

CBI Consumer Protection Code Review 2022

This is a submission by a member of the public who is also a Chartered Insurer undertaking post-doc research on financial services including the non-compliance in Ireland with the Unfair Contract Terms Directive¹ and numerous Motor Insurance Directives² as interpreted by EU and national Superior Courts.

Broad Theme A – Availability and Choice

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

There may be a fundamental flaw in this consultation process on the Consumer Protection Code [CPC] because of a lack of clear definitions for the future. What is meant by a ‘consumer’? Obviously, it cannot be solely the ‘consumer’ in the existing CPC given that the themes addressed include such wide ranging matters as Climate Change. The review also encompasses questions such as market competition and unregulated activities which are themes not limited to ‘consumers’ as currently defined.

A better place to start might have been to identify the weaknesses in the current code which dates back to 2012. This exercise could also have been usefully informed by information from CBI on-site inspections of financial services providers. Another good starting point would have been analyses of the c.5000 complaints annually to the Financial Services & Pensions Ombudsman [FSPO] over the past decade since the current CPC was introduced in 2012.³ Research indicates that formally lodged complaints only reflect the tip of the iceberg of consumer dissatisfaction.⁴ As far back as 2011 the Law Reform Commission commenced examination of the unfairness of insurers in 9 broad areas.⁵

The definition of consumer in the CPC is in urgent need of review. The outdated turnover limit at €3ml which has been the bar since 2003 is no longer adequate to protect SME’s. It is also inconsistent with comparators, such as for micro-businesses in a lending context, while also disproportionately low compared to the Financial Services Ombudsman [FSO] in the UK at £6.5ml turnover.⁶ This lacuna in Ireland became particularly apparent during the Covid-19 Business Interruption claims scandal, about which CBI will know from their ongoing regulatory review. Many policyholders simply could not afford the high legal costs exposure to challenge blanket refusals by most insurers. The ultimate test of ‘*availability and choice*’ is whether the insurance product delivers what it was supposed to provide by way of financial protection at the end of the day.

¹ The Unfair Contract Terms Directive (93/13/EEC) https://commission.europa.eu/law/law-topic/consumer-protection-law/consumer-contract-law/unfair-contract-terms-directive_en

² Implementing and delegated acts - Motor Insurance Directives. https://finance.ec.europa.eu/regulation-and-supervision/financial-services-legislation/implementing-and-delegated-acts/motor-insurance-directive_en

³ Woman gets €120,000 in compensation after bank puts house on market without telling her. <https://www.irishtimes.com/business/2023/03/24/woman-gets-120000-in-compensation-after-bank-puts-house-on-market-without-telling-her/>

⁴ Mulcahy, L. and Tritter, J.Q., 1998. Pathways, pyramids and icebergs? Mapping the links between dissatisfaction and complaints. *Sociology of health & illness*, 20(6), pp.825-847.

⁵ https://www.lawreform.ie/_fileupload/consultation%20papers/cp65.htm

⁶ <https://www.financial-ombudsman.org.uk/consumers/expect/who-we-can-help>

At the other end of the spectrum there are sophisticated large corporations with a myriad of professional advisors. These potential policyholders can explore multiple avenues of availability for financial services from across the world, including self-insurance. They may have an interest in Greenwashing and other such themes but probably merit little in the field of extra protection beyond the requirement for honesty and professionalism by providers. They can most likely incur the excessive legal costs which pertain in Ireland⁷ if the available product fails to deliver its contract.

For the vast majority of 'consumers' the availability and choice of financial services in Ireland is heavily constrained, and it is contracting further since Brexit. This capital 'crisis' might have been avoided by a bi-lateral protocol between Ireland and the UK in relation to financial services if this matter had been appropriately pursued at EU level.

Indeed, the Four Freedoms of the Single Market seem only to operate to the benefit of providers since consumers cannot service their insurance or banking needs from providers in other Member States. Even in the contested space of the Windsor Framework there is currently a lack of clarity on the position of consumers in Northern Ireland who are sold insurance by Providers regulated by CBI. Existing policy documents, as reflected in research submitted to CBI on 30th March 2022, do nothing to bring clarity to policyholders and imposed arbitration clauses may offend the EU Directive on Unfair Terms in Consumer Contracts.

In the banking sector we have lost a number of 'High Street' banks which were providing a full suite of services. Many mortgages are now in the ownership of non-banks that do not provide the same range as the vendor banks such as switches between tracker, fixed etc options despite the fact that many of those borrowers are now 'performing'. This means that chunks of people are 'captured' by these Special Purpose Vehicles [SPV] and cannot migrate to other products. Anecdotally it is said that SPV's are increasing their profit margins over ECB rates by more than the pillar banks.⁸

Availability and choice are not just about price. The buyer is entitled to be facilitated in making an informed decision. However, the identity of the 'provider' often lacks transparency. There may be a web of underwriters, re-insurers, Product Producers, Co-Branding, Outsourcing, Credit Servicing firms and various shades of Intermediaries. It can be challenging for the consumer to know who they are actually doing business with and to establish where 'the buck stops' for various aspects of their dealings when they wish to pursue their rights.

Research on complaints to FSPO and FSO indicate a growing dissatisfaction with how insurers are operating. Identifiable trends relate to the writing off repairable vehicles (surely contrary to the Green Agenda), how average clauses are applied, inappropriate invocation of subrogation clauses plus excessive retentions and inadequate stage payments on household claims. None of these mischiefs are adequately tackled by the existing CPC and there is no mention of such consumer realities in the review document.

Another emerging feature of insurance complaints is 'post-claims underwriting' which should be banned. The once lauded 'prudent underwriter' often seems to have become the 'lazy underwriter' offering freely available cover, with few questions asked, at an apparently affordable price and the process is often conducted online. However, greater effort is subsequently expended in trying to find holes in the proposal once there is any indication of a claim. While this imbalance has been partly

⁷ EU warns Ireland to make legal costs cheaper. <https://www.irishexaminer.com/news/arid-40918280.html>

⁸ Multiple mortgage rate hikes by vultures a 'disaster' for borrowers.

<https://www.independent.ie/business/personal-finance/property-mortgages/multiple-mortgage-rate-hikes-by-vultures-a-disaster-for-borrowers-42376037.html>

addressed in the Consumer Insurance Contracts Act 2019, a more fulsome interpretation of the fairness objectives of that reform will need to be embedded in the revised Code to cover the very start of the sales process.

When reviewing 'availability and choice' all consumers need greater assistance in making 'like for like' comparisons. The CBI might introduce a rating system of financial services providers based on their track record of failures in customer care and this might actually be of more interest to the reasonable person than solvency ratings.

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

There are two separate questions here.

The often vaulted 'new delivery channels' may create no more than the illusion of choice because the one provider may be operating under a number of guises. This can mislead a consumer into thinking that they are comparing offers from competitors. This is similar to the situation where a consumer goes to a 'broker' under the mistaken impression that research will be undertaken into all available products on the market. The reality can be quite different. For example, An Post only has agency relationships with three motor insurers and with one household insurer.⁹ Traditionally, the AA dealt with just three motor underwriters.¹⁰ The current rapidly consolidating intermediary/broker channel is a further cause for concern.¹¹ Resultant reduced market searching may entail the risk of even more muted competition.

New providers, in the real sense, would obviously be welcome given that Ireland is a dysfunctional insurance market. The real reasons for that state of affairs have not yet been conclusively determined.¹² For example, it seems as if the existing few dominant players in the liability market are each playing in their own niches resulting in lack of choice for consumers and the absence of any real competition. Being only prepared to target and underwrite potentially risk-free risks offends the fundamental principle of insurance being the pooling of risks. "By pooling premiums and insured events, between groups of policyholders and/or over time, the financial impact of an event that could be disastrous for one policyholder is spread among a wider group."¹³

⁹ <https://www.anpostinsurance.ie/about-us>

¹⁰ CBI discussion paper on commissions 2016. https://www.centralbank.ie/docs/default-source/publications/discussion-papers/discussion-paper-5/aa---discussion-paper-on-payment-of-commission-to-intermediaries.pdf?sfvrsn=1577d91d_2#:~:text=The%20AA%20has%20over%20120%2C000,tied%20arrangements%20with%20specific%20underwriters.

¹¹ Warnings of market peak amid wave of 'hot' insurance broker deals. <https://www.irishtimes.com/business/financial-services/warnings-of-market-peak-amid-wave-of-hot-insurance-broker-deals-1.4725949>

¹² Cantillon: Underlying issues in a dysfunctional insurance sector remain unaddressed. <https://www.irishtimes.com/business/financial-services/government-caught-on-the-horns-of-an-insurance-dilemma-1.4121936>

¹³ How insurance works. <https://www.insuranceurope.eu/publications/729/how-insurance-works/>

It is understood that the Government Insurance Reform Programme, with the assistance of the IDA, are encouraging new entrants from abroad. However, the process for securing authorisation by CBI may also need to be reviewed.

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

This is an odd question.

There is no evidence that CBI does anything to encourage competition in the Irish market for financial services as their main priority is obviously financial stability.

There should be no tension, as implied in the question, between consumer protection and inter-provider competition when all parties are held to the same high regulatory standards. The one proviso is that compliance is rigorously policed.

CCPC only really deals with suspected breaches of competition law.¹⁴ Similarly, investigations by CBI and even by EU DG Comp take too long and seem to be of limited net benefit to consumers.¹⁵

Sadly there is no entity in Ireland advocating generally for financial consumers. There is a clear need for a stand-alone body such as the Financial Conduct Authority [FCA] in the UK which does not labour under a conflict with prudential concerns. A less preferred compromise would be a ring-fenced and Chinese walled division within CBI if that were considered more efficient. A consumer directorate as currently organised and resourced is simply not enough. This may have become a more urgent need now with the undermining of the traditional role that had been served by the Citizens Information Services.¹⁶

It is not the role of CBI to control competition but from a regulatory perspective it could take steps to even the playing field. For example, in the area of advertising by competing suppliers there is a trend toward trivialising insurance and underplaying the seriousness of the duties of the parties without providing essential information on how meaningful market research should be undertaken to promote competition. This is an essential service of systemic importance and is in an entirely different category from choosing a new mattress.

By virtue of an EU Directive in November 2021 all Member States will shortly be required to establish motor insurance price comparison tools under Article 16a as below:¹⁷

1. Member States may choose to certify tools which enable consumers free of charge to compare prices, tariffs and coverage between providers of the compulsory insurance

¹⁴ Commitments from six parties in the private motor insurance sector.

<https://www.ccpcc.ie/business/enforcement/civil-competition-enforcement/closed-investigations/private-motor-insurance/>

¹⁵ Motor insurers agree to open up access to claims database after European Commission probe. <https://www.independent.ie/business/personal-finance/insurance/motor-insurers-agree-to-open-up-access-to-claims-database-after-european-commission-probe-41803887.html>

¹⁶ Concerns raised that volunteers will no longer be used for Citizen Information Services offices. <https://www.independent.ie/regionals/wicklow/news/concerns-raised-that-volunteers-will-no-longer-be-used-for-citizen-information-services-offices-41683756.html>

¹⁷ *Directive (EU) 2021/2118 of the European Parliament and of the Council of 24 November 2021 amending Directive 2009/103/EC relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability

referred to in Article 3 as “motor insurance independent price comparison tools” if the conditions of paragraph 2 are met

2. A comparison tool within the meaning of paragraph 1 shall:

(a) be operationally independent from the providers of the compulsory insurance referred to in Article 3 and ensure

that service providers are given equal treatment in search results;

(b) clearly disclose the identity of the owners and operators of the comparison tool;

(c) set out the clear, objective criteria on which the comparison is based;

(d) use plain and unambiguous language;

(e) provide accurate and up-to-date information and state the time of the last update;

(f) be open to any provider of the compulsory insurance referred to in Article 3, make available the relevant information, include a broad range of offers covering a significant part of the motor insurance market and, where the information presented is not a complete overview of that market, provide the user with a clear statement to that effect, before displaying results;

(g) provide an effective procedure to report incorrect information;

(h) include a statement that prices are based on the information provided and are not binding on insurance providers.

The above tool may assist in enhancing competition in the motor insurance market. That EU concept might be usefully extended at national level to other areas of insurance and financial services.

In complaints about excessive pricing or refusal to supply, financial services providers can hide behind competition law by the invocation of ‘commercial discretion’. This should be outlawed to the fullest extent possible. One also sees this ‘mantra’ of commercial discretion invoked in PQ’s as a *carte blanche* to prevent answers to questions of concern that are raised by politicians on behalf of their constituents who are the victims of the dysfunctional market. A similar barrier to enquiry can also be raised in complaints before the FSPO, although the FSO in the UK seems to be pushing that door of enquiry open. English consumers also have the advantage that the FCA has a role in advocating on behalf of consumers, as most recently demonstrated in the test case they launched in 2020 on Business Interruption claims when they identified blanket refusals across the insurance market.¹⁸

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?

Yes.

It is regrettable that the practice of differential pricing by insurers was never properly investigated. The tracker mortgage scandal also provides some lessons from which we should learn. CBI should have the power to appoint a High Court Examiner, such as was done by the Minister when concerns were raised about bogus non-resident bank accounts a number of years ago.¹⁹

¹⁸ Result of FCA’s Business Interruption test case. <https://www.fca.org.uk/news/press-releases/result-fca-business-interruption-test-case>.

¹⁹ NIB scandal - Bank cheats must be prosecuted. <https://www.irishexaminer.com/opinion/ourview/arid-10072409.html>

There is a danger that an entreaty to act ‘in the best interest of consumers’ could become a mere box ticking exercise rather than securing a radical and fundamental culture change among financial service providers. One way to curtail that risk is through targeted on-site inspections by CBI with details published annually of their activity and findings, including substantial sanctions where warranted.

It would be inadequate to mandate that providers ‘must satisfy themselves’ that they are acting in the interests of their customers, as set out in this consultation document. Adherence must be auditable otherwise it is a pointless principle. Breaches must be justiciable, either before the Courts or FSPO, by adversely affected consumers or by groups of consumers as proposed in the EU Representative Actions Directive of 2020.²⁰

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 and 33 is too weak.

Reasonable legitimate expectations of consumers should be paramount and this should be auditable using inspection tools. As currently drafted it seems to be left open to the provider view only. The test should be an objective one adjudged on the balance of probability and must be determined transparently. For example, it should not be open to the provider to assert “I didn’t understand the law” as an excuse from sanction and justiciable remedy.

It is pointless to indulge in pious platitudes about the impossible balancing of shareholder interests against those of policyholders as the former will always have precedence over the latter in the real world. An excess of consumer protection has never caused financial instability, which usually results from mismanagement or external shocks such as war and Solvency 11.

What the CBI guidance should focus on is assisting providers in achieving what is, after all, only the minimum in fairness to consumers by helping them to ‘keep on the straight and narrow’ with severe consequences for failure. In that way compliance becomes essentially self-serving for shareholder interests. Some providers may choose to compete on the basis of excellent consumer service but any such claims must be supported by independent audits, under regulatory supervision, and achieve standards well in excess of the baseline required by the mandatory code.

It is a cause for concern that the following words even appear on page 32:

“Inducements from third parties must not impair compliance with the regulated firm’s duty to act honestly, fairly and professionally in the best interests of the customer”

Inducements must never be a part of the provision of financial services and should be fully outlawed. Even the appearance of conflicts of interest should be a matter for investigation by the regulatory authorities. There is already an excessive imbalance of power between consumers and providers to permit another negative weight to swing the scales against fair treatment and impartial advice. Analogous with the *contra proferentem* rule on ambiguity, any such inducement must be deemed to be a failure to act in the best interests of consumers. Guiding principles for financial services providers could be found in Standards in Public Office [SIPO] precedents given that insurance and

²⁰ Collective Actions in Ireland.

<https://www.dacbeachcroft.com/en/gb/articles/2023/march/collective-actions-in-ireland/>

banking are essential services of systematic importance. The personal accountability of executives, if ever introduced, might also have a beneficial effect on corporate culture.²¹

When providers are caught being unfair to consumers the outline guidance suggests that a remediation plan should be prepared. However, the draft does not provide for such a plan to be submitted to CBI and to be made public so that other victims may know that they may be entitled to redress. Mistakes made in this space previously mean that new tracker mortgage complaints are still being notified to FSPO in 2023.²²

The concept of customers is not limited to policyholders but also extends to beneficiaries and Third Parties, as is clear from the existing Chapter 7.7(a) and (b) on referral of claimants to PIAB and MIBI. However, the existing code and the new draft guidance do not go far enough in making explicit to injured parties that they have directly effective rights under EU Motor Insurance Directives, such as the right to sue the vehicle insurer direct as provided for under Article 16(d):

“Member States shall ensure that injured parties to accidents caused by a vehicle covered by insurance as referred to in Article 3(1) of Directive 72/166/EEC enjoy a direct right of action against the insurance undertaking covering the person responsible against civil liability.”

This also has the potential to reduce legal costs that are often expended in trying to identify the culpable vehicle user/owner. In contrast, the insurer details are displayed on the vehicle’s insurance disc which is a simple step. The FSPO legislation of 2017 may need to be clarified to ensure that this 2005 provision of EU law is enforceable in Ireland.

Both policyholders and Third Parties do not have their best interests respected when motor insurers deny indemnity on grounds that are not permitted under EU Motor Insurance Directives, such as by prohibited conditions. Some research on this area was published in the peer reviewed Northern Ireland Legal Quarterly in 2021.²³ No such refusal of indemnity for compulsory motor insurance liability should be permitted without independent adjudication by the FSPO or the Courts.

Fobbing off customers and delaying payment of legitimate claims is a mischief that it not addressed in the draft guidance on reform of the 2012 CPC. In the UK there is a provision in the Enterprise Act 2016 for an action for damages where there are late settlements.²⁴ Similarly, there are no sanctions in Irish law for failure by a motor insurer or the MIBI to provide a reasoned decision to a Third Party within three months of a claim, as provided for under EU Motor Insurance Directives.

Theme 1 – Innovation and Disruption

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

This theme is beyond the remit of a review of the CPC *per se*.

It remains to be seen what benefits this will deliver for consumers.

²¹ Central Bank (Individual Accountability Framework) Bill 2022.

²² FSPO Overview of Complaints 2022. <https://www.fspo.ie/publications/overview-of-complaints.asp>

²³ Dowling, Dorothea. "Motor insurers ignore the law, again." *Northern Ireland Legal Quarterly* 72, no. 3 (2021): 569-587.

²⁴ Damages for late payment of claims. <https://www.incegd.com/en/news-insights/insurance-damages-late-payment-claims-enterprise-act-2016-what-it-all-about#:~:text=The%20limitation%20period%20in%20which,respect%20of%20the%20relevant%20lo>SS.

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

Innovations often seem to be more directed at increasing profitability than operating to serve the best interests of consumers. More research needs to be undertaken on consumer dissatisfaction.

The biggest disruptor may prove to be artificial intelligence [AI]. However, concerns about governance have been expressed by a number of interested parties since the launch of GPT-4.²⁵

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?

This is an odd question as it is not part of the remit of CBI, and it seems that CCPC only have powers in the context of breaches of competition law.

There seems to be no regulator with this responsibility.

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?

This theme is beyond the remit of a review of the CPC *per se*.

The poorer outcomes for consumers as a result of digitalisation are probably identifiable from complaints to FSPO.

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?

It seems that CBI has no power in the arena of advertising, even under the Gender Directive²⁶,

This question seems to be on a hiding to nothing.

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?

The 'halo effect' referred to in the consultation paper probably gives consumers more comfort than is warranted in the mistaken belief that CBI is an advocate for policyholders.

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

Unregulated firms should be obliged to state clearly and prominently on all their communications and advertisements that they are NOT regulated by CBI. There is also a need for prominently

²⁵ Too far, too fast: Elon Musk and Steve Wozniak on list calling for curbs on AI development. <https://www.independent.ie/business/technology/too-far-too-fast-elon-musk-and-steve-wozniak-on-list-calling-for-curbs-on-ai-development-42410036.html>

²⁶ Factsheet: EU rules on gender-neutral pricing in insurance. https://ec.europa.eu/commission/presscorner/detail/en/MEMO_12_1012

displayed warnings that customers are not entitled to any of the protections of FSPO nor of the Statutory Compensation Scheme.

This echoes the views of the National Consumer Agency in their 2011 submission to CBI:

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

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

Regulated firms should NOT be entitled to undertake unregulated activities. The current situation causes confusion, and sometimes substantial financial loss, for consumers.

Theme 4 – Pricing Matters

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

There is almost zero transparency in pricing.

Unjustified age discrimination, both by refusals and through pricing, in travel insurance and in motor insurance is widespread. There is no evidence that CBI collect data to ensure compliance by financial services providers with the Equal Status Acts 2000 to 2018.²⁷ It seems that the only effort made in this area was by a private individual in 2003.²⁸

In compulsory motor insurance it is highly likely that many consumers are paying for cover that they are neither aware of nor need. In 2002 the MIAB made the following recommendation which should be progressed:

R.15. That a regulation be introduced to standardise renewal notices - detailing the calculation of premium from compulsory cover to the full coverage offered with elective elements clearly indicated and showing any loadings or discounts applied in both monetary and percentage terms.

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

It is otiose to ask this question.

²⁷ The Equal Status Acts 2000-2018 prohibit discrimination in the provision of goods and services, accommodation and education. They cover the nine grounds of gender, marital status, family status, age, disability, sexual orientation, race, religion, and membership of the Traveller community.

²⁸ Insurance firm rapped over ban on 80-year-old. <https://www.independent.ie/irish-news/insurance-firm-rapped-over-ban-on-80-year-old-25924893.html>

The reality of that experience necessitated the recent prohibition of ‘price walking’ in home and motor insurance where consumer loyalty was penalised.²⁹ However, the practice is likely to be far more widespread, especially given the limited availability of liability insurance.

This issue was not fully investigated from a regulatory perspective of fairness.

Theme 5 – Informing Effectively

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

The cited concept of ‘buyer beware’ is no longer valid in this context. This has been partially addressed by CICA 2019.

Inappropriate and excessive regulation has resulted in mountains of paperwork, which are rarely read, being thrown at consumers. This does no more than seek cover for providers lest they be accused of non-compliance. It also provides the opportunity for unfair exploitation of ‘small print’ to avoid coverage and/or curtail benefits.

The results of the behavioural experiments undertaken by CBI are awaited with interest.

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

The most important clauses should be highlighted in red and in bold print on product summaries in hard copy and online.

Providers should be obliged to seek the Plain English accreditation available from NALA on consumer communications and contracts.³⁰

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.

The Mortgage Credit Directive³¹ provides a suite of information that is obligatory. However, that does not go far enough to capture current realities in Ireland. Indeed, further challenges are likely to emerge with Home Reversion products, or equity release, given our age demographic.

My submission here is based on the experience of friends and deduced from media reports. However, CBI will know more about what is going wrong and could be alerting consumers on the hidden risks. For example, disclosure at point of sale should highlight the saleability of mortgages with details on whether, and in what circumstances, the provider has the right to sell the loan and whether there is a continuation of protections or not. The reality can be that the SPV agrees to buy today, on a sale that will be completed in 6 months’ time, but the lender will not engage with the

²⁹ Price walking to be banned in motor and home insurance markets.

<https://www.irishlegal.com/articles/price-walking-to-be-banned-in-motor-and-home-insurance-markets>

³⁰ <https://www.nala.ie/plain-english/>

³¹ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 Text with EEA relevance

borrower in the interim without the approval of the SPV purchaser. Accordingly, the existing CBI mandated notice of “your home is at risk if you do not keep up your repayments” is no longer adequate because even performing borrowers are now finding themselves at risk.

There should be a ban on “all loans” clauses in mortgages on homes because the security can be applied against all other borrowings. This is not transparent to many mortgagors.

There is a disparity between how SPV’s treat buy-to-let versus owner-occupier loans. They have been known to put the receiver in to sell the former property but leaving the borrower with the residual debt on the latter property which is the family home. The receiver clause is not transparent. The borrower may not be alerted to the fact that they are appointing the receiver from day one of the mortgage application but then subsequently that the lender alone controls the receiver. The fairness principles of UCTD should apply even if that Directive is not applicable to property contracts. It is not an answer, as is sometimes argued, that the consumer had the benefit of independent legal advice in the conveyancing process as most solicitors are not authorised experts on the suitability of financial products involved in such transactions.

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?

The existing criteria in CPC for ‘vulnerability’ are inadequate, as conceded. Provision must also now be made for the Assisted Decision Making regime.

Financial services providers should be obliged to adopt policies and procedures that are published and available on their websites. At present many deny disclosure of this information on the basis that it is internally confidential. The introduction of such transparency would also assist those advising vulnerable parties. A breach of such duty by the provider should be justiciable in the courts or through FSPO.

Policies and procedures on CCMA and MARP should also be published by providers. It would then be possible to audit their compliance with CPC, and assessed for remediation if necessary.

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

All of us can find ourselves vulnerable from time to time.

To curtail the risks of fraud and scams the spirit of the EU Payments Services Directive, on which we do not have a separate regulator in this country, should be backed by measures in the 27 Member States and in the UK that all systems validate the IBAN. Any mismatch between the input number and the name of the payee would then raise an immediate red flag. Liability for fraud should be clearer in the terms and conditions issued by banks.

Theme 7 – Financial Literacy

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

We need a national policy on financial literacy first before determining what authority might be the most expert at achieving those objectives. This will be a multi-generational project.

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

Putting the onus primarily on consumers ignores the reality of the imbalance of power and the inadequacies of communications referred to earlier in the consultation document.

Theme 8 – Climate Matters

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

This theme ranges well beyond the remit of a CPC review *per se*.

The financial system has many immediate challenges in areas where it is supposed to be expert. Accordingly, allocating resources to more tenuous areas to which many other experts are already committed may be no more than a mere distraction.

Is it to be suggested that lenders will be obliged to refuse loans for petrol cars?

Will it be mandatory to offer preferential rates for loans to retrofit houses to improve energy ratings?

Are providers to be hailed for planting deciduous trees that are of no benefit to man nor beast?

One must guard against financial providers jumping on the Green Bandwagon while failing to address the fundamental cultural issues over which they do have control.

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

This is unknowable.

Extreme weather events are now foreseeable, as were pandemics since at least the SARS outbreak in 2003.

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

This is tenuous.

Signed: Dr Dorothea Dowling

Dated: 31st March 2023