Matheson

A First Look

Changes and Clarifications to the Proposals in CP 158 on the CPC

Introduction

The Central Bank of Ireland (“**Central Bank**”) has published the much anticipated Feedback Statement to the Consultation Paper on the Consumer Protection Code (“**CP158**”), along with the finalised regulations and guidance documents. While the proposals were generally welcomed, it is clear from the Feedback Statement that financial service providers raised concerns regarding implementation, costs, and operational impacts. In response, the Central Bank has made a number of changes to the proposed regulations as well as provided clarity and additional guidance on some key areas of focus. In this initial insight we outline some of those main changes and clarifications.

The changes and clarifications made aim to refine the proposals based on stakeholder feedback, balance consumer protection with practical implementation for firms, and ensure the updated Consumer Protection Code (“**CPC**”) is both effective and proportionate.

For more details on the original proposals, including the drivers behind the need to revise the CPC, the form it will take, and in particular, the approach to certain key concepts. Please see Matheson’s dedicated analysis series which can be found here.

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Newly published General Guidance

The Central Bank has also published a third guidance document - General Guidance on the Consumer Protection Code (“**General Guidance**”). Although the General Guidance was not included with the supporting materials for CP158, there were multiple references made in the consultation paper to the provision of guidance to support firms’ understanding of various topics such as “branding”, “vulnerability” “informing effectively” and, “digitalisation” within the new regulations. The General Guidance delivers on this commitment.

The General Guidance also consolidates the existing Consumer Protection Code Guidance 2012 and the Consumer Protection Code 2012 Advertising Guidance. Finally, the Central Bank explains in the General Guidance that it has also incorporated relevant content from a number of 'Dear CEO' letters issued by the Central Bank. This move to consolidate various forms of regulatory communication into a single guidance document is a very helpful step.

Firms should review the General Guidance carefully as it looks to implement the updated CPC.

1. Changes and Clarifications to Securing Customers Interests

- **Acting on behalf of a customer**
  Clarified that 'acting in the best interests' and 'securing customers' interests' in the context of the CPC does not mean that a financial services firm is 'acting on behalf of' a customer, or in any way taking responsibility for making decisions that could and should be made by the customer themselves. In placing obligations on firms, the securing customers' interests obligations do not remove responsibility from their customers.

- **Assisted Decision Making Act**

  Clarified that the proposals do not conflict with the Assisted Decision Making Act ("**ADMA**"). The guidance outlines for firms how the requirements apply in order to support firms in understanding their obligations under the CPC and the ADMA.

- **Proportionality**

  Clarified that while all consumers should be afforded the same level of protection and all firms have the same responsibility to secure customers' interests, not all firms are expected to meet their obligations in the same way.

  a. Firms should focus on the customer outcomes that may result from their actions, considering what a firm can know, or can reasonably be expected to know, at a relevant time.

  b. Securing customers' interests does not mean that individual customers will always be protected from poor outcomes. 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.

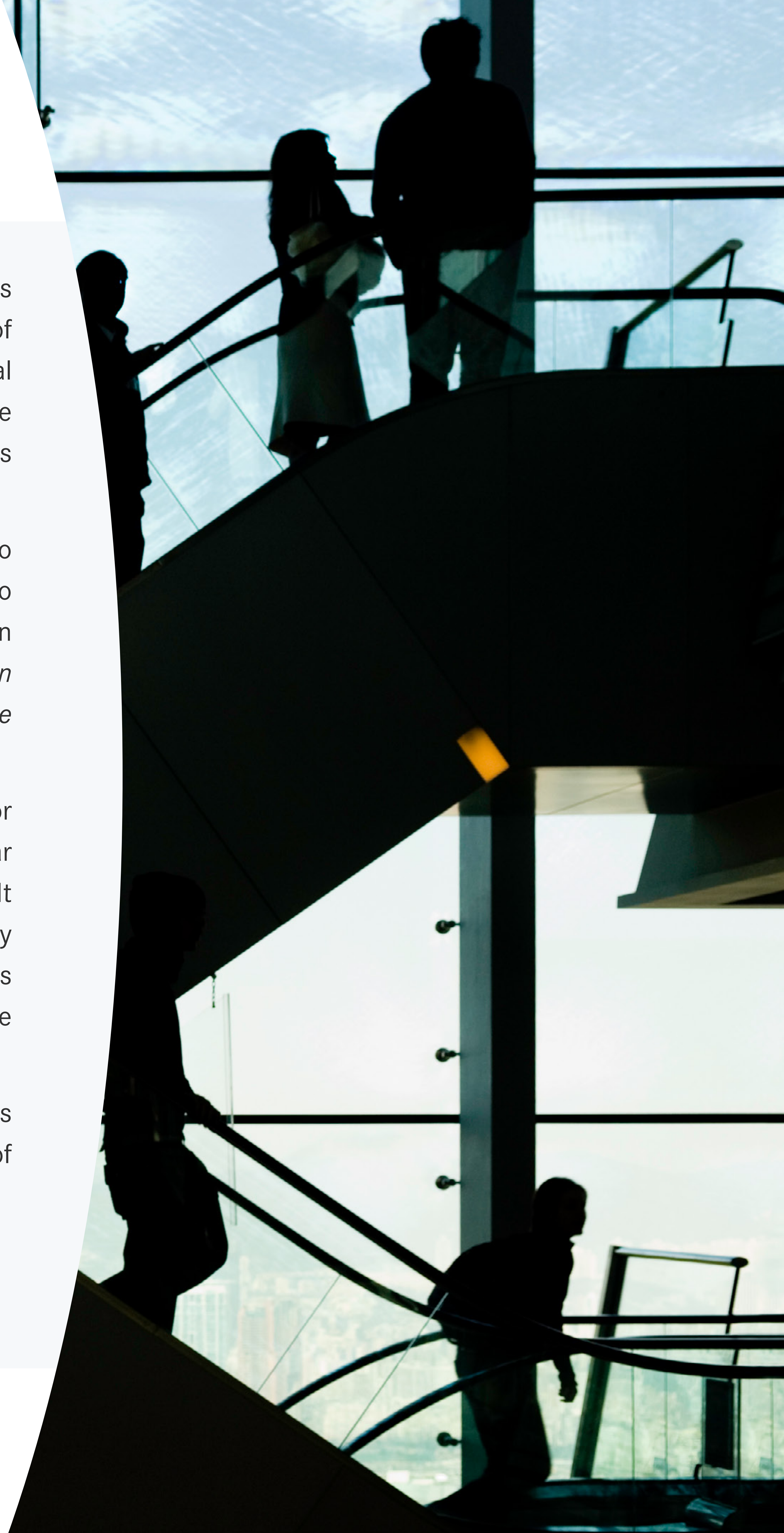
- **Individual Accountability Framework**

  Clarified that the concept of reasonable steps reflected in the Individual Accountability Framework ("**IAF**") is intentionally not replicated in the Securing Customers' Interests Standards for Business. The IAF provides for the concept of reasonable steps in respect of the conduct standards set out in primary legislation in the Central Bank Reform Act 2010 because those standards apply to individuals performing functions. This, the Central Bank explains, can be distinguished from obligations imposed on firms. This reflects the range of resources available to firms and the Central Bank's expectations on how these should be effectively deployed in a way that secures customers' interests.

  Clarified that complying with the obligation to secure customers' interests requires firms to take ownership of how they meet this obligation – "*Crucially, this is not a compliance obligation owned by risk or compliance staff, but one owned by the whole organisation.*"

  The CPC does not prescribe what can or should be done by firms in every particular scenario or set of individual circumstances. It articulates what is required of firms generally so that firms can determine for themselves what actions they should be taking to secure their customers' interests.

  The way in which a business measures its success should include consideration of outcomes for its customers.



- **Application to MiFID firms**

  Clarified that by applying the Guidance on Securing Customers' Interests to MiFID firms, the Central Bank is seeking to ensure a consistent level of protection for all consumers in Ireland when they are engaging with financial services providers.

  Confirmed that the guidance does not conflict or overlap with the MiFID Regulations, with which all EU firms must comply when providing MiFID services, but rather provides guidance on how the Central Bank expects firms to meet their obligations under the MiFID Regulations.

  The CPC applies for the benefit of Irish consumers. The Central Bank explains that it expects MiFID firms and crowdfunding service providers based in other EU countries to consider this guidance when they provide services to consumers in Ireland. When Irish firms are providing MiFID services to consumers in other EU Member States, the expectation is that firms adopt a consistent approach in relation to securing all their customers' interests, whether those customers are in Ireland or abroad.

- **Specific changes to Guidance on Securing Customers' Interests**

  Changed the Guidance on Securing Customers' Interests to:

  a. include the addition of an example of securing customers' interests during digital delivery;

  b. articulate the Central Bank's expectation of firms where customers make poor or unwise decisions;

  c. clarify expectations of firms when dealing with customers on an execution only basis; and

  d. clarify how proportionality will operate and the types of steps that firms are expected to take to secure their customers' interests. The CPC will continue to apply in a way that is appropriate for firms of all sizes, business models and levels of complexity.

> *"Regulated firms will benefit from an integrated regulatory format, and a clearer articulation of their Code obligations, complementing the work they are already doing."*
>
> **Governor of the Central Bank of Ireland, Gabriel Mahklouf**

2. Changes and Clarifications to Digitalisation

The Central Bank explained that to enhance supports for consumers when using digital platforms, and to support firms in implementing the requirements, it has developed guidance to support implementation of the digitalisation requirements in the CPC. This guidance covers areas including filtering of information, scrolling and use of hyperlinks and can be found in the overarching General Guidance on the Consumer Protection Code ("**General Guidance**").

In the Feedback Statement, the Central Bank highlights the following elements of the original proposal which have either changed or are clarified:

- **Pauses**

  Changed the proposed requirement on pause statements to focus on the need for firms to consider the impact that the dynamic of online transactions can have on consumer decision-making. In addition, to apply pause statements where the risk is high of consumers entering into transactions that may be unsuitable due to the speed and ease of the online process. This requirement is supported by the General Guidance which provides examples of online transactions where this risk arises (see Box 3 of the General Guidance).

- **Filtering**

  Removed the proposed filtering requirement and instead have provided guidance in the General Guidance on how filtering can be used to support consumer decision-making online (see Box 1 of the General Guidance).

- **Durable Medium**

  Developed guidance to clarify that a 'durable medium' can include digital formats (see Box 2 of the General Guidance).

  Reviewed the use of 'written consent' requirements in the CPC. Where appropriate, the Central Bank has updated these requirements to include oral consent. However, there are some circumstances where the Central Bank maintains that consumers are best protected if written consent is required. Where the CPC only requires consent, this can be given verbally or in writing. Where the CPC requires written consent it must be in writing only (which includes via email).

- **Digital Platform and interaction with AI**

  Clarified that the term "digital platform" in the CPC describes a channel where the consumer engages with the financial services provider using technology. The Central Bank acknowledged that there may be elements of artificial intelligence (AI) in a digital platform deployed to carry out or augment certain business processes. This could include the use of GenAI. The CPC does not seek to replicate the requirements of the AI Act, which reflects specific requirements in relation to the use of AI for certain financial services products and use cases.

The Central Bank explained that further guidance on the application of the AI Act requirements will be developed throughout 2025 and 2026, in line with the overall timelines of the AI Act.

"By updating the Code to reflect digitalisation in financial services, we want to ensure that firms support their customers to harness the benefits and take action to mitigate risks."

CP158 Feedback Statement

3. Changes and Clarifications to Informing Effectively

Developed guidance for firms to support their implementation of the requirements regarding informing effectively. This guidance includes examples, which illustrate the actions and steps that firms can take to ensure that they are informing effectively, including where the content of disclosures is mandated by regulatory requirements (see section 2.2 of the General Guidance).

The General Guidance also provides an overview of important considerations for firms when they are developing and designing communications for customers. This includes consideration of customer profile, content, language, display, delivery channel, timing and the use of review, all of which are explored in the guidance.

> *"We are also publishing comprehensive guidance to support firms, and we will continue to engage with stakeholders over the next 12 months as we work towards effective implementation"*
>
> **Governor of the Central Bank of Ireland, Gabriel Mahklouf**

4. Changes and Clarifications to Mortgage Credit and Switching

- **Mortgage Incentives**

  Made adjustments to the requirements, which are set out in the Table of Changes Post-Consultation in Annex 1. These include a requirement for firms to include additional signposting to mortgage calculators available on the website of the Competition and Consumer Protection Commission.

  Central Bank explains that research and analysis on the impact of mortgage incentives is now underway. However, at an overall level the research indicates that cashback incentives are not of primary importance when it comes to decisions about which type of mortgage to choose with factors such as interest rate, monthly repayments and the principal borrowed significantly more important. As a result, further consideration is required to determine if any additional policy response is warranted in this area.

  > The Central Bank plans to publish its research and full policy consideration in due course.

- **Mortgage Switching - provision of information to enhance internal switching**

  Added a legal requirement for mortgage lenders to provide title deeds to a borrower or their legal representative within a specified timeframe.

- **Lifetime Mortgages and Home Reversion Agreements**

  Small number of changes to the requirements. For example, there is no longer a need to warn a lifetime mortgage holder that their home might be at risk if they do not keep up repayments on their loan where repayments are not required under their contract.

  Made a specific change to the definition of lifetime mortgage to extend it to second properties. Further details of these updates are outlined in the Table of Changes Post-Consultation in Annex 1.

- **Code of Conduct on Mortgage Arrears**

  Developed criteria and expectations on Appropriate and Sustainable Alternative Repayment Arrangements ("**ARAs**") to support firms in implementing the existing requirements for ARAs in the CPC. Also made some specific drafting amendments to the regulations.

5. Changes and Clarifications to Unregulated Activities

- **Unregulated activities carried out by regulated entities**

  Clarified that under the CPC's Supporting Standards for Business, firms must clearly distinguish between their regulated activities and their unregulated financial activities by taking all appropriate steps to mitigate the risk that a customer will understand an activity to be, or to carry the protections of, a regulated activity where this is not the case. Importantly, unregulated activities are defined for the purposes of the CPC as the provision of services of a financial nature, which are not otherwise regulated activities, to consumers in the State.

  The Central Bank explains therefore that this Supporting Standard for Business applies to regulated financial services firms when providing unregulated financial products and services.

  Similarly, additional disclosure requirements also apply only where a regulated financial services firm is providing unregulated financial products and services. The Supporting Standard for Business and requirements do not apply when regulated financial services firms provide non-financial products and services as part of their business model.

- **Use of branding**

  Updated the Guidance to provide further clarity for firms on how the Central Bank expects firms to meet the requirements in relation to the use of branding.

"Customers need clarity on what is and is not regulated. Where regulated firms engage in regulated and unregulated activities, there is a heightened risk that customers may misunderstand their protections because of the firm's regulated status"

CP158 Feedback Statement

6. Changes and Clarifications to Frauds and Scams

- **Definition of Financial Abuse**

  Confirmed that it is "*disproportionate and impractical to expect firms to apply the financial abuse requirements to future potential customers*". As a result the Central Bank has amended the Standard for Business to clarify that it applies only to consumers to whom the regulated financial service is providing services. As a result of this amendment, firms will not have a duty to protect potential consumers from financial abuse.

7. Changes and Clarification to Protecting Consumers in Vulnerable Circumstances

Changed the definition of consumer in vulnerable circumstances to reflect that the circumstances that cause vulnerability may be permanent or temporary.

Changed the proposed requirement on firms to record information on consumers in vulnerable circumstances, to provide firms with more flexibility on how they can address the many different ways in which vulnerability may present.

Updated the Guidance on Protecting Consumers in Vulnerable Circumstances to include training on adult safeguarding. This will form part of the recommended modules that should be covered under the staff training requirement under the CPC.

Added guidance to explain the use of the word 'harm' in terms of the relationship between a firm and consumers.

- **Trusted Contact Person**

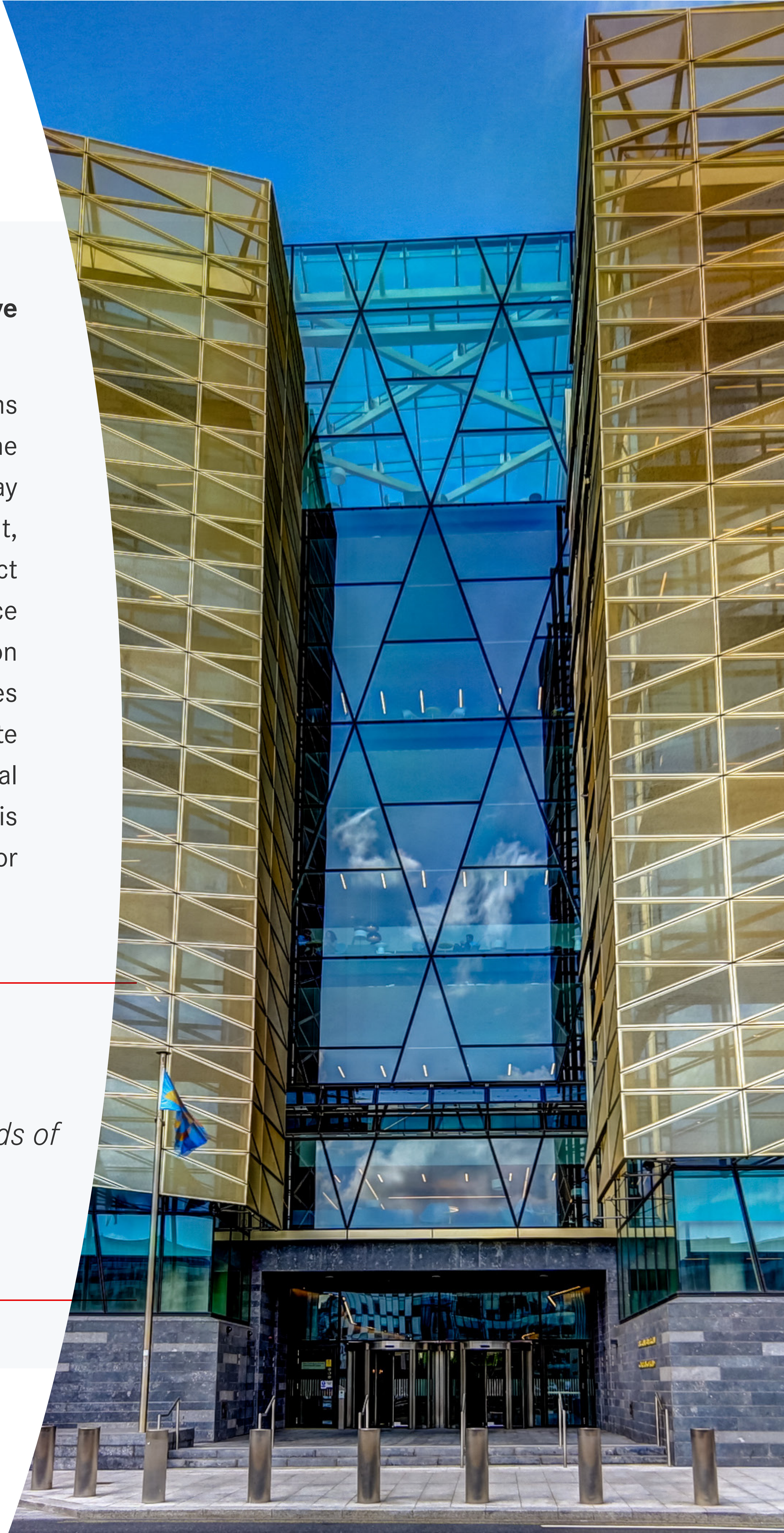
  Changed the requirements that regulate the appointment of a Trusted Contact Person so that if a firm is aware that a decision-making representative has been appointed in respect of a customer under the ADMA, then they should defer to those arrangements instead of contacting any Trusted Contact Person that had been nominated by that customer. This amendment, the Central Bank maintains, will ensure that there is clarity for firms on who they should engage with when dealing with vulnerable customers.

- **Disclosure by Customers of Sensitive Information**

  Changed the requirement to provide firms with more flexibility on how they address the many different ways in which vulnerability may present. In meeting this revised requirement, the Central Bank explains that it will expect firms to have processes and systems in place to appropriately record relevant information where it is suitable to do so. Such processes and systems should consider appropriate levels of consent (taking account of individual circumstances) and ensure that information is up to date, not prejudicial and retained only for appropriate periods.

"Firms need to understand the broad nature of vulnerability, and to ensure that their culture, policies and processes take account of the needs of consumers in vulnerable circumstances"

CP158 Feedback Statement



8. Changes and Clarifications to Additional Policy Proposals

- **Consumer Credit**

  Changed the proposed regulations so that the existing CPC provisions relating to unsolicited contact and personal visits are not applied to Consumer Hire and HP firms.

- **SME Protections**

  Confirmed that the definition of 'consumer' in the CPC to include small businesses with an annual turnover of less that €5m will be implemented.

- **Insurance**

  Confirmed that the introduction of an explicit opt-in requirement for gadget, travel, dental and pet insurance products will go ahead. The Central Bank explained that the proposed measures will not prevent automatic renewal in these categories of insurance, they simply apply an additional step to ensure consumers are fully aware before entering an automatic renewal arrangement. The requirements will apply to new contracts entered into after the requirements take effect.

  Confirmed that the requirement to issue a pre-renewal reminder/notification in respect of insurance products 20 working days ahead of the date on which the full renewal notice is required, will remain.

  Introduced a requirement for health insurance providers to notify all affected adults of a cancellation of cover.

- **Handling of errors and complaints**

  Confirmed that the frequency of analysis of complaints will remain at six months. However, it confirms that the Central Bank applies the principle of proportionality in terms of the approach to be taken, and expects that firms will carry out this analysis in a manner appropriate to the nature and scale of their business, and to the volume and complexity of errors and complaints to be analysed.

  The General Guidance provides more clarity as to what might constitute a 'significant error'.

  Clarified that the requirement to immediately acknowledge complaints submitted via webforms will apply only where a consumer submits a complaint – under the heading of a complaint – via a specific webform dedicated to that purpose. The language of the regulation has been amended to make the position clearer and the requirement is also now covered in the General Guidance.

- **Retention of Records**

  Confirmed that record keeping requirements applicable in cases where a consumer engages with a firm but does not proceed to become a customer will remain at the proposed time of 12 months. The requirement has been amended in order to clarify that it applies only to records created after the commencement of the regulations.

- **Instructions to be acknowledged and processed**

  Confirmed that the proposal to require firms to acknowledge instructions within three days of receipt will not be adopted.

- **Requirements on ceasing to operate, merging business or transferring regulated activities**

  Confirmed that the proposal to change the requirement on firms to provide at least 2 months' notice to affected consumers where they intend to cease operating, merge with or transfer regulated activities to another entity by increasing it to at least six months' notice will not be adopted.

- **Material changes to banking services**

  Developed guidance on how to implement the requirements for banks when they are making material changes to banking services. This includes clarification that the required board–approved assessments should focus on the impact of closures, mergers or significant changes to services, and therefore does not require the inclusion of commercially sensitive information (see section 3.10 of the General Guidance).

  Clarified that the required publication in local media need only include notice of the fact that a report has been prepared and published, and advising where anyone who may wish to access the full report, can do so.

  Clarified that the requirements do not apply for closures of a temporary nature i.e. where the branch is closed for renovation or emergency works. Where banks intend to significantly amend the financial services that are provided in a particular branch, the requirements will apply.

- **Sustainability preferences**

  Developed guidance for firms to support their implementation of the updated requirements on suitability assessments.

9. Changes and Clarifications on Foot of Cost / Benefits Analysis

Changes have been made in areas where the Central Bank acknowledges that the benefits associated with the requirements do not justify associated costs. These include the following changes:

- removed a number of instances where written consent was required, and as noted above, clarified that where written consent is required, that it can be provided via digital channels including e-mail.
- amended the proposed requirement on firms to record information on customers in vulnerable circumstances.
- the proposal to reduce the timeframe to notify consumers of an issue affecting their insurance claim from ten days to five will not be adopted.
- as noted above, the proposal to require firms to issue an acknowledgement within three days of receiving instructions will not be adopted but will instead retain the current requirement on firms to process instructions properly and promptly.
- as noted above, the proposal on pause features for online transactions has been amended so that they will only apply where the risk of consumers entering into transactions that may be unsuitable due to the speed and ease of the online process is high.
- as noted above, the proposal for firms to apply appropriate filtering of information where more than three financial products are offered will not be adopted.
- as noted above, the requirement to retain records for 12 months where a consumer engages with a firm but does not proceed to become a customer, will only apply to records created after the commencement of the regulations.
- where text changes in warning statements have been introduced, firms will not be expected to change all their warnings at commencement of the CPC- but that they should make such changes as part of the next scheduled update.

Implementation and Timing

- Confirmed the 12-month implementation period.
- Expects firms to take a proactive approach to implementation. "*While we understand that some of the changes may take time to implement, some firms may be in a position to implement some of the changes at an earlier stage and we would encourage firms, if they can do so, to adopt these changes as soon as it is feasible to do so.*"
- Published a range of supporting materials, including guidance, a mapping tool and a table of changes made to the regulations since the Public Consultation.
- Enhanced the presentation of the CPC on the Central Bank's website using digital tools to enable users to more easily navigate the regulations and supporting resources.
- During the implementation period, the Central Bank will continue to engage with industry to support the implementation of the requirements through bilateral engagements and workshops on specific areas, such as industry approaches to supporting customers in vulnerable circumstances.

Over the coming weeks we will update clients on the implications of these changes and clarifications and what they will mean in practice. In the meantime, should you have any questions in relation to the above or your work on the implementation of the revised CPC, please do not hesitate to contact our team or your usual Matheson contact.

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