

FINANCIAL REGULATION  
& INVESTIGATIONS

# CONSUMER PROTECTION CODE REVIEW

*What you need to know now and key  
compliance and governance steps*

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# 01 / INTRODUCTION

On 7 March 2024, the Central Bank of Ireland (**Central Bank**) launched a consultation on its review of the Consumer Protection Code 2012 (**Code**).

Along with the consultation paper, the CBI published two sets of draft Regulations:

- draft Central Bank Reform Act 2010 (Section 17A) (Standards for Business) Regulations (**Standards for Business Regulations**), which provide for the 'Business Standards' anticipated by section 17A of the Individual Accountability Framework Act 2023
- draft Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Conduct of Business) Regulations (**Conduct of Business Regulations**)

(together, the Regulations), which will replace the Code once finalised.

The CBI also published two draft guidance documents:

- draft 'Guidance on Securing Customers' Interests' (the **SCI Guidance**)
- draft 'Guidance on Protecting Consumers in Vulnerable Circumstances' (the **Vulnerable Guidance**)

The review of the Code is designed to deliver further positive outcomes for consumers, build trust and confidence in the functioning

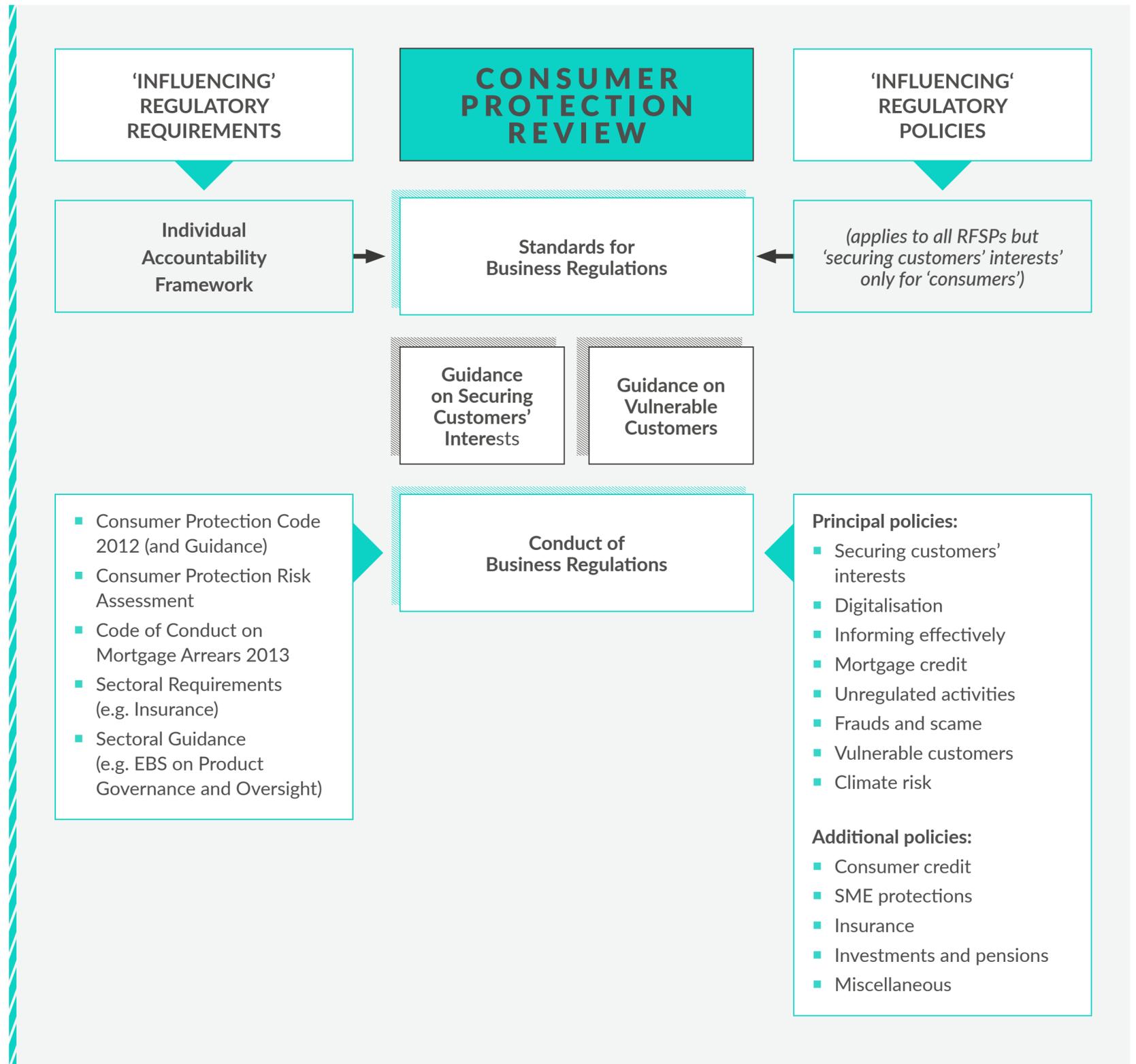
of the financial system, encourage effective competition and innovation, and modernise the Code to reflect a changing regulatory environment. Our previous briefing explains the background to, and rationale for, the Code review, and our initial observations on the new structure and themes of the revised Code.

We summarise below the new and enhanced rules and their practical impact for firms, even as the Central Bank consultation continues, and the final legislation and guidance is developed.

**There is no substitute for reviewing the draft regulations and guidance in detail as part of your implementation project. However, it is important to have a clear framework for analysing the changes and how these will impact your firm. This document provides you with that framework.**

These reforms reflect a number of policy changes including the Individual Accountability Framework and not only an update to the Consumer Protection Code and Code of Conduct on Mortgage Arrears. The reforms also reflect 'principal' and 'additional' policy proposals.

**The 'map' of reforms looks like this:**



## Scope of the New Requirements

**Code 'in-scope' services:** The Regulations do not bring any additional regulated entities within their scope. However, the Regulations will now apply, in full, to:

- the provision of certain indirect credit products, such as 'buy now pay later' agreements
- hire purchase agreements
- consumer hire agreements

While firms that offer these products to consumers have been subject to certain aspects of the Code, they will need to review and update their consumer credit policies, procedures, systems and controls to ensure that their customers are afforded the same protections as customers of other consumer credit products. This includes enhancements to meet requirements and expectations in areas such as information disclosure, arrears handling, errors and complaints management and record-keeping.

**Code 'in-scope' customers:** The definition of "consumer" has been broadened to include corporates (**SMEs**) with, inter alia, an annual turnover of €5m (compared to the previous €3m). Firms will need to review their SME customer base to identify new in-scope customers and amend their procedures to incorporate these new thresholds.

**Standards for Business:** These apply to all firms in the 'conduct of their affairs', except in respect to certain MiFID investment services, activities of crowdfunding service providers and activities of a credit union other than insurance intermediation activities.

However, the Central Bank states in its consultation paper that it expects firms providing MiFID investment services and crowdfunding service providers to consider and apply the SCI Guidance in the context of their existing obligations to act honestly, fairly and professionally in accordance with the best interests of clients.

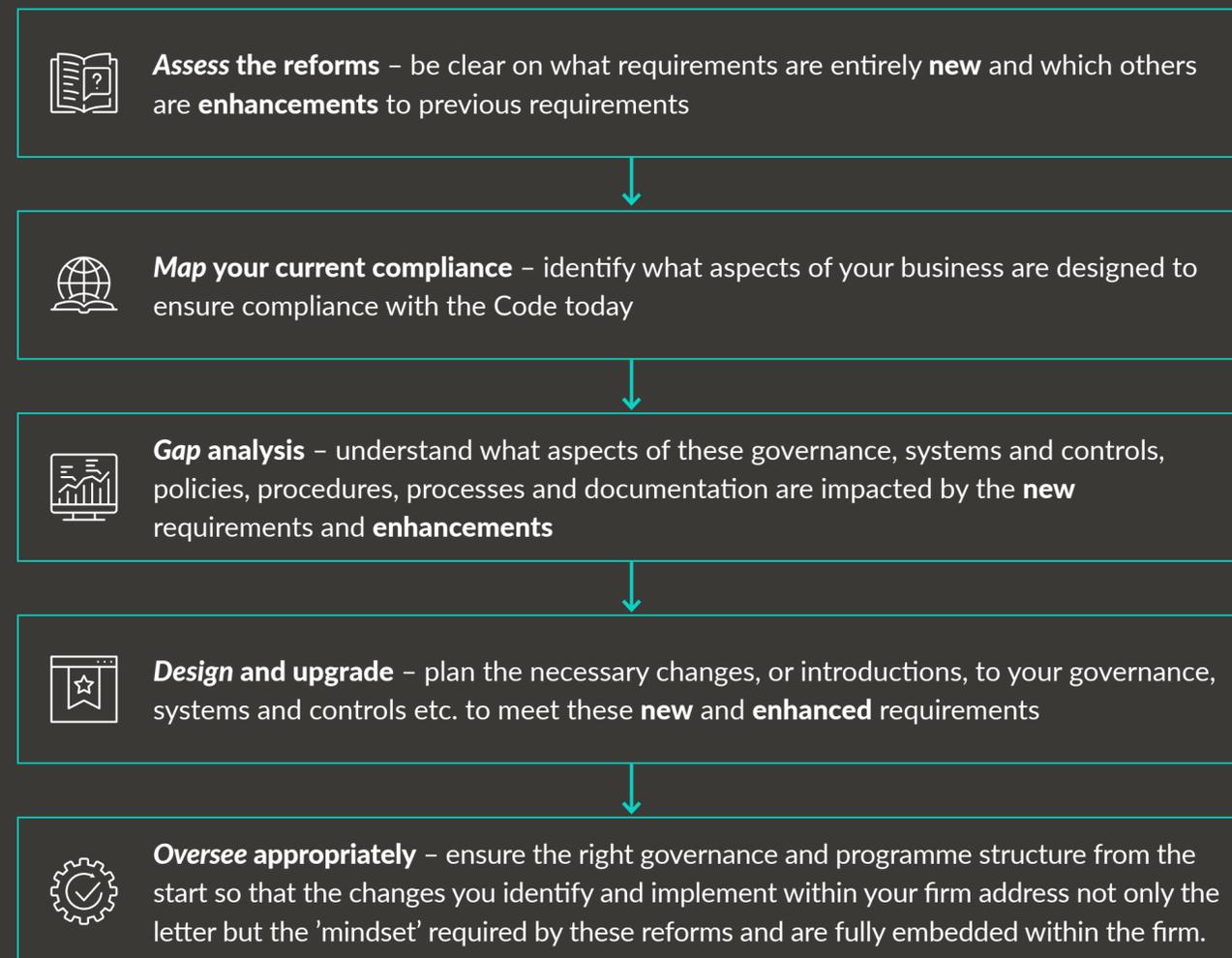
## WHAT REMAINS UNCLEAR?

Whilst not a scope question, the draft Regulations use different language when articulating the standard of conduct required of firms. E.g. Regulation 23 (conflicts) refers to taking 'all steps within its control' to manage conflicts; Regulation 28 (conflicts/rewards) refers to taking 'reasonable steps' to ensure employees do not offer rewards likely to raise a conflict; and Regulation 103 (complaints) refers to taking 'all reasonable steps' to resolve complaints. It remains to be seen whether this difference in wording is intended to impose any different standards across these requirements.

## 02 / AT A GLANCE

### HOW TO: Progressing a complex compliance project

These reforms are wide ranging. The project to ensure compliance is also complex given that it covers governance, systems and controls, customer servicing and other processes, training and customer documentation. A holistic approach to assessing and implementing these reforms will require you to:



### Key map to the reforms

The **new** requirements appear to address technological and market developments whereas the **enhancements** to previous requirements appear intended to clarify how firms can protect the interests of consumers most effectively. 'At a glance' the key reforms can be characterised as follows:

#### 'NEW' REQUIREMENTS

- Digitalisation
- Sustainability/climate
- 'Securing customers' interests'
- 'Informing customers effectively'
- Unregulated activities
- Frauds and scams
- 'Vulnerable' customers

#### 'ENHANCED' REQUIREMENTS<sup>1</sup>

- Suitability
- Conflicts/commission/remuneration
- Bundling
- Charges
- Record keeping
- Advertising
- Arrears handling
- Mortgage credit/switching
- Investments
- Consumer credit
- Insurance
- Errors/complaints handling

<sup>1</sup>This document focuses on the key new principles and enhancements to inform your firm on how to approach the CPC reforms rather than a 'rule by rule' update. Given the relatively limited enhancements in some areas we do not cover every topic in this document. This includes, for example, provisions relating to bundling, pensions, deposit agents, high cost credit providers and debt management firms.

**Key actions for firms**

The Regulations contain **new** categories of requirements and **enhanced** versions of previous requirements.

This document summarises the key ‘new’ requirements and the key aspects of ‘enhancements’ to current requirements.

**Overall, a firm’s project for assessing the scope of these reforms, identifying the areas of its business that are impacted and designing, reviewing and implementing the necessary changes will cover a number of areas, including:**



**Enhanced governance arrangements**

Firms will need to have in place “robust governance arrangements” relating to e.g. errors and complaints management, including arrangements for the urgent escalation of “significant” errors to the Board.



**Increased involvement of the Board**

The Board will need to e.g. every two years a report on whether the firm is meeting the new requirements regarding staff training for identifying and responding to consumers in vulnerable circumstances. The Board will also need to approve a firm’s policy on e.g., communications with personal consumers in arrears.



**Enhancements to information**

Additional information will need to be provided to consumers via e.g., digital platforms, online mortgage calculators, warning statements, statements of account for variable rate mortgages, and certain communications to consumers relating to interest rate switching and mortgage arrears.



**Enhancements to customer documentation**

Additional information will need to be included in customer documentation, e.g. pre-sale customer documentation, terms of business and guides to product switching. In addition, changes may be needed to documentation to explain any technical terms used.



**More regular internal reviews**

Firms will need to conduct reviews to assess compliance with new requirements regarding e.g. staff training relating to vulnerable consumers and prepare a report of the findings for the Board. Firms will also need to conduct and document an annual review to assess the information in advertisements for compliance with applicable requirements.



**Updates to existing policies, procedures, systems and/or controls**

Firms will need to review and update policies, procedures, systems and/or controls relating to e.g., pre-sale information gathering from consumers, suitability assessments, identifying and responding to the needs of consumers in vulnerable circumstances, errors and complaints management, renewal notification process for non-life insurance policies and ‘opt-in’ consents to automatic renewal of gadget, travel, dental and pet insurance policies.



**New policies, procedures, systems and/or controls**

Firms will need to develop and implement policies, procedures, systems and/or controls relating to ‘trusted contact persons’ (a new concept) and ‘financial abuse’, the recording of information from a consumer suggesting that s/he may be in ‘vulnerable circumstances’ and the design, testing and operation of ‘digital platforms’.



**Updates to product design**

Whilst many firms will already embed sectoral guidance on product design and testing (e.g. the EBA Guidelines on Product Governance and Oversight Arrangements), they should review these processes and governance against the broader expectations in both Regulations and associated Guidance.



**Revision to training**

Firms will need to design and develop new and/or updated staff training programmes relating to identifying and responding to the needs of consumers in vulnerable circumstances.

## 03 / STANDARDS FOR BUSINESS

### A new approach

The Standards for Business Regulations sets out 'Standards for Business' that will apply to all firms. These are part of the Individual Accountability reforms.

Amongst other things, they enhance, re-frame and replace the existing General Principles in Chapter 2 of the Code (which generally applied to engagements with all customers rather than being limited only to consumers).

The Standards for Business are complemented by Supporting Standards for Business providing further detail on how firms should comply.

### The Standards for Business broadly:

#### **INTRODUCE NEW REQUIREMENTS RELATING TO:**

- securing customers' interests (for consumers only)
- controlling and managing the firm's affairs and systems sustainably, responsibly and in a sound and prudent manner
- maintaining adequate financial resources
- controlling and managing their affairs and systems to counter the risks to customers of 'financial abuse'
- engaging and co-operating with the Central Bank in good faith and without delay

#### **ENHANCE PREVIOUS GENERAL PRINCIPLES FROM THE CODE RELATING TO:**

- acting with honesty and integrity
- acting with due skill, care and diligence
- acting in the best interests of customers and treating them fairly
- ensuring all information is provided to customers to inform them effectively

Importantly, unlike the Conduct Standards under the Individual Accountability Framework, there is no reference to firms taking 'reasonable steps' to comply with the Standards for Business. Rather, like the previous Code, firms are simply required to comply with the substantive requirements subject to the terms of each individual requirement.

As this reform involves a detailed overhaul of previous principles, we discuss what each Standard for Business means for your firm in practice and what remains unclear.

## WHAT'S NEW? STANDARDS FOR BUSINESS

### 1. Securing customers' interests ('Consumers' only)

#### KEY PROVISIONS IN SUPPORTING BUSINESS STANDARDS

This is an entirely new provision. It is the only one that is limited to firms' engagements with **consumers**.

The relevant Supporting Standards for Business are relatively detailed, some of which appear to 'build on' the Central Bank's experience from supervisory and enforcement engagements relating to e.g. Tracker Mortgages, Business Interruption Insurance and Differential Pricing.

The Supporting Standards include references to:

- ensuring a firm's culture, strategy, business model, decision-making, systems, controls, policies, processes and procedures take into account its customers' interests
- acting in accordance with the 'reasonable expectations' of a firm's customers
- taking into account the interests of customers when designing products and services including the methods of delivery
- ensuring that products and services are not designed to unfairly exploit the behaviours, habits, preferences or biases of customers leading to customer detriment
- resolving customer complaints and errors
- effecting appropriate disclosure of errors or issues for all affected customers
- distinguishing between a firm's regulated and unregulated activities
- delivering 'fair outcomes' for customers

#### What does this mean for your firm?

The scope of this new requirement implies that it may apply beyond the provision of regulated financial services. Regulation 4(3) refers to this requirement applying regarding the 'conduct of a firm's affairs'. Indeed, para 2.7.5 of the SCI Guidance states that a firm's commitment to securing customers' interests does not 'turn on or off' depending on the legal/regulatory status of business a regulated firm does.

Key elements of 'securing customers interests' include the following:

**Taking into account customers' interests:** firms are required to take a holistic approach to complying with this new requirement. E.g.:

- paragraph 1.2.2 of the SCI Guidance notes the need for a 'collective understanding' in a firm of what securing customers' interests means and that this should be reflected across a firm's culture.
- paragraph 1.6.2 of the SCI Guidance encourages firms to take the principles and learnings from the examples in the SCI Guidance and consider how they can apply them across the culture in their firm.
- paragraph 2.1.7 of the SCI Guidance states: "...[t]hose in leadership roles should ensure that the right standards are set and reflected throughout the business including strategy setting, product, service and delivery channel development, risk management, people management and complaints handling..."

**Acting in accordance with customers' 'reasonable expectations':** no significant detail is given in the SCI Guidance as to how a firm should assess customers' 'reasonable expectations' in practice. However, the Central Bank's approach to the previous Tracker Mortgage Examination (TME) (in the retail banking sector) and Business Interruption Insurance Supervisory Framework (BI Framework) (in the insurance sector) will likely inform the regulator's approach. In particular, under the TME, assessing a customer's 'reasonable expectations', involved a number of factors, including:

- considering the meaning and proper interpretation of contractual provisions
- considering 'influencing factors' such as:
  - › broader written communications with customers, including advertising and communication through call centres (including how staff are trained to engage with customers) and
  - › other material surrounding circumstances; and
- 'transparency considerations' including how a particular term or product has been interpreted or operated by the firm, differing product names and other terminology used by the firm in engaging with customers

## WHAT'S NEW? STANDARDS FOR BUSINESS

**Designing products:** the SCI Guidance in particular sets out more detailed expectations regarding governance and processes for product design, including pre- and post- launch testing and monitoring. This is considered further below (page 17).

**Customer complaints and errors:** These provisions appear intended to clarify the manner in which the Central Bank expects firms to engage not only with individual customer complaints, but also assess the potential impact on the outcome of such complaint(s) on all other relevant customers or customer engagements. E.g.:

- Regarding engaging with customer complaints, Regulation 5(f) refers not only to resolving errors or mistakes in a timely manner, but also disclosing those errors or mistakes to affected customers also in a timely manner (i.e. engaging fully with impacted customers rather than focussing on internal steps to resolve errors or address complaints).
- Regarding potential impacts of errors or complaints on a broader cohort of customers, there is now an express reference to ensuring 'errors' or 'issues' identified for one customer that 'may reasonably have affected' other customers are resolved for all affected customers 'efficiently, fairly and in a timely manner'. This refers to the Central Bank's 'read across' expectation if a complaint is upheld in relation to a particular aspect or a product, customer journey or other aspect of customer engagement, then the firm should ensure that other customers benefitting from that particular product attribute, or who were subject to the same customer journey or

engagement, should be treated fairly and if necessary afforded a similar outcome to the individual.

- Assessing whether any 'read across' arises from an error or individual complaint, and identifying the population of customers impacted by any such 'read across', is often a complex and value-based assessment. Neither the Supporting Standards nor the SCI Guidance includes further indications as to how to conduct this assessment. However, in practice it can involve assessing which customers have similar contractual terms; received similar customer communications; were treated in a similar way in terms of product options or product servicing; and/or whose own circumstances may have been similar such that the overall customer outcome was similar for them.

**Regulated vs unregulated activities:** The SCI Guidance includes further discussion on expectations to avoid the 'halo' effect of customers gaining assurance from regulatory status in relation to unregulated services. This is complemented by e.g. Regulation 75 of the Conduct of Business Regulations requiring certain systems and controls to ensure information given to consumers is clear on the division between regulated and unregulated activities.

**Delivering 'fair outcomes' for customers:** This is a key new requirement under the reforms. This is similar in concept to the new 'Consumer Duty' in the UK under which, inter alia, firms are required to take steps to achieve certain outcomes relating to:

- the appropriate design of products and services
- ensuring 'value for money' for customers
- ensuring communications with customers enable them to understand the features, risks and implications of products
- supporting customers in using the products and services they have purchased

At a general level, firms who follow the process requirements in the new Business Standards will likely comply with all aspects of the requirement to 'deliver fair outcomes'. This is discussed further below in the context of the SCI Guidance.

## WHAT'S NEW? STANDARDS FOR BUSINESS

### 2. Controlling and managing the firms' affairs and systems sustainably, responsibly and prudently

#### KEY PROVISIONS IN SUPPORTING BUSINESS STANDARDS

This is another entirely new provision. It introduces the requirement for a firm to control and manage its affairs and systems 'sustainably' and 'responsibly' (as well as in a 'sound and prudent manner').

The Supporting Standards include references to:

- having and employing 'appropriate' resources and 'effective' governance of policies, procedures, systems and control checks to 'ensure' the firm complies with its obligations under financial services legislation
- providing 'appropriate' staff training on the legal and regulatory framework relevant to the performance of (presumably) their functions 'including' those under financial services legislation
- ensuring appropriate delegation with effective oversight
- managing risks arising from outsourcing activities and arranging adequate protection for customer assets
- delivering 'fair outcomes' for customers

#### What does this mean for your firm?

Key elements of 'controlling and managing' a firm's affairs include the following:

**Policies, procedures, systems and controls:** Whereas the Code refers to employing 'effectively' systems and controls 'necessary' for compliance with the Code itself, this requirement is broader and covers compliance with obligations under all financial services obligations. The references to 'sustainably' managing affairs is one of a number of examples of sustainability being introduced to these new requirements. The references to managing affairs in a 'sound and prudent' manner is consistent with broader obligations on, for example, credit institutions regarding governance, systems and controls under the EU Banking Directives.

**Staff training:** This new requirement appears relatively broad. Its wording suggests that training should be tailored to particular cohorts of employees so that they cover the key legal/regulatory obligations of the firm pertinent to those employees' own functions within the firm. Further, it refers to legal obligations or standards under financial services legislation non-exhaustively, suggesting that 'appropriate' training in this sense could cover core legal/regulatory obligations of the firm outside of financial services legislation. If so, it remains for each firm to assess the scope of such training. Parallels might be drawn with other areas in other jurisdictions, such as the US, where regulators have mandated large firms such as credit institutions to ensure they have adequate logs and training relating to

all key legal/regulator obligations to which the bank is subject.

**Appropriate delegation:** This appears to mirror the obligation on senior executives within the scope of the Senior Executive Accountability Regime (SEAR) and Additional Conduct Standards to ensure appropriate delegation frameworks are in place. Whilst there is no further guidance available in the context of the Business Standards, firms would be well advised to consider the more detailed guidance issued in the context of the Individual Accountability Framework (IAF) (and more broadly issued by other regulators in this context such as the UK Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) in the context of the UK Senior Managers Regime).

**Outsourcing risk and asset protection:** It remains unclear what this generic aspect of the Business Standards adds to a particular firms' obligations by reference to, for example, the Central Bank's Cross-Sectoral Guidance on Outsourcing (and other obligations including under the incoming Digital Operational Resilience Act) and the more prescriptive asset 'safeguarding' rules that apply for example under MiFID and the Payment and Electronic Money Services Regulations. This may be intended as a 'catch all' requirement making it more efficient ultimately to enforce the Central Bank's risk management expectations in these areas.

## WHAT'S NEW? STANDARDS FOR BUSINESS

### 3. Maintaining adequate financial resources

#### KEY PROVISIONS IN SUPPORTING BUSINESS STANDARDS

This is another entirely new provision. The Supporting Standards merely refer to complying with the relevant obligations under financial services legislation and establishing and implementing systems and controls to ensure a firm maintains adequate financial resources.

As with outsourcing risk and asset protection in the context of managing a firm's affairs (above), it remains unclear what this generic aspect of the Business Standards adds to the more detailed obligations a firm is subject to regarding, for example, specific capital and, if relevant, liquidity requirements.



## WHAT'S NEW? STANDARDS FOR BUSINESS

### 4. Countering 'financial abuse'

#### KEY PROVISIONS IN SUPPORTING BUSINESS STANDARDS

This is another entirely new provision.

The Supporting Standards include references to:

- putting in place reasonable systems and controls to mitigate the risk of financial abuse to customers
- appropriately monitoring financial abuse trends
- carrying out ongoing monitoring of potential vulnerabilities in the services/distribution channels
- notifying customers of digital frauds/deception connected to the firm's affairs or sector in which it operates
- communicating to customers the supports available and actions customers can take in the event of financial abuse

#### What does this mean for your firm?

In this context, 'financial abuse' is defined to include, in summary, the wrongful or unauthorised taking or withholding etc. of a customer's assets or the obtaining control or wrongfully interfering in the ownership of customers' assets.

Key elements of 'countering financial abuse' include the following:

**Systems, controls and monitoring:** many firms will already be subject to specific and more detailed legal/regulatory requirements regarding systems and controls designed to avoid the kind of conduct within 'financial abuse' (e.g. credit institutions' and insurance undertakings' generic 'systems and controls' requirements under the Banking and Solvency II Directives, and in other sectors).

However, references to 'monitoring' trends relevant to the firm's customers or its sector more generally are new. No further guidance is given as to the scope of this requirement. Parallels might be drawn with the specific requirements under AML legislation.

This includes, for example, the more specific obligations in that context to monitor customer transactions to assess on an on-going basis the money-laundering risk arising from their activities. This also includes the requirement to conduct risk assessments addressing the level of AML risk across a firm's business; in due course these might be broadened to include assessments of the nature of risk that the firm's customers may be subject to 'financial abuse' by third parties which in turn would inform the development or enhancement of systems and controls required under this new Business Standard.

**Notifying and supporting customers:** firms can benefit from incorporating into their systems and controls the expectations in related guidance such as the Central Bank's Cross Industry Guidance in respect of Information Technology and Cybersecurity Risks, including expectations regarding clear communications plans for customers if a cybersecurity incident arises.

## WHAT'S NEW? STANDARDS FOR BUSINESS

### 5. Engaging and co-operating with the Central Bank

#### KEY PROVISIONS IN SUPPORTING BUSINESS STANDARDS

Whilst such a generic and single cross-sector reporting obligation for firms is new, many specific areas of financial services legislation include reporting obligations.

The Central Bank in its engagements with industry has often emphasised the overlap with obligations and expectations on individuals within the 'fitness and probity' system to either comply with specific reporting obligations (such as that for PCFs under section 38(2) of the Central Bank (Supervision and Enforcement) Act 2013) or more generally the requirement to act professionally and with integrity to satisfy the 'Fitness and Probity Standards'.

The Supporting Standards include a non-exhaustive list of information that should be reported, including relating to:

- commission of an offence or regulatory contravention by the firm or senior individual
- deliberate concealment of destruction of evidence
- the provision of false or misleading information to the Central Bank or impeding of such investigation
- the commencement of legal proceedings against a firm which may impact its ability to continue to trade
- a decision to cease providing particular financial services
- or anything that may otherwise interfere significantly with the operation of the firm or its compliance with financial services legislation

Other aspects of the Supporting Standards mirror the above, including obligations to respond to requests and requirements under financial services legislation in an 'open' and timely manner and not providing false, inaccurate or misleading information, records of explanations to the regulator.

#### What does this mean for your firm?

The list of non-exhaustive matters that should be reported to the Central Bank, whilst centralising these requirements, may not result in a significant legal change. For example, the non-exhaustive list is similar to that set out for MiFID firms in Irish implementing legislation.

However, this does represent a shift to a broader approach to disclosure and engagement, similar to the 'Principle 11' approach of the UK FCA. In the UK, the FCA has issued further guidance on its expectations which appear to be broad in scope.

For example, the UK guidance refers to the similar UK requirement applying to unregulated activities as well as regulated activities and that it takes into account the activities of other members of a group. Furthermore, the UK guidance notes that the timing of such notification will depend on the event, although the UK regulator expects a firm to discuss relevant matters with it at an early stage 'before making any internal or external commitments'.

## WHAT'S ENHANCED? STANDARDS FOR BUSINESS

### 1. Acting with honesty and integrity

The Supporting Standards elaborate this requirement, including requirements:

- to operate without bias and preventing, or identifying and appropriately managing, conflicts of interest
- not exerting pressure of influence on a customer to limit their ability to make an informed choice and
- not misusing or misappropriating assets

### 2. Acting with due skill, care and diligence

The Supporting Standards elaborate this requirement, including requirements:

- to ensure that persons responsible for managing the firm's activities have 'appropriate knowledge of the activities and associated risks' that apply in the conduct of the firm's affairs
- complying with financial services legislation and
- complying with applicable standards of market conduct and trading venue rules

The reference to management having 'appropriate knowledge' of a firm's activities and risks might overlap with broader 'fitness and probity' requirements for individuals, although the focus here appears to be on ensuring management having appropriate levels of information rather than, as with fitness and probity, the necessary skills and attributes to perform their senior role.

### 3. Acting in the best interests of customers and treating them fairly

There are more significant enhancements regarding this requirement. The Supporting Standards elaborate these changes, including requirements to:

- ensure customers are informed in a clear manner of 'relevant information' of which they ought to be aware
- communicate 'relevant information' to customers in a timely manner
- seek from customers 'information relevant' to the financial service requested
- assess the needs and circumstances of customers
- ensure customers are not misled as to the advantages/disadvantages of any financial service
- ensure that any advice/recommendation is appropriate and tailored to meet customers' financial services needs and circumstances
- not acting unfairly to customers
- not unreasonably preventing access to financial services

The Central Bank uses different terminology for similar concepts, and it is unclear whether there is any intention or difference in standard as a result. These Supporting Standards refer to disclosing 'relevant information' whereas the separate Standard (below) relating to disclosing information refers to 'key information' which is a defined term (see below).

On one view, this might suggest e.g. that the threshold for what is 'relevant information' is intended to be lower than 'key information' (defined in summary as information that would influence a customer's decision) but this is not clear.

Similarly, the reference to seeking 'relevant information' from customers does not refer to the purpose for which this information may be sought. The following Supporting Standard deals specifically with 'suitability', so again this may be intended to be a lower threshold for triggering what 'relevant information' is, but again this is not clear.

Again, it is unclear how the reference to not acting 'unfairly' is intended to present a different requirement to that to act in a customers' best interest and to treat them 'fairly'. Perhaps this is intended to emphasise the need for firms to understand types of conduct which fall foul of the 'fairness requirement'.

Examples from previous enforcement cases (albeit specifically in the consumer context) include how litigation with customers within a similar cohort of customers should be handled to avoid some benefitting (e.g. by way of favourable settlement) whereas others in similar circumstances do not (e.g. if they happen to be the party to what the firm determines to treat as a 'test case' to determine certain market-wide or cohort-wide issues). They also include relying on strict contractual entitlements when it may be unfair in all the circumstances to do so (although identifying when this principle might be engaged when a firm is dealing with a non-consumer is not clear in the Business Standards).

## WHAT'S ENHANCED? STANDARDS FOR BUSINESS

### 4. Ensuring all information is provided to effectively inform customers

There are also more significant enhancements regarding this requirement. The Supporting Standards elaborate this change, including requirements to:

- ensure that information provided to a customer enables material features of the product/service to 'reasonably' be understood
- ensure that 'all' information provided to a customer is clear, accurate, up to date and written in plain language
- avoid the unnecessary use of technical terms
- provide information to a customer on a timely basis
- bring 'key information' to the customer's attention

A key aspect is how the definition of 'key information' operates in practice. This covers 'any information which is likely to influence a customer's actions with regard to financial services'. This might be said to be an improvement on the Code which, at least, did not define the concept of 'material information' for the purpose of the equivalent General Principle.

In the many consumer redress programmes, particularly in retail banking and retail insurance since the Code was introduced, the concept of 'causation' and therefore the practical impact of information on what decision a customer would ultimately have made, and therefore whether any detriment may have arisen from the difference between a course taken and a course that may otherwise have been taken, has been important. In other contexts, such as complaints before the Financial Services and Pensions Ombudsman (FSPO), the FSPO has in some cases determined that detriment may have occurred to a customer receiving inaccurate or confusing information even if they may not have made a different decision.

The Supporting Standards also helpfully introduce an objective element to these concepts (e.g. referring to enabling material features of a product to be 'reasonably' understood). This emphasises the importance of key customer communications and client documentation to be reviewed for clarity, and minimal technical terms, not only in isolation but also 'in the round' by reference to other artefacts such as brochures, advertisements and customer journey engagements.

## 04 / SECURING CUSTOMERS' INTERESTS: THE DRAFT GUIDANCE

### A new 'mindset' to regulatory compliance?

The Guidance on Securing Customers' Interests contains a number of statements as to the Central Bank's objectives and expectations on firms' approaches to engaging with consumers, including:

- the SCI Guidance states that it sets out what firms need to **consider**, the **actions** they need to take and the **mindset** they should have, towards customers to effectively 'secure customers' interests'
- the SCI Guidance also refers to the importance within firms of a **collective understanding** of what securing customers' interests means and the types of behaviour it requires, including how it should be **incorporated** into commercial objectives and be reflected across a firm's **culture**, strategy, business model, decision making, processes and systems

A key statement by the Central Bank regarding the overall objective of the SCI Guidance is that: *"...well run firms incorporate consumer interest into their culture, strategy, business model and decision-making, offer consumers availability and choice, and empower them to make effective decisions to meet their financial needs..."*

The SCI Guidance therefore builds on the expectations set out in the Central Bank's previous Guide to Consumer Protection Risk Assessment (the **CPRA Guidance**), following on from the Central Bank's '5 Cs' framework referring to the consumer, confidence, compliance, challenging firms and culture.

### Proportionality

Proportionality remains a key principle underlying firms' approaches. The Guidance refers to consumer protection requirements being 'proportionate' in terms of achieving the outcome sought without being unduly burdensome or costly and that a firm's approach to adhering to these obligations should reflect the nature of its business, products, services and customer base. It also notes that it does not impose an open-ended duty that goes beyond the scope of the firm's role and its ability to determine or influence customer outcomes or protect customers from all potential harms.

### Substance or procedure?

The SCI Guidance also helpfully calibrates the outcomes to be achieved by firms in following its terms. It notes that 'securing customers' interests does not mean that individual customers will always achieve positive outcomes or will always be protected from poor outcomes.

It remains unclear how far the SCI Guidance is intended to influence substantive outcomes (product attributes and service levels) compared to the processes that firms will follow in designing, marketing, offering, servicing or even withdrawing products and services. Indeed, paragraph 2.3.2 of the SCI Guidance comes close to regulating the substance of a consumer product or service in stating that, when designing or reviewing a product, developing its communication and customer service 'considering pricing', then it should consider the needs of its

customer base or target market. However, most of the SCI Guidance focusses on the procedure rather than the substance of a firm's products.

Some good examples of the Central Bank's expectations on what 'good process' looks like in this regard include:

- the Case Study on 'Appropriate Target Markets' refers to the fact that some products are not appropriate for 'execution only' models and should only be sold with advice where it is possible for the firm to determine the suitability of the product for the customer and the level of customer understanding (focussing on the sales process).
- the Case Study on 'Incentives' notes that firms should ensure when offering incentives that they are designed in a way that seeks to deliver positive outcomes for customers by supporting customers to act in their own interest and make informed decisions (although there is a reference to substance in emphasising that firms should overall be able to demonstrate how the features of a product, including incentives, align with the interests of customers).

### 'Delivering fair outcomes'

The SCI Guidance also helpfully emphasises process rather than substance in elaborating on what 'delivering fair outcomes' involves in practice. Paragraph 2.9.2 refers in this regard to:

- developing products and services that are fit for purpose and meet the needs/expectations of customers

- ensuring delivery channels are effective for the products/services offered and the relevant customer base
- providing consumers identified as being in vulnerable circumstances with the support they need when engaging with financial services
- ensuring their communication and engagement with customers 'empowers' customers to make decisions in their own interests

### Alignment with the Individual Accountability Framework

With the emphasis on appropriate processes to ensure fair outcomes for consumers, there is a clear overlap between the clarity of roles and responsibilities created by not only the requirements of the Senior Executive Accountability Regime but the Conduct Standards and Additional Conduct Standards under the IAF and the more general expectations set out in the CPRA Guidance on how firms should embed consumer protection in their culture, governance and systems and controls. These included that firms should ensure that:

- reporting lines and management responsibilities/accountabilities for consumer protection risk are clear and transparent
- there is evidence of a clear understanding at Board, Board Committees and Management Committees of key consumer protection risks
- there is evidence of a clear understanding of

## 04 / SECURING CUSTOMERS' INTERESTS: THE DRAFT GUIDANCE

individuals' responsibilities and skillset required to oversee and challenge the management of these risks

- the Board can demonstrate that it has or can address consumer protection risks that have been escalated to it
- the Board tracks and monitors consumer protection risks

### **Embedding consumer culture: aligning culture, strategy, decisions, controls with customers' interests**

The SCI Guidance also emphasises the importance of embedding consumer culture in a firm's decision making. E.g.:

- Paragraph 2.1.8 makes clear that the business as a whole has responsibility for securing customers' interests, not just risk or compliance staff.
- Paragraph 2.1.19 refers to all aspects of strategy formation or decision making at Board level demonstrating that the customer is 'central' to the process. It also refers to firms being able to provide examples of where compliance or risk functions have prevented the firm from taking action or substantially changed the action as a result of concerns about consumer impact.

This raises a practical question as to how firms should strike the right balance between formulating products or servicing approaches etc. without the need for a 'veto' at senior level (e.g. through properly designed products) and leaving sufficient discussion for senior

approval even if those issues have already been dealt with through a robust product development lifecycle. This can be managed in practice through an appropriate understanding at Board and Committee level of the 'flightpath' of a product or servicing proposal – i.e. what inputs went into a proposal and where in the firm's management decision making processes would compliance and risk input/challenge have been formulated (and potentially what those challenges were and how they were addressed in the final proposal being made to the Board or relevant Committee).

### **Product lifecycle: business model change, innovation and service and delivery channels**

The SCI Guidance refers to ensuring decisions to materially change a firm's product or service offering, or the mode of delivery of products and services, should include a full consideration of the impact on outcomes for customers. This may be a reflection of the Central Bank's significant work on tracker mortgage issues, which ultimately concerned the withdrawal of tracker mortgage products from the Irish market and the consistency of this change of offering with customer's contractual entitlements and reasonable expectations. The SCI Guidance also refers to firms designing products with features that meet the needs of consumers identified for the relevant product.

The SCI Guidance also includes helpful practical steps, in parallel with other requirements (such as the EBA Guidelines on Product Governance and Oversight

Arrangements), for embedding consumer interests in the design and lifecycle of individual products and services. This could include e.g. 'test running' consumer products or customer journeys through Code requirements during the design phase rather than later phases. The EBA Guidelines also refer to e.g.: (i) testing how new products may affect consumers under a wide range of scenarios including stressed scenarios; and (ii) monitoring product characteristics against customer objectives once they are launched.

Much of the SCI Guidance also reflects the expectations in the Central Bank's Consumer Protection Risk Assessment approach across product development, sales/transaction processes and post sales handling. Firms should revisit their implementation of those particular principles (e.g. identifying consumer protection risk, monitoring and tracking those risks using management information, including consumer protection fora and individual(s) with clear responsibility for consumer protection issues and ongoing monitoring and testing of consumer protection controls against the practical examples in the SCI Guidance.

### **Customer behaviours and biases**

The Guidance focusses on ensuring firms are not 'consciously or unconsciously' exploiting or taking advantage of customers' inertia to their detriment. This is in the context of the availability of increasing financial data facilitating customer profiling and artificial intelligence technologies. This 'reads across' to the new

Digitalisation requirements in the Conduct of Business Regulations, emphasising how choice architecture can influence the choices and decisions customers make.

### **Contractual clarity**

This has been a key aspect of the Central Bank's engagement with consumer issues over recent years. The Guidance not only emphasises the importance of high quality communication and transparency regarding terms of business. It also summarises the Central Bank's expectations that when a material ambiguity arises, firms apply the understanding that most benefits the customers and to resolve any contractual interpretation issues quickly. This goes on to refer to using such rights appropriately. Whilst the SCI Guidance does not go further, parallels can be drawn from some of the detail in e.g. the Business Interruption Insurance Supervisory Framework which sets out additional expectations regarding how firms should handle the procedure for 'test cases', including e.g. the costs of pursuing those cases.

### **'Proactivity'**

A key theme throughout the SCI Guidance is that firms should be proactive in their approach to identifying, assessing and acting on consumer impacting issues. E.g.:

- paragraph 2.3.7 of the SCI Guidance, in discussing the Central Bank's engagement with the banking market relating to CFD products, notes the

## 04 / SECURING CUSTOMERS' INTERESTS: THE DRAFT GUIDANCE

important principle of assessing practices or products ex post facto

- it also states that firms should never wait for the Central Bank to intervene before they take the necessary steps to effectively secure their own customers' interests (e.g. through disclosing, and designing and implementing, remediation or redress programmes)

### Ongoing monitoring and increased reviews

It is also clear that the need to 'secure customers' interests' applies right across the product and customer servicing 'lifecycle'. E.g.:

- In the context of dealing with errors or customers complaints, paragraph 2.5.4 of the SCI Guidance notes the importance of monitoring of post sales activities to identify potentially unsuitable or unfair consumer outcomes or detriment. It also includes specific examples which go beyond the level of detail in the Code or previous guidance.
- This refers to the proactive random sampling of call centre calls and the ongoing reporting of KPIs (as compared with the Code's higher level reference to monitoring patterns of complaints).
- In practice, a firm's systems and controls need to not only facilitate this random sampling and assessment of customer engagements, but also record at a governance level the decisions and rationale for scope of random sampling, and the analysis and outcomes of any such sampling.

### Holistic consumer approach

The number and scope of consumer protection legislation is constantly growing. The SCI Guidance helpfully cross refers to other requirements such as the Consumer Rights Act 2022 and, for in-scope firms, the EU Digital Services Act. Firms are well advised to consider their consumer protection obligations as a whole, both under and outside financial services legislation, when embedding the principles set out in the SCI Guidance.

### Case studies

Importantly, the Central Bank requires firms to take the principles and learnings from the sample case studies in the SCI Guidance and consider how they apply to their own business. It is clear these are non-exhaustive and therefore it is for firms to 'extrapolate' them to their own products, servicing and customer base.

The table on the right hand side is an example of the 'lessons learned' from these case studies:

	<b>Digital delivery:</b> managing the transition away from physical presence and in-person services.	<ul style="list-style-type: none"> <li>digital platforms must be easy to navigate, use and understand</li> <li>consider customer impacts and identify appropriate mitigants before moving to digital delivery</li> <li>appropriate notice of changes to services and impact assessments</li> </ul>
	<b>Use of incentives in product design:</b> these should not impair a customer's ability to act in their own interest and make informed choices.	<ul style="list-style-type: none"> <li>explore the rationale for including incentives to determine if they secure customers' interests</li> <li>avoid incentives which unfairly exploit or take advantage of customer behaviours, habits, preferences or biases</li> <li>ensure customers understand the implications of choosing a product with an incentive compared to alternatives (e.g. mortgage cashback impact on total repayments)</li> </ul>
	<b>Target markets and delivery channels:</b> consider the appropriate target market.	<ul style="list-style-type: none"> <li>product features, charges and risks must meet the needs of customers identified for the product</li> <li>consider the potential impact on customers of product complexity</li> <li>e.g. some products are not appropriate for 'execution only' models and should only be sold with advice after assessing suitability and customer understanding</li> </ul>
	<b>Green/sustainable products:</b> customer confidence	<ul style="list-style-type: none"> <li>avoid information asymmetries or leveraging these to mislead or misdirect customers for sustainable/green products</li> <li>clearly explain features and characteristics of sustainable/green products</li> </ul>
	<b>Differential pricing in insurance;</b> avoid unfair, hidden or discriminatory practices	<ul style="list-style-type: none"> <li>e.g. 'price walking' where customers are charged higher premiums the longer they remain with the same provider without further justification</li> <li>e.g. while differences between technical and actual pricing increasing with length of tenure might be consistent with risk-related factors, firms should ensure this does not reflect reliance on customer inertia</li> </ul>
	<b>Use of firm branding:</b> must not confuse or mislead customers on regulatory status	<ul style="list-style-type: none"> <li>avoid the 'halo effect' regarding assurance for customers with unregulated services</li> </ul>
	<b>Contractual ambiguities:</b> e.g. Business Interruption Insurance issues	<ul style="list-style-type: none"> <li>applying interpretation of ambiguous contractual/policy wording favourable to customers</li> <li>assisting policyholders in making claims</li> <li>be operationally ready to deal with claims with adequate governance and oversight of the process</li> </ul>
	<b>Delivering positive outcomes for customers</b>	<ul style="list-style-type: none"> <li>consider how information is presented to customers</li> <li>consumer behavioural research shows that certain targeted changes to customer notifications can significantly increase customer engagement on options</li> <li>move from 'providing information' to 'seeking to support practical understanding' by the customer</li> </ul>

## 05 / DIGITALISATION

### WHAT'S NEW?

The Chapter on Digitalisation is entirely new, in fact the concepts of “digitalisation” and “digital platform” do not feature in any guise in the Code. The Central Bank’s focus on assessing the implications for consumers of digitalised financial services offerings has grown significantly, since it published its “*Discussion Paper on Digitalisation*” in 2017.

The Central Bank’s stated aim in introducing digitalisation requirements is to “...ensure that firms support their customers to harness the benefits of digitalisation and take action to mitigate risks”. Chapter 4 (Regulations 38-45) of the Conduct of Business Regulations has been drafted in that context.

The key proposed new provisions are as follows:

- digital platforms must be designed for use by consumers without requiring specialist knowledge in the use of the technology of the digital platform, so that the digital platform is easy to use, to understand and to navigate
- the digital platform and the algorithms within it must be designed to produce objective and consistent consumer outcomes and must have been appropriately tested
- firms must give clear and effective guidance on use and navigation of the digital platform and must display the means of accessing the guidance prominently
- firms must give information regarding how assistance can be accessed
- firms must allow the consumer to filter product options, where more than three services “of the same type” are offered digitally



### WHAT DOES THIS MEAN FOR YOUR FIRM?

- The scope of these requirements is broadly defined, with the term “digital platform” broadly defined to mean “*an online system through which contracts can be concluded to provide financial services to consumers, or a website or application that provides access to consumers to conclude contracts for the provision of financial services*”. It is likely that all firms engage with consumers by means of a digital platform to at least some degree.
- Firms will need to look afresh at exactly how user friendly their digital platforms are. To do this, they will likely need to stress test (and be able to document exactly how they did that) just how easy to use, understandable and navigable their platforms are.
- Following appropriate review and stress testing, firms will have some degree of changes to make to existing platforms, including to build in specific product filtering capabilities.



### WHAT REMAINS UNCLEAR?

- The nature of the required digital platform “testing” remains unclear i.e., internal or external, with or without consumer involvement, as well as the expected regularity of testing. This may indicate a proportionate approach to testing, once those approaches can be justified objectively.
- The Central Bank is to issue further guidance on how firms can support customers in accessing information digitally, including through the use of filtering. It may be that this guidance will offer some clarity on the kinds of “pre-set criteria” the Central Bank expects consumers to be able to apply when filtering financial products.
- The extent of human participation in the “assistance” that consumers must be able to obtain is unclear. It may be, for example, that a degree of use of chatbots will be appropriate, in certain cases. As against this, the Central Bank did note in its *Paper on Data Ethics Within Insurance* that firms must ensure that consumers can access timely and customer-focused services, including where a consumer needs, or is best served by, *in-person engagement*. Firms will need to carefully reflect on this.



## 06 / INFORMING CUSTOMERS EFFECTIVELY

### WHAT'S NEW?

Separately from the enhanced rule in the new Standards for Business requiring firms to ensure that all information provided to customers is presented in a way that seeks to effectively inform the customer, there are new more detailed provisions in the Conduct of Business Regulations on informing customers effectively. These include the following additional details:

- requirements to ensure the names of financial services are not misleading regarding the nature or benefits of those products and, separately, that 'key information' is not presented in a way which disguises, diminishes or obscures the importance of such key information
- requirements regarding providing one month's advanced notices of changes to the range of regulated services provided (with information enabling consumers to compare the position before and after the change)
- requirements to explain 'technical terms' (undefined) in plain language or a glossary with an emphasis (emphasising that they should only be used if they cannot be avoided)

An important new requirement is that firms will need to ensure that all information provided to consumers is drafted and presented in a way that an *"average consumer who considers the information can be expected to have a reasonable level of understanding to appreciate the decisions that they make and to which the information relates"*. This emphasises the need for 'plain English' wording across all communications to customers.

There are also new 'pre-information' requirements, including:

- to inform a consumer of the relevant Ombudsman and, if applicable, any alternative dispute resolution service, that will deal with a complaint
- to clarify whether and if so on what terms there is a right to cancel or withdraw from the relevant financial service, in each case before offering, recommending, arranging or providing that service (these are subject to the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004)

Any material change to terms of business must not only be notified to customers in revised terms of business, but firms must now also provide each affected consumer with a notice setting out the position before and after those changes to enable the consumer to compare both positions (to be provided at least five business days before the change rather than 'as soon as possible' as currently in the Code).

Continuing the theme of introducing more requirements for periodical reviews, there are new detailed requirements regarding, e.g., product producers having in place a process to regularly review, test and monitor the effectiveness of the information and documentation provided when producing, manufacturing or packaging a product of a financial or investment nature to consumers or relevant intermediaries.



## 06 / INFORMING CUSTOMERS EFFECTIVELY (CNTD.)

### WHAT'S CHANGED?

Certain other aspects of the Code are enhanced again with the objective of ensuring clarity and understanding for all consumers. These include the following:

- specific requirements regarding e.g. font size now apply to all written information, not just printed information
- requirements to provide terms of business (with the usual required content) on any website, including directing customers to the firm's schedules of fees and charges

In line with a recommendation following the Retail Banking Review, where a firm intends to cease operating, merge its business or transfer all or part of its regulated activities to another regulated firm, the notice period for notifying affected consumers will increase from two months to six months.

The extended notification period could have a significant impact on the timing and efficiency of insurance portfolio transfers and on domestic and cross border merger processes involving insurance undertakings and insurance intermediaries. It may also impact firms' ability to complete transactions within timelines set by their groups or by third parties. Therefore, firms will need to plan for the impact of the extended time period and build it into step-plans, timetables and checklists for transactions that will be affected.

There are also updated requirements regarding the closure of, or changes to, branches of credit institutions, including:

- A new requirement for credit institutions to notify the Central Bank without delay when the decision to close, merge, or move has been made, and at least two months in advance of notifying affected consumers or the wider community. At least six months' notice prior to the closure, merger, or move must be given to affected consumers (via individual notice) and to the wider community (via appropriate public notification).
- A new requirement for credit institutions to inform the Central Bank of any relevant planned steps or subsequent developments which have the potential to affect consumers during the period from the notice to the date of closure, merger or move.
- New governance requirements in this context. Where a credit institution intends to close a branch, it must prepare an assessment, approved by the Board, of the anticipated impact of the closure on affected in respect to access to, and availability of, financial services. The assessment must include the suitability of alternative arrangements, and where alternative arrangements are suitable, the assessment must contain the credit institution's plans for transferring consumers to those arrangements, including

any plans necessary for consumers in vulnerable circumstances. It must be published in the relevant branch and on the institution's website at least two months prior to the closure of the branch.

- A credit institution must also commence an assessment nine months following the closure to assess consumers' satisfaction and experience in respect to the alternative arrangements, to be completed within 15 months of closure, and the results must be published on the institution's website.

There are also new requirements regarding changes to branch services, broadly reflecting the requirements above regarding closure or merger, with similar governance and ex-post facto review requirements albeit with different timelines.

### WHAT DOES THIS MEAN FOR YOUR FIRM?

Firms will need to collate and review a broader range of 'artefacts' (e.g. client terms of business, contractual documentation and a broader range of other written and internet based communications with consumers) to ensure they are compliant with both the new specific requirements as well as the broader points such as 'providing a reasonable level of understanding to the average consumer'. Given the objectivity of some of these new requirements, even more emphasis will be placed on the importance of 'plain English' and other clarity assessments of all aspects of a firm's engagements with customers.

### WHAT REMAINS UNCLEAR?

Firms will need to assess the detail of these changes in practice. In doing so, questions will arise as to whether differences in drafting across these requirements are intended to reflect differences in standards or approaches. These include, for example, differing references to 'notifying' customers compared with 'notifying' them 'directly', and references to 'key information' (which is already defined as information which is likely to influence a consumer's actions regarding a financial service) also being qualified by an additional requirement that such information will 'assist the consumer in understanding the financial sector'.

## 07 / INFORMATION ABOUT UNREGULATED ACTIVITIES

### WHAT'S NEW?

The new requirements build on the Code's distinction between the provision of regulated and unregulated activities by firms. The Supporting Standards for Business include an obligation requiring firms to clearly distinguish between their regulated activities and unregulated activities by taking all appropriate steps to mitigate the risk that a consumer will misunderstand a service to be, or to carry the protections of, a regulated service where that is not the case.

The Conduct of Business Regulations enhance and expand these principles by requiring firms to establish and implement policies, procedures, processes, systems and controls to ensure:

- the identification of regulated and unregulated services
- the provision of clear, accurate and up-to-date information to consumers, including via advertisements and digital platforms, that identifies and distinguishes regulated and unregulated activities
- that firms inform consumers of the regulatory protections (including compensation schemes) that apply in respect to the firm's regulated activities but which are not applicable to unregulated activities
- that firms include the required warning statement in all written correspondence to consumers in relation to a firm's unregulated activities



### WHAT DOES THIS MEAN FOR YOUR FIRM?

Firms will need to carefully review their information templates, advertisements, digital platforms and written correspondence with customers to ensure that it distinguishes appropriately between the provision of regulated and unregulated products/services, and that this is made clear to customers.

This may be complex in some cases, e.g. in the retail credit sector where in practice there may be unclear lines between regulated and unregulated activities, or e.g. regarding trust and company service providers where not all are regulated by the Central Bank. This is particularly the case given the breadth of definition of 'unregulated activities', which includes the provision of 'services of a financial nature' which are not otherwise regulated activities.



## 08 / ERRORS RESOLUTION

### WHAT'S NEW?

The errors management and resolution requirements have been enhanced, particularly in respect to governance. New aspects of these requirements include the following:

- A new requirement for “significant errors”, (of a nature that management ought to be made aware of) affecting consumers to be detected, classified and escalated to the Board urgently.
- A new requirement to formally analyse “at the appropriate level” the rate of occurrence and patterns of errors on a regular basis and at least once every six months (not just an ‘appropriate’ analysis of patterns of errors and an investigation into whether they were isolated).
- A new requirement to have in place arrangements for the reporting to the compliance, risk or any other relevant function, and to the Board (or entity or persons controlling the firm) of aggregated information on the number of errors handled, resolved and on the analysis referred to above.
- A new requirement on firms to take “all reasonable steps to make a prompt refund due to a consumer as a result of an error” that has caused a consumer to overpay or suffer a financial loss. A record of the steps taken to make the refund must also be retained (it is also clarified that this is without prejudice to additional requirements under the Payment Services Regulations).

### WHAT'S CHANGED?

The existing requirement obliging firms to have procedures in place for the effective handling of errors affecting consumers has been updated to require firms to have “robust governance arrangements”, which must include written procedures for the appropriate and effective handling of errors. The new requirements outlined above are included as examples of what comprise these more general governance arrangements.

This emphasises the important role senior management and the Board will have in overseeing error resolution (in parallel with relevant prescribed responsibilities for firms within the scope of SEAR, for example, PR7 relating to taking action to prevent further detriment to customers where the firm becomes aware that a decision or action taken, or failure, has caused detriment).

An important aspect of these new governance arrangements will include:

- The urgent escalation of “significant errors” to the Board (it is not clear whether this anticipates reporting within the Board meeting cycle or the presentation to Board members/convening an ‘ad hoc’ Board meeting for a sub-set of very material “significant errors”).
- The new requirement to conduct an analysis of the occurrence and patterns of errors, including

root causes, at least every six months and reporting to the compliance and/or risk functions (as appropriate), as well as to the Board.

- Consideration of the “potential impact of the error on consumers” and the identification of all “potentially” affected consumers. This is consistent with, albeit worded differently to, the reference in the Standards for Business Regulations to consider whether an error identified for one customer may have reasonably affected other customers. This reflects the development of the Central Bank’s expectations regarding the ‘read across’ of errors, adverse complaint adjudications and even resolutions of customer complaints, as discussed above in the context of that aspect of the Standards for Business Regulations.

The requirement to notify the Central Bank of any error affecting consumers that remains unresolved after 40 days has been deleted. In its consultation paper, the Central Bank noted that this requirement has been deleted in light of the enhanced governance obligations (discussed above). The Central Bank stated that there will be supervisory reporting obligations imposed on firms requiring them to notify the Central Bank of “more significant errors”, and that it will engage with firms on this as part of on-going engagement on reporting obligations more generally.

## 08 / ERRORS RESOLUTION (CNTD.)

### WHAT DOES THIS MEAN FOR YOUR FIRM?

Firms are already subject to potential directions from the Central Bank requiring, and/or civil damages claims from customers seeking, 'redress' for certain issues under sections 43 and 44 of the Central Bank (Supervision and Enforcement) Act 2013. However the obligations under the Conduct of Business Regulations to take all reasonable steps to make prompt refunds due to a consumer as a result of an error might be said to be broader given it arises in relation to any 'error'.

Firms will need to be more probing and detailed in their assessment of occurrences and patterns of errors. The Central Bank expects them to apply a 'pull the thread' approach to assessing whether such issues may be systemic.

In some cases, this may be relatively simple (e.g. which documents issued to which cohorts of customers may have contained an error regarding contractual terms). However, in others it may be more complex (e.g. whether errors by customer servicing staff are isolated or systemic by reference to training/scripts, or whether a system issue impacting one cohort of customers might have an indirect impact or unintended consequence for a different cohort of customers).

### WHAT REMAINS UNCLEAR?

Firms will need to review and update their errors management policies, procedures and systems to ensure that they define a significant error (including potentially non-exhaustive criteria), and include the requirement for escalation of significant errors to the Board and prescribe the escalation process (including who/which function or fora will assess the matter). There is no definition of a 'significant error' and this categorisation appears to be at the discretion of the firm, although many firms will have a number of reference points in this regard including in their risk appetite statement and current internal monitoring processes.

Firms will need to have arrangements in place for reporting the details of errors, including the number of errors handled and resolved, to the compliance and/or risk functions (as appropriate) and to the Board (as well as any other relevant function required) to enable an analysis of the rate of occurrence and patterns.

Firms will also need to ensure that their policies and procedures are updated to reflect the new requirement and that their systems for logging errors are fit for purpose to conduct the required analysis.

## 09 / COMPLAINTS MANAGEMENT

### WHAT'S NEW?

Similar to errors management, new requirements have been introduced that require firms to take ownership of, and responsibility for, the management of complaints received from consumers. These include the following:

- A new requirement to implement and maintain systems and controls to track and manage the progress and resolution of complaints, so that they are satisfied that they “effectively” track and manage the progress and resolution of complaints.
- A new requirement to implement “robust governance arrangements” for the appropriate ‘oversight’ of complaints handling. These arrangements must include:
  - › processes for proper oversight of complaints handling, analysis on a regular basis and at least once every six months of the rate of occurrence and patterns of complaints (including complaints resolved within five working days – thereby capturing patterns that might not have been identified as material or complex); and
  - › arrangements for reporting to the compliance or risk function (or any other relevant function) and the Board, of aggregated information on the number of complaints handled and resolved, and on the analysis of the rate of occurrence and patterns of complaints.

### WHAT'S CHANGED?

The content of complaint logs has been enhanced and must now also include:

- The ‘core reason’ for the complaint ‘in order to facilitate analysis of the complaint by category’. This may be a follow-on from the Central Bank’s supervisory engagements relating to e.g. tracker mortgages and business interruption insurance, where a significant part of the industry reviews involved assessing whether ‘patterns’ of complaints emerged such that a cohort of ‘customer journeys’ or customer groupings could be identified as requiring further assessment and, if necessary, redress.
- The current status of an appeal of a decision from the relevant Ombudsman (if any). Again, this may follow the Central Bank’s experience in overseeing the handling of tracker mortgage and other retail finance complaints, including assessing any potential ‘read across’ implications arising from the adjudication of complaints to the relevant Ombudsman.

There are also updated detailed requirements regarding acknowledging complaints and engaging with customers raising complaints, including providing for immediate acknowledgments in certain circumstances and providing details regarding potential complaints to the relevant Ombudsman.

### WHAT DOES THIS MEAN FOR YOUR FIRM?

While firms are likely tracking and managing existing complaints under specific systems and controls given the existing obligations relating to complaints management under the Code, particularly in relation to maintaining a complaints log and the regular analysis of patterns of complaints, it would be prudent for firms to review their systems and controls to ensure they are dedicated, of appropriate scope and sensitivity, to effectively track and manage progress in resolving complaints.

From our experience with enforcement investigations covering a range of engagements with consumers, these systems and controls could benefit from, for example, tracking and logging which parts of the business (servicing, customer engagement, IT systems etc) are necessary to ensure a complete resolution of a particular category of complaint.

As regards governance arrangements, firms will need to ensure that their policies, procedures and systems are updated to reflect the requirement to analyse complaints every six months, resolved within five days and recorded to integrate with the necessary complaints analysis. The necessary complaints analysis should also be included as a standing Board agenda item at least twice a year.

### WHAT REMAINS UNCLEAR?

The new requirement introducing governance arrangements are intended to provide appropriate ‘oversight’ of complaints handling. The level of review, challenge and requests for follow-up is not elaborated further in the Conduct of Business Regulations. However, firms’ own internal thresholds for senior management and Boards to engage in any particular complaint pattern or resolution issue will be informed at least in part by the nature of their business, products and target markets.

## 10 / CONSUMERS IN VULNERABLE CIRCUMSTANCES

### WHAT'S NEW?

The concept of “*vulnerable consumer*” will be replaced by that of a “*consumer in vulnerable circumstances*”.

There are new, more detailed, provisions on engagement with consumers in vulnerable circumstances. The key new elements are:

- The assessment of vulnerability will shift from an individual's ability to make their own decisions, to assessing any individual circumstances that make a consumer especially susceptible to harm, particularly where a firm does not act with the appropriate levels of care.
- There is a new requirement for firms to provide training to specified staff to enable them to have the knowledge and awareness to understand and recognise consumers in vulnerable circumstances and how to respond to their needs. Training will also need to be provided on the firm's policies, procedures, systems and controls for responding to the needs of consumers in vulnerable circumstances. The Guidance on Protecting Consumers in Vulnerable Circumstances (the **Vulnerable Guidance**) provides more detail as to what this training should cover.
- This is not limited to staff in customer-facing roles. Staff who perform roles in product design and development, sales and marketing or hold other positions that influence the customer journey must also receive the required training,

in addition to persons responsible for overseeing and managing staff in these roles. Firms will also be required to personally identify the staff who require training and ensure they complete it.

- Firms will be required, at least every two years, to conduct a review to assess if they are meeting the requirements regarding staff training and prepare a report of the findings for the Board. No further detail is provided as to what action a Board might be expected to take following consideration of the report.
- Firms must also take the necessary steps to protect their customers from ‘financial abuse’. This is defined broadly to include, in summary, the wrongful or unauthorised taking or withholding etc. of a customer's assets or the obtaining control or wrongfully interfering in the ownership of customers' assets (including e.g. offline and online scams and frauds). This overlaps with the requirement under the Business Standards that firms control and manage their affairs and systems to counter the risks to customers of financial abuse.
- There are new requirements regarding the new concept of “*trusted contact person*”. Firms will be required to facilitate (and establish policies, procedures and systems regarding) personal consumers electing to provide the name and contact information of a ‘trusted contact person’. A firm may then communicate with that person

where there is difficulty communicating with the consumer, financial abuse is suspected or the firm needs to confirm the consumer's contact details or health status or the identity of the consumer's e.g. legal guardian, executor, trustee, holder of power of attorney or decision-making assistant. The Guidance on Protecting Consumers in Vulnerable Circumstances suggests personal consumers may choose to nominate a trusted contact person even if they are not in vulnerable circumstances.

- Firms must also establish, maintain and adhere to policies and procedures for their employees to report internally concerns that a personal consumer is at risk of financial abuse by any person. Firms must also record information (with the consent of the customer) received from the customer of circumstances or facts that suggest they may be a consumer in vulnerable circumstances and must have in place systems and processes on the recording and appropriate accessing of that information regarding the provision of financial services to that consumer.

### THE VULNERABLE GUIDANCE

The Vulnerable Guidance sets out expectations of the ‘mindset and culture’ required by firms to support consumers in vulnerable circumstances, including embedding an understanding of ‘vulnerability’. The expectations include that firms will ‘anticipate’ that some consumers may be in vulnerable circumstances and to ensure their culture, strategy, systems and controls take account of the reasonable needs of vulnerable customers.

The Vulnerable Guidance recognises that there are different degrees of vulnerability, and that vulnerability is not necessarily a permanent condition or characteristic like a long-term medical issue or lack of capability, but that consumers can move in and out of vulnerable circumstances, for example, due to a bereavement, job loss or temporary ill health.

The Vulnerable Guidance also recognises that the steps that firms need to take to protect consumers will take different forms, and therefore, the approaches to vulnerability taken must reflect the nature and complexity of the products or services offered.

## 10 / CONSUMERS IN VULNERABLE CIRCUMSTANCES (CNTD.)

Key aspects of the Vulnerable Guidance include the following:

- A firm's directors and senior management should ensure treating customers in vulnerable circumstances is embedded in a consumer-focused culture throughout the firm, not just in customer facing areas.
- Firms must ensure that all relevant staff have the appropriate skills and capabilities, and system supports, to understand and take into account the needs of consumers in vulnerable circumstances.
- Firms should understand the types and characteristics of vulnerability that may exist in their target market/customer base, including by identifying types of risk to which their customers are vulnerable.
- Firms should influence the design of products, policies and processes by a consideration of vulnerability.
- Firms should be proactive in addressing potential consumer vulnerability in general process and product designs (e.g. when designing and operating digital platforms).
- Firms should provide customers with reasonable assistance to facilitate their dealings with the firm, across a 'spectrum of risk' and not just for consumers who are innately vulnerable. E.g. if a customer states they do not understand something, a firm should take appropriate steps to support that customer's understanding, regardless of whether they appear in vulnerable circumstances.

### WHAT'S CHANGED?

Whilst the previous requirement under the Code that a consumer in vulnerable circumstances be provided such reasonable assistance as necessary to facilitate their dealings with the firm, the specific requirements set out above are additional to that general requirement.

### WHAT DOES THIS MEAN FOR YOUR FIRM?

Firms will need to:

- design and develop new training programmes and materials to comply with the requirements
- establish and maintain new/updated policies, procedures, systems and controls for responding to the needs of consumers in vulnerable circumstances
- identify all staff required to receive training and maintain a record of the training provided to, and completed by, each staff member
- conduct a review, and prepare a report for the Board, assessing compliance with the requirements, every two years

The new requirements relating to trusted contact persons mean that firms will need to establish and maintain policies, procedures, systems and controls providing for:

- the recording of the details of trusted contact persons
- the requirement to receive the written consent of the personal consumer and trusted contact person and the circumstances under which consent is provided and
- the circumstances under which the firm can contact, and provide confidential information to, the trusted contact person

### WHAT REMAINS UNCLEAR?

The involvement of the Board in receiving reports regarding the effectiveness of training is a significant step. Whilst the requirements and Guidance do not specify the types of actions expected of Boards in this context, it may be appropriate to establish a form of 'feedback loop' so that training is enhanced or updated in light of the Board's consideration of the internal regular reviews and/or as the firm's business or products expand or develop.

The scope of the obligation on staff to report concerns regarding customers in vulnerable circumstances is not set out in any detail. This merely refers to reporting 'concerns' that a personal consumer is 'at risk' of financial abuse. It will be important for firms to 'calibrate' the threshold for this reporting as part of its training on vulnerable customers.

# 11 / ARREARS, CCMA AND MORTGAGE LENDING

## WHAT'S NEW?

The updated provisions on consumer arrears generally include:

- new requirements to have in place policies and procedures for the handling of arrears cases
- clarification of the periods within which firms must notify consumers that they are in arrears
- updated information requirements relating to e.g. websites and correspondence regarding arrears

Separately, as regards loans secured on a customer's primary dwelling, the provisions of the Code of Conduct on Mortgage Arrears 2013 (CCMA) have been consolidated into the Conduct for Business Regulations, together with a number of enhancements to the existing requirements. However, the Central Bank has indicated that the previous CCMA and Mortgage Arrears Resolution Process (MARP) remains fit for purpose.

There are also a number of new provisions relating to the information to be provided in the context of:

- mortgage calculators
- where mortgage incentives such as 'cashbacks', deferred starts and payment breaks are provided
- in instances of interest-only mortgages
- where customers are switching from a tracker interest rate

## WHAT'S CHANGED?

There are however some enhancements to the CCMA/MARP provisions, including:

- the process for seeking information through a Standard Financial Statement (SFS) has been simplified with firms being able to deem an SFS to be complete for 12 months after it is received, subject to a customer confirming a change to that information
- when assessing a borrower's financial position under the MARP, firms must now not only assess their current, but also now their future, payment capacity
- when assessing potential Alternative Repayment Arrangements (ARAs), firms must now:
  - › document their consideration of each ARA assessed for the customer's circumstances and
  - › provide to the customer the reasons why any ARA offered (or not offered) is appropriate and sustainable (or not) for that customer's circumstances

Additional information must also be provided to personal customers who have an option to switch from a tracker rate to any other rate including contrasting how the tracker rate is calculated as against the alternative rate.

## WHAT DOES THIS MEAN FOR YOUR FIRM?

Whilst the substance of the CCMA and MARP processes have not materially changed, firms should now assess the steps required to comply with these requirements in the light of both their general obligation to secure customers' interests and, more specifically, in light of the Vulnerable Guidance, including applying the more general and broader principles in those sets of guidance.

The new and enhanced information requirements around tracker mortgages, mortgage calculators, incentives and interest-only mortgages will require updates to existing documentation as well as systems and controls in place to ensure that these information requirements are applied where required.

## WHAT REMAINS UNCLEAR?

As with many other parts of the Conduct of Business Regulations, there are a number of changes to wording where it is not entirely clear whether the changes in terms are intended to merely clarify, or to change, the nature of action expected of firms in any particular case.

For example, whilst not clear whether this is intended to change any applicable thresholds, whereas the CCMA previously referred to a firm not commencing legal proceedings unless it had 'made every reasonable effort under the CCMA' to agree an ARA, the updated requirements now simply refer to the firm having 'taken reasonable steps' in compliance with these requirements.

## 12 / INSURANCE

### WHAT'S NEW?

Of the 10 Chapters in Part four that are exclusively applicable to the insurance sector, only a very small number of requirements within them are entirely new to the insurance sector. Many of the proposed requirements are either already reflected word-for-word in other in-force regulations or are in the Code and have been amended / extended.

Noteworthy requirements not currently in the Code include:

- Explicit **opt-in** requirements for automatic renewal of pet insurance, travel insurance, gadget insurance and dental insurance. Under these requirements, an insurance undertaking or insurance intermediary is not permitted to automatically renew a policy of pet insurance, travel insurance, gadget insurance or dental insurance with a consumer unless the consumer has, prior to the entry into of the insurance policy which is being renewed, provided consent to automatic renewal.
- “Price-walking” and pre-renewal notice requirements. Broadly, the “price-walking” regulations restrict the ability of insurance undertakings and insurance intermediaries to charge higher premiums to home and motor insurance customers who have renewed with the same insurer more than once. These requirements already apply to the domestic insurance sector since July 2022, under the *Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Insurance Requirements) Regulations 2022*.
- Insurers and insurance intermediaries are required to notify consumers at proposal stage of the consequences of failure to comply with the duty of disclosure. This was not previously in the Code but reflects the requirements of the *Consumer Insurance Contracts Act 2019*.



### WHAT'S CHANGED?

There are far more subtle changes than new requirements:

- Certain additional restrictions on phone contact with prospective customers for the purpose of discussing a quotation provided via a digital platform. Express customer consent must first be obtained.
- Certain features of the client premium account rules have been slightly modified and are more detailed than before. For example: any buffer amounts held in the account must now be identified in terms of their source and purpose.
- There are enhanced requirements relating to sales of serious or critical illness policies. For example, the requirement for an insurance undertaking or insurance intermediary to explain “where relevant” to a consumer any restriction, condition or exclusion applicable to a serious injury policy prior to the consumer completing a proposal form, has become an absolute requirement.
- Enhanced (modernised) requirements relating to confirmation of cover for policies sold or renewed digitally, including requiring that the insurer / intermediary provides immediate digital confirmation of cover and permitting the terms of business to be provided at the same time as the digital confirmation.
- Enhanced (modernised) requirements relating to the mode of communication of decisions to refuse to quote for motor and property insurance. These remove the default of this information being provided on paper or on another durable medium and instead require that consumers are offered the option of receipt of the information on a durable medium.
- Certain minor changes to premium rebate timing requirements, which in limited circumstances will change from five to ten working days.
- A requirement to notify consumers at least six months in advance of a decision to cease operating, merge business with another person, or to transfer all or part of regulated activities to another firm. Under the Code, the requirement is to make this notification two months in advance. We note that this requirement applies to all firms (and is set out in Chapter 15 – *Miscellaneous Business Requirements*). Whilst this requirement applies to all firms, it may be particularly impactful for insurers.
- A number of factors insurance undertakings and intermediaries must take into account when approaching claim settlement offers, which must represent the insurer’s best estimate of the claimant’s reasonable entitlement. While these factors are reflected in the current *Guidance* that accompanies the Code, they will have legal effect under the proposed requirements.



## 12 / INSURANCE

### WHAT DOES THIS MEAN FOR YOUR FIRM?

Even the most minor changes are going to impact business processes and customer journeys, requiring systems modifications.

To give two examples:

- Insurance undertakings and intermediaries that wish to enable customers to automatically renew gadget, travel, dental and pet insurance policies will need to obtain explicit “opt-in” consents (but not so with motor, home and health).
- The requirement to provide six months’ notice of closure, merger or transfer, will have a particularly tangible impact on the timing and efficiency of insurance portfolio transfers and on domestic and cross-border merger processes involving insurance undertakings. For example, in order to comply, insurers transferring portfolios of business may need to push out the effective date of transfer by several months longer than would have been the practice to date. While a niche point that won’t impact many firms, this is a point that merits focus both by potentially impacted firms.

### WHAT REMAINS UNCLEAR?

- The potential fall-out from (and consumers’ reactions to) explicit “opt-in” consent requirements to automatic renewal of gadget, travel, dental and pet insurance, remains to be seen. We anticipate that insurers will want to underline the benefits of cover (and continued cover) to those consumers, in particular where to date their policies have automatically renewed year on year.
- Exactly what the Central Bank intends by other subtle, yet important changes, remains unclear. For example, in relation to claims processing, insurance undertakings will be required to “*verify the validity of a claim*”, rather than (merely) “*endeavour*” to verify the validity of a claim prior to making a decision on outcome. Could this mean that insurers cannot make sensible judgment calls when they cannot conclusively achieve verification?

## 13 / INVESTMENTS

### WHAT'S NEW?

There are new information requirements for “investment products” and a new warning statement which must be included on any application form for an investment product (other than an insurance-based investment product) which will require firms to update their customer documentation and communications.

For this purpose, an “investment product” means an “investment instrument” as defined by the Investment Intermediaries Act 1995 and certain insurance products.

### WHAT'S CHANGED?

There are also a number of enhancements to the current Code requirements. For example:

- While the Code imposes obligations on product producers to update the information provided to intermediaries who are selling their investment products at least annually, the new requirements will require that any additional material information which the product producer has implemented or of which the product producer is aware must be provided to the intermediary within ten working days.
- This additional requirement only applies to information in relation to the “*key characteristics and features of the product*” and “*the level, nature, extent and limitations of any guarantee attaching to the product and the name of the guarantor*”. Product producers will, therefore, need to update their policies and procedures to provide for ad hoc notification of material changes to product information rather than the (at least) annual procedure that is currently required.
- The obligation on a product producer to provide an annual statement on investment products has been revised to include aggregated costs and charges information and a new warning statement. There is no guidance as to what that format the information on aggregated cost and charges must take. Firms are already required

to include information on any charges and deductions affecting the investment product so the additional element is to include the aggregated amount of charges which must be expressed as a monetary amount.

- This requirement does not appear to go as far as the MiFID costs and charges requirements which require aggregated costs as both as a nominal amount and a percentage but firms may wish to consider format of the aggregated costs and charges disclosures provided by EMSA at question 9.13 of the Investor Protection Q&A [ESMA35-43-349] if they are seeking practical guidance on what a regulator considers to be a clear aggregated costs disclosure.
- Information in advertisements about the simulated performance of the advertised service will now need to be based on the actual past performance of one or more investment products which are the same or substantially the same as the advertised service, not based on simulated performance as is currently the case. The revised wording will narrow the scope of performance information which can be included in advertisements and result in greater transparency for consumers.

## 14 / KNOWING THE CUSTOMER/SUITABILITY

### WHAT'S NEW?

#### *Sustainability preferences*

The scope of these new requirements include a number of detailed exclusions which firms should review.

New suitability requirements have been introduced reflecting the transition to a climate neutral economy. Prior to offering, recommending, arranging or providing a financial service (including financial products) appropriate to a customer, in-scope firms will be required to obtain information on consumer's "sustainability preferences" regarding financial services.

This will be a significant change for in-scope firms who are subject to the current suitability requirements and are not already subject to similar MiFID and Insurance Intermediary requirements that have been in place since August 2022.

#### *Is there a more suitable financial service available?*

When assessing and documenting whether a financial service meets a consumer's needs, it is also now expressly stated on a more general basis that firms will need to assess and document whether there is a more suitable financial service available based on the information gathered from the consumer (excluding information on sustainability preferences). This is consistent with the more general proactive principle of 'securing customers' interests'.

The statement of suitability itself will need to identify where a financial service meets any of the consumer's sustainability preferences. Requiring firms to consider a consumer's sustainability preferences after consideration of the other suitability criteria, such as the consumers' needs and objectives, personal circumstances, financial situation and attitude to risk, reflects the importance of these criteria to the suitability assessment, as stated by the Central Bank in its consultation paper.



### WHAT DOES THIS MEAN FOR YOUR FIRM?

Firms will need to:

- update their pre-sale information gathering documentation, policies, procedures and systems to provide for the collection of information regarding consumers' sustainability preferences for the purposes of suitability assessments
- update their policies, procedures and systems for suitability assessments to ensure that the suitability assessment also provides for the assessment of a consumer's sustainability preferences and recording of whether or not there is a more suitable financial service available to the consumer

Firms should also consider the Central Bank's broader expectations regarding the provision of 'green' or 'sustainable' services to consumers, including the importance of clear, concise and understandable disclosures that seek to inform customers, enhance understanding and build overall confidence in the green economy, which are outlined in the SCI Guidance.



### WHAT REMAINS UNCLEAR?

The Central Bank has not defined "sustainability preferences" in the Regulations so firms will have to interpret the concept if the Central Bank does not issue further guidance.

The new requirements do not make clear the method to gather sufficient prior information on sustainability preferences other than stating that the information must be: (i) appropriate to the nature and complexity of the financial service sought by the consumer; and (ii) sufficient to provide a professional service to the consumer. This seems fact specific. For example, the level of sustainability preference information "appropriate" for a short-term product might be expected to be lower than e.g. a longer term pension product. However, the extent to which firms can apply a proportionality approach is not entirely clear.

In the absence of a definition, firms might draw on other areas containing more detail, such as the MiFID definition of "sustainability preferences" for guidance. Those separate provisions set out in more detail are a client's choice as to whether certain financial instruments should be integrated into their investment, such as minimum proportions invested in 'environmentally sustainable investments' as defined in the separate EU Taxonomy Regulation or 'sustainable investments' as defined in the Sustainability Related Disclosure in Financial Services Regulation.



# 15 / CONFLICTS OF INTEREST/REMUNERATION

## WHAT'S NEW?

### Conflicts of interest

The definition of “*Chinese walls*” will be replaced by a new definition of “*information barriers*”. There are also a small number of changes, whereby: “*the fact of information held*” must be withheld (in addition to the information itself, as currently required), and the information in question must also be “*properly segregated*” (in addition to being withheld, as currently required).

Firms must now have in place a “robust” conflicts of interest policy and information barriers. The conflicts of interest policy will also need to contain measures to “*properly identify*” conflicts (in addition to measures for the management of identified conflicts, which is an existing policy requirement). Firms will need to review and, if necessary, update their conflicts of interest policy to satisfy themselves that it is robust and sets out measures to properly identify conflicts.

It is unclear whether wording changes are intended to change certain thresholds. For example, remuneration arrangements must now not be structured in a manner that may be “*inconsistent with*” (rather than as previously stated “*have the potential to impair*”) a firm’s obligations to act in consumers’ best interests and satisfy suitability requirements.

There are additional limitations to the circumstances in which a firm can provide a service to a consumer where a conflict arises which cannot be reasonably avoided. The amended requirements require a firm to “*fully and transparently*” disclose the existence of the conflict to the consumer in writing, confirm that the consumer has acknowledged that they understand the conflict and wishes to proceed, and take “*all steps within its control*” to appropriately manage the conflict and minimise the impact of the conflict on the consumer.

### Remuneration

In joining the conflicts of interest requirements and remuneration requirements under one chapter, the Central Bank is clearly embedding the point that Board and staff remuneration can give rise to a conflict of interest.

A number of enhancements will be introduced to the requirement that mortgage and investment intermediaries disclose remuneration received or receivable prior to offering, recommending, arranging or providing a service to a consumer. Such disclosures must be “*easily understood*” (rather than “*understandable*”) and specifically brought to the attention of the consumer. The reference to the disclosure being easily understood is technically an enhancement which embeds standards in relation to customer journeys that the Central Bank has

demand in the retail banking sector, guarding against ‘small print’ disclosures.

Where remuneration in respect to a service is receivable by an intermediary from a product producer on an ongoing basis, the intermediary will be required to disclose to a consumer “*the basis on which the product producer is providing such remuneration*” (in addition to the nature of the service, which is an existing requirement). The disclosure must also be brought to the attention of the consumer.

Intermediaries must also now publish details of all fees, commissions and other rewards or remuneration provided on their websites rather than generally.

## WHAT DOES THIS MEAN FOR YOUR FIRM?

Firms will need to review and, if necessary, update their conflicts of interest and information barrier policies and procedures to reflect these new requirements. Intermediaries should review and, if necessary, update their template disclosure documentation regarding remuneration to ensure they contain the requisite disclosures and can be easily understood by consumers.

## WHAT REMAINS UNCLEAR?

It is unclear if the introduction of the word “robust” regarding the above policies and procedures is intended to be an enhanced standard when compared to other sectoral legislation requiring such policies to be ‘adequate’.

## 16 / INFORMATION ABOUT CHARGES

### WHAT'S NEW?

Although there are limited changes to the requirements relating to charges, some enhancements are made to reflect the emphasis (e.g. in the Standards for Business) on presenting information to customers in a way that seeks to effectively inform them, e.g.:

- In addition to retention of current 30 and 10 business day written notice to consumers of charge increases, firms are now required to notify consumers of any decrease in charges as soon as reasonably practicable. This will ensure customers have a fuller picture of their service or product where they are shopping around and will help to some extent guard against unnecessary switching.
- Consumers subject to penalty charges will need to be notified of the methods by which those penalties may be avoided or mitigated.

The current carve out in the Code allowing firms to notify consumers that charges that cannot be ascertained in advance will be levied as part of the transaction has been deleted. Its absence from the new requirements means that firms will be required to provide a written breakdown of the charges payable by a consumer in respect of a financial service, rather than just notifying them that such charges will be imposed in the future.

### WHAT DOES THIS MEAN FOR YOUR FIRM?

These enhancements provide some further detail on how firms must correctly identify all relevant costs and bring them to the attention of consumers in a way that they will understand.

### WHAT REMAINS UNCLEAR?

It is unclear what the new regulations expect of situations where transaction charges are not readily ascertainable before a service is provided. Deletion of this Code provision suggests that such charges should be disclosed in advance which may be difficult to achieve in all situations. It is not, for example, clearly indicated that the reforms were intended to restrict the provision of financial services where charges cannot be readily ascertained at the outset. Firms might, in practice, be able to take reasonable steps to ascertain and disclose charges in advance, but separately disclose other charges that cannot be ascertained at that time as soon as reasonably practicable after that point.

# 17 / ADVERTISING

## WHAT'S NEW?

For the most part, the provisions on advertising are enhancements on the current requirements in the Code. However, there are a number of proposed new provisions of note:

- Firms will be required to carry out a review every 12 months that assesses the information given to consumers in advertisements for compliance with applicable requirements in the Conduct of Business Regulations.
- Firms must keep records relating to this annual review and any consequent updates to advertisements.
- There are also new requirements around the use of hyperlinks within advertisements. A hyperlink that links to information forming part of an advertisement can only be included in that advertisement in circumstances where the information given in the advertisement specifies the name of the financial service and/or an invitation to consumers to discuss the service in more detail with the firm.
- The hyperlink must be displayed prominently within the advertisement and link to all of the information required to be provided under the advertising requirements in the Regulations, and such information must be provided on a single webpage on the firm's website.

The Central Bank has not proposed new requirements for targeted advertisements as it previously indicated that it would. This is on the basis that the EU Digital Services Act separately introduces specific obligations related to targeted advertising.

## WHAT'S CHANGED?

- The existing requirements in respect to the "key information" to be included in advertisements have been updated. Where the benefits of a service are specified in an advertisement, the risks attached to the service must also specify, in a font size that is at least equal to the predominant font size used throughout the advertisement.
- The existing requirements that oblige firms to ensure that advertisements are not misleading have been enhanced to ensure that advertisements do not mislead consumers on the sustainability features of services. In particular, firms will need to review and, if necessary, update advertisements to ensure that they are not misleading to the extent to which the firm has a reputation of supporting sustainability factors and the features of a service in terms of sustainability factors.
- The requirements relating to advertisements that include recommendations or commendations have been amended to require that such advertisements are attributed to the person that is the author of the recommendation/commendation and dated as of the date of the recommendation/commendation.
- There have been substantial enhancements to the existing requirement to ensure that any assumptions, on which a statement, promise or forecast in an advertisement is based, are clearly stated, reasonable and up to date. These include substantiating any research, statistics or claims used in the advertisement.

## WHAT DOES THIS MEAN FOR YOUR FIRM?

- The requirement to conduct an annual review of advertisements is part of a larger theme around the practical impacts of the new requirements in relation to advertisements – review and substantiate.
- Firms will need to integrate the updated requirements into its processes and controls around advertisement formulation while bearing in mind the broader requirements and expectations around engagements with customers in the SCI Guidance.
- Governance around advertisements will likely increase with consideration of the customer's viewpoint being integral to the development not only of products but the communications around those products such as advertisements.
- The annual review itself will require a discrete set of controls in order to ensure that all advertisements are captured in the review, that they are tested appropriately and that any corrective actions are considered both on a go-forward ad look-back basis.
- It will be important that the records kept of the annual review are comprehensive, not only as to 'what' was reviewed but the considerations that went into any assessment and the rationale for the output and corrective actions if any.

## 18 / GENERAL CONSUMER CREDIT

### WHAT'S NEW?



Strengthened consumer risk disclosure requirements have been introduced for the sale of lifetime mortgages. Personal consumers must be provided with pre-sale information on the party who would be liable for any redemption costs, whether the consumer or their estate would be liable for any post mortgaged property sale shortfall and details of any costs which may apply over the term of the lifetime mortgage or on the mortgaged property's sale.

### WHAT'S CHANGED?



Further minor enhancements are also included, with other clarificatory changes. E.g.:

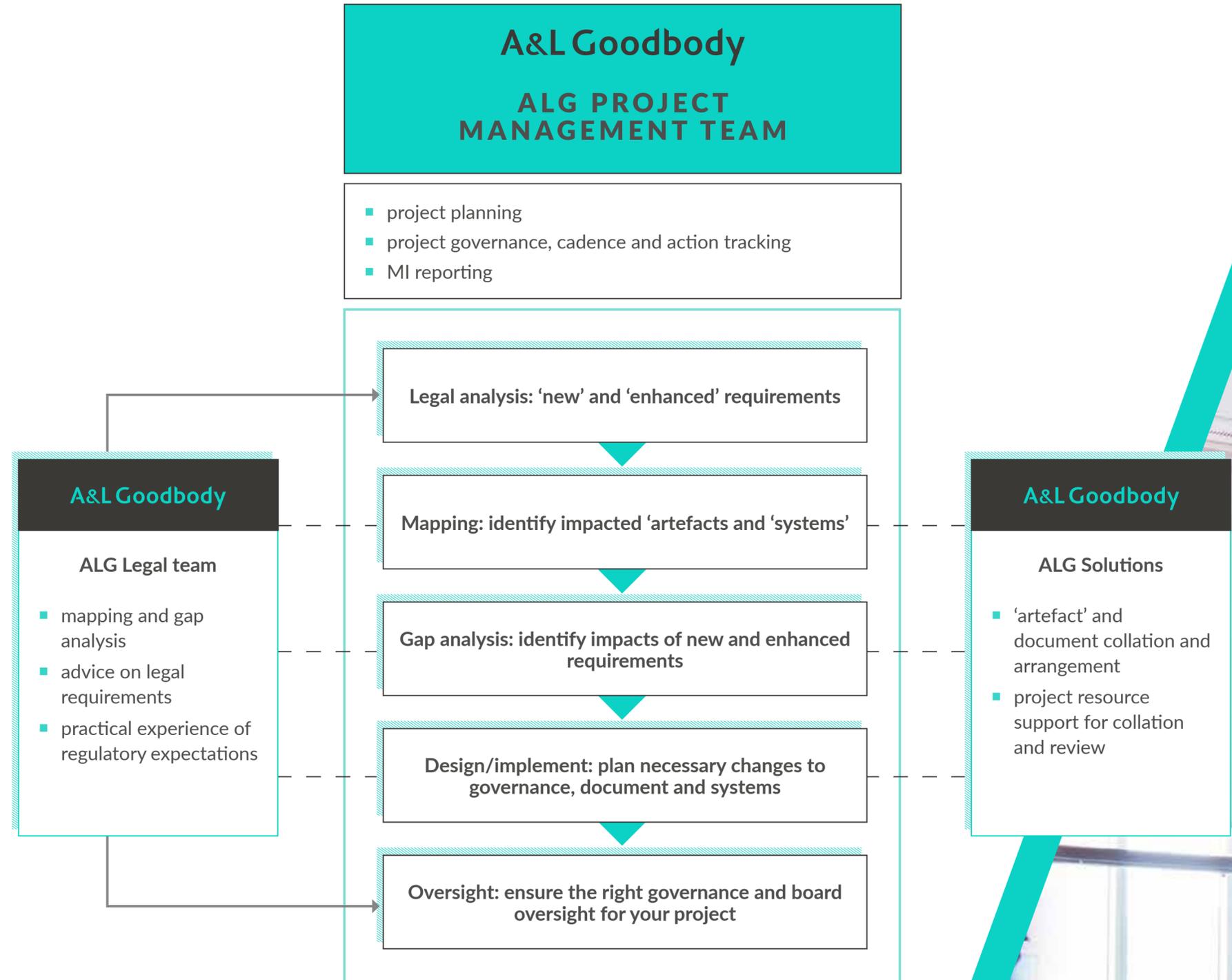
- Where a personal consumer requests to be notified of the reasons why their application for credit was not approved, the communication must now be provided within ten working days of the request.
- Regarding information to be provided prior to the consolidation of loans, firms must now provide a personal consumer with an indicative comparison of the *"total cost of the consolidated loans or credit and the total cost of the consolidating loan"*, instead of an indicative comparison of *"the total interest"* payable in the same circumstances (the former is potentially broader than the latter). Prior to offering, recommending, arranging or providing a loan to a personal consumer for the purpose of consolidating other loans, firms will need to ensure that the indicative comparison of the total costs is provided to the consumer, and firms' policies, procedures and systems will need to be updated to reflect the change.

## 19 / HOW CAN A&L GOODBODY HELP?

Your ALG Business Standards/Consumer Protection Code team combines specialises from our Financial Regulation & Investigations Group and sector experts from Banking, Insurance, Payments and Investment Services, to provide a holistic approach to assessing and implementing these reforms.

Our ALG Regulatory specialists, Legal Programme Managers and Client Technology teams work seamlessly to design, oversee and progress implementation plans for firms getting ahead of these changes.

“Our practice area specialists and Legal Project Management teams are ready to plan, advise on and oversee your implementation project end to end.”



## 20 / BUSINESS STANDARDS/CPC REVIEW – ALG SOLUTIONS

ALG Solutions can provide supports to assist clients in the Business Standards/CPC review process.

### SUPPORT



#### Resources

Understanding the resource demands that the CPC review will put on your organisation, ALG can provide dedicated resources to you, on-site or off-site, to progress document and information collation, driving your CPC project.



#### Systems

ALG's investment in technology can help store, process and manage the complexity of information and scope of documents to be reviewed and produced, as well as the efficiency of legal and regulatory review, during your CPC project.



#### Project management

ALG can provide dedicated project management resources to manage all of your scheduling and planning requirements to deliver on time and to budget, including resource plans, delivery of milestones, interview and briefing scheduling and required reporting.

### ADVANTAGES OF USING ALG SOLUTIONS MODEL

#### ALG Solutions resources can:

- free up resources in your legal and compliance teams
- act as a dedicated line between your internal teams and ALG's legal and regulatory team
- utilise flexible pricing models for resource support to meet your project demands

#### Systems

#### ALG systems can:

- act as a repository of information and documentation
- synthesise complex information and present it in a clear and concise format
- improve the efficiency of legal and regulatory review during your project
- provide live updates on the progress of the CPC project
- create a picture of your organisation as a whole

#### Project management

#### ALG's PM function ensures:

- close engagement with ALG and client team resources without necessity or cost of additional third-party consultants
- a dovetail with your business team to maximise efficiency through strong planning and delivery of key milestones to budget and schedule

# 21 / YOUR ALG CONSUMER PROTECTION TEAM

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**Kevin Allen**  
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