not reflect the reality for some older persons, who, regardless of the availability of education and training programmes will never be able to safely access digital banking due to physical or cognitive impairments. It also fails to reflect that some older persons may simply not want to make this significant and difficult change in their financial world at a late stage in their lives. Initiatives in respect of financial literacy should reflect these realities.

· Age Action believes that the following activities can improve financial literacy:

· Provide low-cost financial advice services.

· Provide financial education classes in appropriate locations and informed by the principles of adult learning. These classes should not be mandatory and should support peer learning, to mitigate the risk of being experienced as blaming financially insecure people for their own circumstances.

· The Customer Protection Code should be aligned with, and provide support to the delivery of, the financial literacy commitments in the Adult Learning for Life strategy.

· Counteract belief that it is 'too late' for older persons to benefit from budgeting. At the same time, disproportionate focus should not be placed on budgeting. Similar levels of budgeting ability are found across the different income levels. Having an inadequate income isn't caused by poor budgeting skills, it is just more greatly exacerbated by it. As such, while efforts to improve financial literacy are required, they should not ignore the structural and external causes of inadequate incomes or imply that people are struggling simply because they lack budgeting skills.

Theme 8 – Climate Matters

Q.23 How should the financial system best fulfil its role in supporting the transition to a climate neutral economy?

Q.24 How will climate change impact on availability, choice and pricing for financial products and services?

Q.25 Does the impact of climate change require additional specific consumer protections?

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