

Insight Series on the Central Bank of Ireland's Consultation Paper on the Consumer Protection Code

Insight 4: Informing Effectively

Overview

As set out in our [Initial Observations on the Central Bank of Ireland's Consumer Protection Code Consultation Paper](#) the Central Bank of Ireland (“**Central Bank**”) has proposed a revised structure for the Consumer Protection Code (“**CPC**”) under CP158 - Consultation Paper on the Consumer Protection Code (“**CP158**”) comprising:

- (i) The Central Bank Reform Act 2010 (Section 17A) (Standards for Business) Regulations, (“**Standards for Business Regulations**”);
- (ii) The Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Conduct of Business Regulations) (“**Conduct of Business Regulations**”);
- (iii) The Supporting Guidance on Securing Customers' Interests (“**Guidance**”); and
- (iv) The Supporting Guidance on Protecting Consumers in Vulnerable Circumstances;

(together the “**Revised Code**”).

Our previous insights provided an overview of the Standards for Business under the Revised Code which all regulated financial service providers (“**RFSPs**”) must comply with in their dealings with customers and the specific obligations of RFSPs in complying with their obligation to [Secure Customers' Interests](#).

This insight will focus on one of the Central Bank's principal policy proposals under CP158, being “Informing Effectively”, which has been included as a Standard for Business for RFSPs.



Scope

Informing Effectively is a Standard for Business that applies to all RFSPs under the Standards for Business Regulations, other than those providing MiFID services and crowdfunding services (for which there are equivalent regimes in EU legislation) and credit unions (“**Excluded Firms**”). This includes both current and potential customers.

Additional informing effectively obligations are imposed on RFSPs dealing with consumers under the Conduct of Business Regulations. Under the Revised Code, a consumer includes individuals, groups of individuals (such as partnerships) and small corporates in Ireland, (which have turnover of up to €5 million).



Informing Effectively – Standards for Business Regulations

In introducing this new Standard for Business, the Central Bank is seeking to shift the focus of RFSPs from meeting disclosure requirements in a “tick box” manner, to instead requiring firms to take an outcomes-focused approach by ensuring the manner in which they communicate with customers facilitates understanding and empowers customers to make decisions in their own interests.

The Supporting Standards for Business provide that “informing effectively” includes:

- (a) ensuring that the information is provided to a customer in such a way that the material features of the product or service in question can reasonably be understood by the customer;
- (b) ensuring that all information that it provides to a customer is clear, accurate, up to date, and written in plain language;
- (c) avoiding the unnecessary use of technical terms;
- (d) providing information to a customer on a timely basis; and
- (e) bringing key information to the attention of the customer.



RFSPs will be familiar with broadly similar obligations to those outlined above under the existing CPC and other sector-specific legislation. It therefore brings into question what, if any, additional obligations will actually be placed on RFSPs pursuant to this Standard for Business.

It seems to us that the key change introduced by this Standard for Business is for firms to consider not only if they are providing all required information to the customer in accordance with their disclosure / provision of information obligations, but to also ensure that the information and the manner in which it is provided is clear, meaningful, easy to navigate and digestible. The overall objective of the Standard for Business is to ensure effective and timely understanding of financial products so as to enable customer autonomy to make decisions that are in their best financial interests.



Informing Effectively – Conduct of Business Regulations

To further support RFSPs in meeting their obligations to inform effectively, Part 5 of the Conduct of Business Regulations sets out more detailed requirements for firms to comply with when dealing with consumers.

The majority of Part 5 of the Conduct of Business Regulations is broadly aligned with the existing provision of information obligations of RFSPs under the CPC on matters such as warning statements, presentation of information, use of regulatory disclosure statements, information on charges etc.

There are however a number of new requirements / clarifications that RFSPs should be aware of:

■ **Product Producers to ensure that information enables consumer understanding**

This is one of the key new provisions being introduced under the Conduct of Business Regulations for the purposes of “informing effectively” and will require product producers to:

- (a) ensure that information and documentation is designed to readily enable consumer understanding having regard to the target market for that product;
- (b) ensure that the requirement referred to at (a) is incorporated into the product producer’s processes for product and service design; and
- (c) have in place a process to regularly review, test and monitor the effectiveness of information and documentation referred to at (a).

There are clear synergies between this requirement and existing product oversight and governance obligations of RFSPs. The specific product related obligations of firms under the new Standards for Business of Securing Customers Interests (obligations to act in accordance with the reasonable expectations of customers / take into account the interests of its customers when designing products and services, and the methods of delivery / ensure that its products and services are not designed to unfairly exploit the behaviours, habits, preferences or biases of customers leading to customer detriment) should also be considered in parallel with this.

It is advisable that RFSPs consider their approach to compliance with this obligation on a holistic basis and, where alignment exists, incorporate the additional obligations, particularly on monitoring the effectiveness of customer communications, into their product oversight and governance processes.

■ **Technical Terms**

Under the Revised Code, where technical terms cannot be avoided, a clear explanation in plain language must be provided to the customer.

■ **Terms of Business**

The Revised Code clarifies that where an intermediary is providing regulated activities on behalf of another RFSP, only the intermediary is required to provide its terms of business to the consumer. This is a useful clarification for firms distributing products through a chain of distribution where it has not always been clear under the CPC whether one or all parties in that chain are required to provide a terms of business to the end consumer.

The Revised Code expressly requires RFSPs to make their terms of business clearly identifiable and available on their website. We expect the majority of RFSPs are already compliant with this new requirement in practice.

The Revised Code also precludes RFSPs from including any information on any unregulated activities carried out in the terms of business. As set out in our Insight on [Secure Customers' Interests](#), the Central Bank is requiring firms to eliminate any potential for confusion or the "halo effect" on the protections available for regulated and unregulated products. This new requirement aims to support this objective.

■ Ombudsman / Alternative Dispute Resolution Services

RFSPs are subject to existing obligations to inform customers of their right to refer a dispute to the Financial Services and Pensions Ombudsman as part of the complaints handling process. Under the Revised Code, RFSPs will now be required to provide this information, and if applicable any alternative dispute resolution service, to the consumer prior to entering into the contract.

■ Recording Telephone Conversations

Where an RFSP intends to keep a record of a telephone conversation with a consumer, it must inform the consumer at the outset that the conversation is being recorded. While this is a new requirement under the Revised Code, we expect that RFSPs are already compliant with this requirement as part of their data protection obligations.



Conclusion

Going forward, RFSPs will need to consider whether they are complying with their disclosure obligations in an effective manner and test and monitor the effectiveness of information / documentation provided to customers in order to comply with this Standard for Business and related obligations.

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