

Central Bank Code review

What are your views on the availability and choice of financial services and products for consumers?

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

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

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?

Our advice is that the new Code should be fully aligned with the **Assisted Decision-Making (Capacity) (Amendment) Act 2022** (hereafter the Act) which is to be fully commenced on 26 April 2023. The language in the Discussion Paper currently reflects the language in the 2012 Consumer Code e.g. "The Code obliges firms to provide those identified as vulnerable with such reasonable arrangements and/or assistance that may be necessary to facilitate him or her, in their dealings with the firm." Persons with disabilities are vulnerable because of the many barriers they face, e.g. attitudinal, physical, and financial, rather than being inherently vulnerable because of their disability.

The **Assisted Decision-Making (Capacity) (Amendment) Act 2022** makes it clear that the will and preferences of an individual need to be ascertained and respected. The will and preference approach will take the place of best interests when the Act is commenced. This new statutory structure will need to be reflected through more robust and person-focused obligations being placed on firms via the language used in the new Consumer Protection Code, whereby the

focus on 'will and preferences' can be interpreted in the context of the financial activities encompassed by that Code. Detailed guidance is available via the Decision Support Service's Code of Practice for Financial Professionals and Financial Service Professionals, setting out how actors in this space can provide financial services to relevant persons in compliance with the above legislation. The NDA advises the importance of both Codes being fully aligned, with consistency of language and principles. They need to reflect each other.

Does the suggested outline of "customer best interest" guidance capture the essence of the obligation to act in customers' best interests?

As stated above the new capacity legislation requires a focus on the will and preference of a person rather than their best interests, which is a paternalistic approach not in compliance with the rights-based delivery of services and supports to persons who may lack functional capacity. The draft Code of Practice for Financial Professionals and Financial Service Providers developed by the Decision Support Service reiterates this in the guiding principles outlined in the draft Code. The Act provides for individuals to exercise, and be supported to exercise, their capacity to make decisions, even if these decisions may not always be considered wise. The making of unwise decisions is not evidence of a lack of functional capacity to make decisions. The NDA recognises that this is a significant shift for financial professionals, but will need to be recognised and provided for in the guidance provided by the Central Bank. Financial professionals will need to become familiar with issues around capacity and assessment of functional capacity as they may be required to assess capacity.

There is a line in the Discussion Paper which states that: "Firms must not take undue advantage of customer behaviour or habits". This language is broad and implies that the customer is the "problem" that has to be worked around. This is the opposite of the principles behind the new legislative framework and should be amended to reflect that in many cases it is the environment, and processes around the individual that are the issue, in keeping with a rights-based model of service provision.

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

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

With the advent – and increased promotion – of online banking by financial institutions, it is more important than ever that these services are fully accessible to all who have the capacity to use them.

Under the EU Web Accessibility Directive (WAD) public bodies in Ireland must ensure their websites and mobile apps are accessible to all people, including persons with disabilities. It is already a requirement for public bodies, under sections 26 & 28(2) of the **Disability Act 2005**, that websites and electronic communications, originating within this jurisdiction, are accessible to persons with disabilities. The EU's Web Accessibility Directive (WAD), however, sets out specific timeframes and standards for web accessibility that have to be met under the Regulations.

The WAD was transposed into Irish law via the **European Union (Accessibility of Websites and Mobile Applications of Public Sector Bodies) Regulations 2020** which came into force on 23 September 2020.

Public sector bodies comply with the 2020 Regulations if for all websites and mobile apps they:

- Meet the relevant parts of the harmonised European standard EN 301 549 V2.1.2 (2018-08). This is the same as meeting all the Level AA Success Criteria from the international guidelines WCAG 2.1.
- Publish and maintain an Accessibility Statement about their websites or mobile apps.

The NDA has been designated as the national monitoring body for the WAD by the Department of the Environment, Climate and Communications.

As a public body the Central Bank is covered by the WAD and the NDA encourages the Central Bank to disseminate the best practice highlighted by the NDA across the digital services of the financial institutions and finance professionals that it regulates.

The NDA is required to provide periodic reports to the EU containing monitoring data on the reviews conducted on public sector websites and mobile applications. The Central Bank is covered in [Ireland's Monitoring Report for the EU Web Accessibility Directive](#). The NDA will continue to provide advice and guidance to all public bodies on how to continuously improve their performance under the WAD.

In addition, Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services requires that, from 28 June 2025, a range of specified products and services are designed, and where necessary manufactured, to ensure that they are accessible to persons with disabilities. The directive is known as the **European Accessibility Act (EAA)**. The EAA focuses mainly on digital products and services

Unlike its companion directive the Web Accessibility Directive (WAD) which only applies to the public sector, the EAA applies to private companies selling products or services that 1) are seen as highly important for persons with disabilities, and 2) have wide ranging accessibility requirements across the member states.

The main aims of the EAA are to:

- Bring benefits to businesses, persons with disabilities and older people by increasing the availability of accessible products and services across the EU
- Ensure that accessibility requirements for certain products and services (such as computers and their Operating Systems and self-service terminals) are harmonised across the EU thereby guaranteeing that the manufacture and sale of these products and services adopts consistent approaches to accessibility across jurisdictions
- Clarify existing obligations under EU legislation in respect of accessibility in particular in public procurement and structural funds thereby ensuring that products and services acquired by public-sector organisations meet the needs of persons with disabilities.

The EAA applies to consumer banking services. The Central Bank will have a role in relation to accessible ATMs and other aspects of consumer banking. The EAA states that consumer banking covers: providing identification methods, electronic signatures, security, and payment services which are perceivable, operable, understandable and robust.

With a view to enabling persons with disabilities to use those services throughout the EU, including where provided through websites and mobile device-based services including mobile applications, to make well-informed decisions, and to feel confident that they are adequately protected on an equal basis with other consumers, as well as ensure a level playing field for service providers, the EAA should establish common accessibility requirements for certain banking and financial services provided to consumers.

Consideration should also be given to the case where ensuring the accessibility of products and/or services might require that the environment in which they are located should also be made accessible. For example, the EAA mandates that ATMs must be made accessible. However, the accessible ATM will be rendered useless to persons with disabilities if the built environment in which it is located cannot be accessed by said persons.

The EAA also requires that the Central Bank, as a market surveillance authority, may have to decide on complaints related to accessibility as well as requests for exemptions from accessibility requirements.

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?

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?

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?

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

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

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

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

How can regulation improve effectiveness of information disclosure to consumers?

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

Banking and financial services are increasingly dominated by technology. There are obligations on the Central Bank and financial firms around accessibility through the Web Accessibility Directive and the European Accessibility Act – both referred to in greater detail elsewhere in this questionnaire.

While technology is increasingly dominant. There are other, more traditional, methods that are used by a lot of customers. It is important that these remain available to people for whom technology isn't an option, or they are reluctant to move on from methods of communication that have served them well for years. Understanding can be improved by following a Universal Design approach to customer communications. In partnership with the Department of Public Expenditure, NDP Delivery and Reform, the NDA has published an updated version of its Customer Communications Toolkit for Services to the Public — A

Universal Design Approach. More detail on this Toolkit is available in the answer to another question

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.

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?

No group in society is inherently vulnerable, but they can be placed in situations of vulnerability.

Disabled people are often included in the category of “vulnerable groups” in policy frameworks and strategies both internationally and nationally. However, it is important not to depict disabled people as inherently vulnerable.

People with disabilities become vulnerable because of the disabling barriers in society, rather than because of an individual's ‘impairment’. This approach shifts the perspective from paternalism and protection towards empowerment and the recognition of disabled people as rights-holders. We advise against the use of vulnerable as blanket term as it does not align with the new approach to capacity adopted in the new legislation or the current language used. Firms should consider how to deliver the services and supports within their remit in accordance with the will and preferences of all their customers, noting that this may include providing supports for decision making in accordance with the guiding principles of the Act.

Disabled people are not a homogenous group and may choose to identify in various ways. Furthermore, language changes and evolves over time. Disabled Persons Organisations (DPOs) are the organisations best placed to advise with regard to the most up to date language. Many national DPOs have guidelines on language on their websites which were developed collectively with their members. The views of some DPOs may differ from others. A flexible approach

which is respectful to all can be adopted. If engaging with a disabled individual in a consultation or meeting, it is always best to ask a person their preference with regard how to refer to them. The NDA recognises both ‘person with a disability’ and ‘disabled person’ as valid and legitimate terms. The NDA paper on [Disability Language and Terminology](#) expands on this issue.

The NDA has recently published [Participation Matters: Guidelines on implementing the obligation to meaningfully engage with disabled people in public decision making](#). These guidelines are a practical resource to support public officials at national and local level to meaningfully consult with and actively involve disabled people and their representative organisations in policy development and other decision making processes to meet obligations set out under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). These guidelines support officials to take a Universal Design approach to all public consultation and participation processes so that disabled people can participate on an equal basis with others.

The NDA advises that the Central Bank seeks the views of disabled people, following this approach, during the course of its consultations around the Code Review and in future consultations.

What other specific measures could be adopted to protect consumers in vulnerable circumstances while respecting their privacy and autonomy?

For people working in finance the **Assisted Decision-Making Capacity (Amendment) Act 2022** (the Act) will bring about important changes in how they do certain parts of their work. The Act is due to be fully commenced on 26 April 2023 and it will be important that the Consumer Code is aligned with this legislation.

The Decision Support Service (DSS) has duties to promote awareness of and confidence in the new statutory framework, to regulate and supervise the support arrangements and to promote organisational change.

The core element of the legislation is to support all persons to make their own decisions as far as is possible. A key reform is the change to a will and preference approach rather than a best interest approach.

Giving effect to the will and preference of an individual is one of the guiding principles of this draft Code of Practice for Financial Professionals and Financial Service Professionals. While financial service providers and financial professionals

are not classed as interveners under the Code they may find themselves in circumstances where they are taking actions involving relevant persons. In these cases they are asked to follow the guiding principle. A relevant person is presumed to have capacity to make a decision unless the contrary is shown in accordance with the Act. It will be important that people working in finance familiarise themselves with these new arrangements and procedures, and seek further training and guidance as relevant and appropriate.

It is important to remember that the provisions of this Code do not alter the obligations of financial professionals and financial service providers under consumer protection codes. In providing advice or a financial service or selling a financial product, a financial professional or financial service provider must consider whether a specific financial product or service is suitable for their customer.

What can the responsible authorities do to improve financial education?

Universal Design involves the design of the built environment, products, services and information and communications technology so that they can be accessed, understood and used by all, regardless of age, size, ability or disability.

Financial education can be improved by following a Universal Design approach to customer communications. In partnership with the Department of Public Expenditure, NDP Delivery and Reform the NDA has published an updated version of its [Customer Communications Toolkit for Services to the Public — A Universal Design Approach](#). The Toolkit explains the importance of simple, clear language for effective communications. It contains guidance on written, spoken and signed communications, plus specific guidance on designing forms, documents and signage. It also highlights the importance of offering communications in more than one format. In addition, it provides guidance on developing and maintaining high-quality online services, which are user-centred, regularly updated and easy to navigate.

The NDA advises that the Central Bank should consider recommending this Toolkit to the financial institutions and financial professionals it regulates as a means of making financial information accessible to all.

The NDA will be producing an updated version of its 2011 Disability Awareness Training: e-learning module, later this year. While this module is aimed at the public sector it contains best practice that can be applied across financial

institutions as well. There are numerous other options available for online and in-person disability awareness and disability equality training.

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

Where possible, it is recommended that financial institutions and financial professionals use the simplest and clearest language possible (plain English). Avoid using technical words that may not be used by a member of the public. If the use of technical language cannot be avoided, clearly explain what it means. This will allow people to understand important information relating to their finances so they can better protect their own interests.

The Department of Public Expenditure, NDP Delivery and Reform has been leading out on developing new design principles for the delivery of services across the public service. These [prototype design principles](#) are worth consulting in order to see the direction of travel on this issue.

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

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