

## **Mutual Learning Programme**

**A Review of the Consumer Protection Function of the Central Bank of Ireland**



## **The Netherlands Authority for the Financial Markets**

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The AFM promotes fairness and transparency within financial markets. We are the independent supervisory authority for the savings, lending, investment and insurance markets. The AFM promotes the conscientious provision of financial services to consumers and supervises the honest and efficient operation of the capital markets. Our aim is to improve consumers' and the business sector's confidence in the financial markets, both in the Netherlands and abroad. In performing this task the AFM contributes to the prosperity and economic reputation of the Netherlands.

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## Executive Summary

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### **Background**

In early 2014, the Central Bank of Ireland (“**the Central Bank**”) requested the Netherlands Authority for the Financial Markets (“**the AFM**”) to carry out a review of its consumer protection function in accordance with the terms of reference described in Chapter 1 of this Report. The Central Bank has also agreed to carry out a reciprocal review of the AFM in 2015. The Central Bank requested the carrying out of this Mutual Learning Programme (“**the Programme**”) for three main reasons:

#### ***(1.) The Development and Promotion of High International Standards of Financial Consumer Protection***

The Central Bank and AFM are committed to the promotion and development of high international standards of consumer protection for consumers of financial services. In this regard, the Central Bank and AFM actively participate in various EU and International fora including at the European Supervisory Authorities (“**ESAs**”), the OECD and the International Financial Consumer Protection Organisation (“**FinCoNet**”). The Programme sought to build upon and give practical application to the strong international standards for financial consumer protection set out in the ‘*G20 High-Level Principles on Financial Consumer Protection – Oct. 2011*’ (“**the G20 Principles**”). The development of the G20 Principles was led by the OECD and it is anticipated that other G20 member countries may wish to engage in similar mutual learning exercises to this Programme in the future.

#### ***(2.) Statutory Requirement for a review of the Consumer Protection Function of the Central Bank***

Under the Central Bank Act 1942, as amended (“**the 1942 Act**”), the Central Bank is required to be subject to external review in respect of the performance of its regulatory functions on a periodic basis. This Programme is one of a suite of reviews which will assist in the fulfilment of this statutory requirement. In this regard, it should be noted that the consumer protection function of the Central Bank has also been assessed in various other international reviews as detailed in Chapter 1 of this report. This Programme represents an additional review in recognition of the distinct nature of consumer protection, in particular, its cross-sectoral nature and the extent to which it can comprise activities and tools other than those traditionally used in the regulation of financial services providers.

#### ***(3.) Mutual Learning and Relationship Building***

The Programme represented an opportunity for mutual learning between the Central Bank and the AFM by facilitating knowledge sharing in relation to the best practices and challenges faced in each jurisdiction. The proposal to carry out the Programme arose following high level engagement between the Central Bank and the AFM at the OECD Taskforce on Financial Consumer Protection. The objective of the Programme

participants was to raise consumer protection standards in both jurisdictions and to build a lasting collaborative relationship between the Central Bank and the AFM. It is envisaged that the mutual learnings from the Programme will ultimately improve outcomes for consumers.

### **The Programme**

The Programme took place between April 2014 – March 2015 commencing with the agreement of terms of reference for the Programme in June 2014. In furtherance of the objectives outlined above, it was agreed that certain of the G20 Principles would be used as a reference point for the Programme. In line with other international reviews of this nature, the Central Bank first completed and provided to the AFM a briefing pack of materials describing the role and function of the Central Bank including a self-assessment of the consumer protection function of the Central Bank by reference to the G20 Principles in scope and the terms of reference agreed for the Programme. Following the provision of these materials to the AFM, there was extensive further engagement between the participants in the Programme including two one-day on-site visits by the Central Bank to the AFM and a three-day on-site visit by the AFM engagement team to the Central Bank in July 2014. Further details of the terms of reference and the engagement involved in the Programme are included in Chapter 1 of this report.

### **Summary of the Overall Findings and Key Learnings from the Programme**

The AFM review team has been impressed by the dedication of the Central Bank to continually strive to achieve better outcomes for consumers. Though the Central Bank's consumer protection mandate is relatively new, a lot has been achieved in a relatively short timeframe. The AFM team encountered a very motivated and professional staff and leadership team that is committed to developing a consumer-focused culture and ethos across the financial services industry and delivering meaningful outcomes that meet the expectations of consumers and other stakeholders. The Consumer Protection Directorate ("**the CPD**") within the Central Bank has set itself the mission of *"Getting it Right for Consumers – we will work together and with others to strengthen and maintain protection for consumers so that financial services work in the best interests of all consumers, now and in the future"*. The AFM observed a strong collective drive to fulfil this mission and the Central Bank provided the AFM with evidence of a number of work-streams and examples of thematic work relevant to the application of the G20 Principles. Further details on recent Central Bank consumer protection work are set out in Chapter 2 of this report.

The Central Bank has also exhibited a strong dedication towards stakeholder engagement in respect of consumer protection matters both domestically and internationally. Domestically, the Central Bank has active engagement with relevant

stakeholders such as Government departments, the Financial Services Ombudsman (“**the FSO**”) and the Competition & Consumer Protection Commission<sup>1</sup> (“**the CCPC**”). There is also extensive engagement with regulated firms where the Central Bank aims to ensure that there is a consumer focused ethos in all firms. Also, the Central Bank engages strategically with international stakeholders through its active role in leading and shaping consumer protection policy and practice within the ESA’s, and international bodies such as the OECD and FinCoNet. In this regard, the AFM notes the Central Bank’s current chairmanship of FinCoNet and the Standing Committee on Consumer Protection and Financial Innovation of the European Banking Authority. In the performance of its consumer protection functions, the Central Bank is independently advised by an external Consumer Advisory Group (“**the CAG**”) which is in line with international best practice. The CAG provides a valuable variety of external stakeholder perspectives on consumer protection matters to the Central Bank.

The economic challenges faced by Ireland in recent years have meant that the protection of consumers in mortgage arrears has been a strategic priority for the Central Bank. Significant resources have been dedicated by the Central Bank to ensuring that consumers in mortgage arrears are treated fairly by their lenders. Economic challenges have also led to the development of a debt management sector in Ireland and the Central Bank has been charged with regulating, and applying consumer protection standards, in respect of this previously unregulated sector. Other notable achievements include the significant consumer redress payments secured in respect of issues around the sale of payment protection insurance, the Central Bank’s recent cross-sectoral themed inspection on remuneration and sales incentives aimed at promoting a consumer focused culture in regulated firms and the Central Bank’s dedication to implementing minimum competency standards for all consumer facing staff in regulated firms. There is also a clear focus on eliciting good governance and culture in regulated firms in relation to consumer protection matters.

The Central Bank is also to be commended for its focus on market intelligence and advertising monitoring and its use of research and behavioural economic insights to inform its consumer protection activities. The Central Bank’s regulatory toolkit has also been enhanced in recent years in particular by the Central Bank (Supervision and Enforcement) Act 2013 (“**the 2013 Act**”) and through other legislative amendments which together have improved cross-sectoral powers in relation to investigations, directions, securing consumer redress, requiring ‘skilled person’s reports’ and enhanced sanctioning powers under its administrative sanctions regime including increased financial penalties.

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<sup>1</sup> On 31<sup>st</sup> October 2014, the National Consumer Agency and Competition Authority merged to form the Competition & Consumer Protection Commission

The AFM has also identified in this report possible areas where the Central Bank can further develop the existing model and approach. The findings and recommendations made in this report reflect both the AFM engagement team's assessment of the Central Bank's performance of its consumer protection function together with knowledge sharing of the AFM's own domestic approach to the protection of consumers of financial services. Amongst the key areas for consideration by the Central Bank identified by the AFM were the following:

- Product Governance and Oversight – there is scope for the Central Bank to enhance its supervisory approach in respect of governance and oversight in respect of specific products in the market. The Central Bank currently tends to focus more on the on-going supervision of individual product providers rather than on specific products that may pose a market-wide threat.
- Strategic Planning & Outcome Measurement – While the Central Bank has a clear strategy in respect of Consumer Protection based around the 5 C's framework and the Central Bank Strategic Plan 2013 – 2015, future strategy development may benefit from a more elaborate long term plan that builds on the agenda in respect of treating customers fairly with appropriate measurement of the outcomes for consumers over the lifetime of the plan;
- Problem Based Approach – The Central Bank may wish to consider drawing on elements of the current AFM model whereby the AFM have evolved from a more firm specific approach to conduct supervision towards an approach whereby the AFM now seek to identify and address only the most serious market wide conduct risks on a cross-sectoral basis. Further details on this Problem Based approach are included in Chapter 3 of this Report.
- PRISM Model – The PRISM risk based supervision model operated by the Central Bank symbolises the Central Bank's innovative outlook on the financial sector and the rigorous and systematic supervisory process that PRISM applies is regarded as good practice. While primarily a prudential regulatory model, PRISM also includes functionality in respect of conduct of business matters through the assessment of 'conduct risk' in individual firms and incorporates useful supervisory tools including the thematic and triage functionalities. Further work is required however to operationalise the Central Bank's 5 C's Consumer Protection model to better identify and prioritise key consumer risks (including market wide risks) and from that, to devise consumer protection actions to deal with those key risks.
- Prioritisation, Capacity and Planning – The Central Bank faces many competing demands in terms of protecting consumers and performing its related statutory functions with limited resources. The Central Bank may wish to consider a more integrated prioritisation model which has the required flexibility to allow the Central Bank to de-prioritise and flexibly deploy its limited consumer protection resources towards addressing only

the greatest threats to the Central Bank's statutory objective of protecting consumers.

- Low Impact Firms (Intermediaries) and Enforcement – The Central Bank's current strategy in respect of low impact firms under PRISM (primarily retail intermediaries) could be improved to build on existing compliance motivation measures (such as the retail intermediary newsletter and road-shows) whilst also having increased regulatory/enforcement measures in relation to treating consumers fairly. While the Central Bank cited a number of enforcement cases against low impact firms, those cases tended to relate more to prudential issues such as professional indemnity insurance rather than consumer protection issues around treating consumers fairly.<sup>2</sup> In this regard, the AFM engagement team recognise that enforcement is only one of the suite of regulatory tools used to ensure consumer protection. It is important that the Central Bank continues to impact and influence the longer term behaviour of this large population of firms.
- Compliance Motivation and Corporate Culture – The Central Bank promotes putting consumer protection at the heart of corporate culture within regulated firms with an increasing onus on firms to demonstrate how their culture, products and services are in the best interests of consumers. An example of this cited by the Central Bank was the regular high level meetings that take place between the Consumer Director and senior bank officers. This approach could be built upon by developing a more systematic and cross-sectoral approach challenging High and Medium High Impact firms in relation to their corporate culture in respect of Consumer Protection. Further use might also be made of compliance motivation techniques such as the Central Bank's successful retail intermediary newsletter and road-shows.

### **Conclusion**

Overall, the Central Bank has exhibited a strong commitment to consumer protection as evidenced by its participation in this Programme and through the various regulatory initiatives cited throughout this report. Consumer protection is a relatively new area in regulatory oversight with limited harmonized standards internationally. Consumer Protection models are continually evolving and being re-shaped. The areas for possible improvement identified above must be viewed in this overall international context.

It is for the Central Bank to consider whether or not it is appropriate to implement the various findings and recommendations made in this report having regard to legislative, supervisory and consumer protection policy considerations in Ireland. The

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<sup>2</sup> The Central Bank noted to the AFM Engagement team its view that Professional Indemnity Insurance also represented a significant protection against consumer detriment to the extent that a consumer could benefit under such an insurance policy if a claim by the consumer against the insured retail intermediary arose.

AFM were consistently impressed by the positive attitude of staff at the Central Bank and their commitment to the protection of consumers. Engaging this positive approach, together with the continued support of senior management, will be important factors in successfully implementing any of the findings and recommendations made in this report.

This report is a reflection of the AFM's observations on the Central Bank's consumer protection functions. The AFM engagement team would like to underline that the learning goes beyond what is written down in this Report. Both supervisory authorities are committed to an on-going process of learning through dialogue and the exchange of views and lessons learned.

## **CENTRAL BANK RESPONSE TO AFM REPORT ON THE MUTUAL LEARNING PROGRAMME**

I would like to express my appreciation to the AFM and its engagement team for their conscientious implementation of the Programme described in this report. The G20 Principles have provided a useful reference point for the Programme and the Central Bank recognises the OECD's valuable work in the development of the G20 Principles and '*effective approaches*' in respect of the Principles.

The Central Bank is committed to the protection of consumers of financial services. Our participation in this Programme represented an opportunity for the Central Bank to invite external scrutiny of its consumer protection function for the purposes of ensuring that we measure up to international standards and the expectations of consumers and other stakeholders. Participation in the Programme was intended to complement our active participation in other international fora, including at the ESAs, FinCoNet and the OECD, where we aim to lead and shape the future direction of international policy and practice in relation to the protection of consumers of financial services.

The Central Bank welcomes the AFM's acknowledgement of our strong collective drive of fulfilling our stated mission of "*Getting it right for Consumers*" and its recognition of our achievements in the protection of consumers to date. We also acknowledge and welcome the AFM's observations on areas for potential improvement of the consumer protection framework and our own performance in securing the protection of consumers.

This Programme took place in the context of our current consumer protection strategy and model. The Central Bank's current strategy centres on the 5 C's framework whereby the **Consumer** is our central focus. This central focus is complemented by promoting **Compliance** and a consumer protection focused **Culture** within regulated entities, promoting consumer **Confidence** in financial services, products and regulation and providing **Challenge** to ourselves and others to deliver a better outcome for consumers. As part of the Programme, the AFM were also invited to provide observations in respect of our prospective future consumer protection strategy and direction.

We will carefully consider the key findings and recommendations emerging from the Programme in the context of the Central Bank's development and evolution of our consumer protection strategy. The Central Bank intends to ensure that we are prepared to meet future challenges in the protection of consumers of financial services. In particular, we intend to develop a revised consumer protection model, to enhance our approach in relation to product oversight and governance and to more clearly prioritise the consumer protection concerns which represent the greatest

threat to consumers. The AFM's findings and recommendations will provide valuable assistance as we embark upon this task.

The Central Bank views this Programme as being part of an on-going need to challenge ourselves in relation to what we do and how we do it. Our relationship with the AFM and other international peer consumer protection regulators will play an important part in providing this on-going challenge. The Central Bank wishes to re-iterate its appreciation to the AFM for carrying out this important piece of work and to re-state our own commitment to seeking to continually improve the regulatory framework and our supervisory practices in respect of the protection of consumers of financial services.

Bernard Sheridan  
**Director, Consumer Protection**  
**Central Bank of Ireland**

## CHAPTER 1: INTRODUCTION

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### 1.1 General remarks

The Central Bank and the AFM have agreed to carry out reciprocal reviews of their consumer protection frameworks. The main objective of these reviews is to engage in a mutual learning exercise for both supervisory authorities.

Consumer protection is a relatively new area in regulation with limited harmonized standards. It is also an area in which regulatory models are constantly evolving and being reshaped. The focus on mutual learning creates an opportunity to further develop thinking on consumer protection models through a constructive fact based dialogue among peers. It provides a peer sense-check on the regulatory work of the Central Bank and the AFM. It also enables regulators to compare respective approaches to the use of consumer protection tools and to the measurement of consumer outcomes. This Programme paves the way for on-going engagement and dialogue between the Central Bank and the AFM with a view to continued improvement in consumer protection standards. It is also anticipated that this work will inform the important work of international organizations such as the OECD and FinCoNet in the development of consumer protection models and tools.

The AFM and the Central Bank agreed that the Programme would start in 2014 with an assessment of the consumer protection function of the Central Bank, to be followed by an assessment in 2015 of the consumer protection functions of the AFM.

As a general remark, the engagement team of the AFM wishes to stress that it was impressed by the dedication of the Central Bank to achieve better outcomes for consumers. Although the current consumer protection mandate of the Central Bank is relatively new, a lot has been achieved in a very short time span. The lessons learned from the credit crisis and relevant external reviews on financial regulation in Ireland have led to an enhanced focus within the Central Bank on consumer protection. The dedicated CPD has the mission of: *'Getting it Right for Consumers. We will work together and with others to strengthen and maintain protection for consumers so that financial services work in the best interests of all consumers, now and in the future'*. The AFM observed a very strong collective drive to fulfil this mission. This mutual learning programme serves as an outstanding example of the CPDs commitment to continuous learning and improvement.

The AFM encountered a highly motivated and very professional staff and leadership team, who are keen to deliver on the expectations of consumers and its key stakeholders. These observations are widely confirmed by external stakeholders with whom the engagement team met during its on-site visit to the Central Bank. The AFM engagement team appreciated the thorough briefings, the openness of the approach and tireless assistance that the Central Bank has provided throughout the mutual

learning programme. This approach has been key to deriving maximum value from the engagement process.

## **1.2 The Central Bank's statutory background and objectives**

It is a statutory objective of the Central Bank to ensure *“the proper and effective regulation of financial service providers and markets, while ensuring that the best interests of consumers of financial services are protected”*.<sup>3</sup> Furthermore, the Central Bank has defined its mission as *“Safeguarding Stability, Protecting Consumers”*. The Central Bank expressed to the AFM that it is committed to performing its regulatory and consumer protection functions to the highest international standards and in accordance with international best practice. To this end, the Central Bank invites external scrutiny of both its regulatory powers and remit, and the performance of its supervisory functions through certain formal reviews by external parties such as:

- 2013 – Banking Regulation & Supervision  
IMF Review and Report on the Observance of Standards and Codes based on the Basel Core Principles for Effective Banking Supervision
- 2013 – Securities Regulation & Supervision  
IMF Review and Report on the Observance of Standards and Codes based on the IOSCO Objectives and Principles of Securities Regulation
- 2014 – Insurance Regulation & Supervision  
IMF Review and Report on the Observance of Standards and Codes based on the Insurance Core Principles published by the IAIS

### ***Regulated industries and regulated firms***

The Central Bank is responsible for the regulation and supervision of a wide range of entities in the categories set out below:

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<sup>3</sup> Section 6A, (2) (b) of the Central Bank Act, 1942 (as amended).

**Table 1 - Summary table of firms regulated and supervised by the Central Bank as at 31 December 2014<sup>4</sup>**

	2014
Credit Institutions (including branches of overseas credit institutions)	62
Life Insurance Companies	51
Non-Life Insurance Companies	102
Reinsurance Companies	74
MiFID	
• Investment Firms	102
• Branches of overseas firms	32
Non-Retail Investment Business Firms	10
Fund Service Providers	227
Retail Intermediaries, <i>including</i>	2,822
• Investment Intermediaries (authorised advisors, multi-agency intermediaries, mortgage intermediaries)	
• Insurance/Reinsurance Intermediaries	
Collective Investment Schemes (including sub funds)	5,833
Credit Unions	383
Money Transmitters and Bureaux de Change	14
Moneylenders	38
Regulated Market/Market Operator	1
Moneybrokers	5
Retail Credit Firms & Home Reversion Firms	18
Payment Institutions	11
Debt Management Companies	51

### 1.3 Reference point for the Programme

This Programme is complementary to the above mentioned reviews and recognises the distinct nature of consumer protection. Consumer protection is cross-sectoral in nature and it can comprise activities and tools other than those traditionally used in the regulation of financial service providers. In implementing this Programme, the Central Bank and AFM are going over and above the international benchmarking exercises mentioned above.

Although worldwide there is increasing focus on consumer protection by policy makers and regulators, there are still limited internationally accepted common

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<sup>4</sup> *Approximate figures only. The table includes all entities subject to Central Bank supervision and is not limited to those entities subject to consumer protection supervision by CPD.*

standards and effective practices in this field. In order to provide the engagement team with a framework to structure its review and the resulting observations, the Central Bank and the AFM decided to use certain G20 Principles as a reference point for this Programme.<sup>5</sup>

The G20 Principles, published by the OECD in October 2011 were developed as a response to the G20 Finance Ministers and Central Bank Governors call in February 2011 for the OECD, the Financial Stability Board (“FSB”) and other relevant international organizations to develop common principles on consumer protection in the field of financial services. They were developed by the OECD Committee on Financial Markets (“CMF”), in close cooperation with the FSB and its Consultative Group, other international organizations and standard setter bodies and consumer and industry associations.

Since the scope of this Programme extends solely to the consumer protection function of the Central Bank, certain of the G20 Principles have been excluded from the ambit of the assessment on the basis that their implementation is the primary responsibility of another state established agency or body in Ireland.<sup>6</sup> In addition, Principle 7 has been excluded on the basis that the Central Bank’s regime for the protection of consumer assets against fraud or misuse has already been the subject of external review in the context of the ROSC reviews in the banking and securities sectors mentioned above.<sup>7</sup> Accordingly, the scope of this mutual learning programme is limited to G20 Principles 1, 2, 3, 4 and 6.

Both the Central Bank and the AFM acknowledge that while “effective approaches” have been developed in respect of the implementation of the G20 Principles<sup>8</sup>, there is no OECD approved methodology/benchmark for a peer review assessing the compliance or non-compliance of any member country against the G20 Principles. Accordingly, the G20 Principles were used as a reference point only in the context set out below. The assessment does not purport therefore to involve an exhaustive analysis and final determination or rating on the extent to which the Central Bank is in compliance with the relevant G20 Principles under consideration.

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<sup>5</sup> See Chapter 2

<sup>6</sup> For example, Principles 5 & 10 – CCPC, Principle 8 – Data Protection Commissioner, Principle 9 – FSO/Pensions Ombudsman

<sup>7</sup> Reports on these reviews were published in 2014.

<sup>8</sup> Excluding Principle 5.

## 1.4 Scope of the assessment of the Central Bank

The engagement team reviewed the Central Bank's performance of its regulatory functions covering two main areas as set out below:

### *1.) The Consumer Protection framework within the remit of the Central Bank*

The engagement team assessed generally:

- the legal, regulatory and supervisory framework within the remit of the Central Bank for the protection of consumers of financial services in Ireland; and
- the Central Bank's role as an oversight body for the purposes of ensuring that the best interests of consumers of financial services are protected.

This area of the review was conducted by reference inter alia to G20 Principles 1 and 2 (as set out in Chapter 2 of this report).

### *2.) The Central Bank's Strategy for Consumer Protection and the implementation of that Strategy*

The engagement team assessed the Central Bank's strategy and implementation of strategy for ensuring that the best interests of consumers of financial services are protected by reference to:

- the need to have appropriate safeguards in place to ensure the equitable and fair treatment of consumers of financial services;
- the disclosure and transparency of information on financial services for consumers; and
- the requirement for financial services providers and their authorised agents to act responsibly in the conduct of business with consumers.

This area of the review was conducted by reference inter alia to G20 Principles 3, 4 & 6 (as set out in Chapter 2 of this report).

### ***Time period to which the Review Relates***

The review of the consumer protection function of the Central Bank focused on the current legal and regulatory framework for the protection of consumers at the time of the review. The focus was on the Central Bank's current strategy for consumer protection as set out in the Central Bank Strategic Plan 2013 - 2015 and recent performance of the Central Bank in the implementation of that strategy. The objective of the AFM was to provide high level qualitative recommendations relevant to the current and prospective performance by the Central Bank of its statutory function of ensuring that the best interests of consumers of financial services are protected.<sup>9</sup>

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<sup>9</sup> The Programme also included consideration, where relevant, of historical matters/work prior to 2013 where such matters required to be considered in order to ensure the most accurate and beneficial review possible.

## 1.5 Timeline

The following table highlights the key dates and activities in carrying out the review of the Central Bank's consumer protection function:

**Table 1 - Key Dates and Activities of the Review**

<b>May/June 2014</b>	Engagement between the Central Bank and the AFM in relation to the agreement of Terms of Reference for the carrying out of the Programme.
<b>27 June 2014</b>	The Central Bank provided the AFM with a detailed briefing note on the Central Bank and its consumer protection function, setting out a self-assessment as to how the CPD aligns with the G20 Principles in scope and providing details on the Central Bank's consumer protection strategy and its implementation of that strategy.
<b>4 July 2014</b>	The Central Bank presented the Briefing Note in a face to face meeting at the premises of the AFM.
<b>21 - 23 July 2014</b>	<p>The engagement team of the AFM made an on-site visit to the Central Bank. The AFM engagement team spoke extensively with staff of the CPD. It also had meetings with the prudential and enforcement directorates. Furthermore, the engagement team spoke with the following external stakeholders:</p> <ul style="list-style-type: none"><li>• The Department of Finance;</li><li>• The Competition &amp; Consumer Protection Commission;</li><li>• The Financial Services Ombudsman;</li><li>• The Consumer Advisory Group;</li><li>• A regulated bank; and</li><li>• A regulated investment firm.</li></ul>
<b>September 2014 – March 2015</b>	On-going engagement between the AFM and the Central Bank, including a meeting on 1 October 2014 at the AFM.

## 1.6 Disclaimer

The observations and recommendations made in this Report are based on information provided by the Central Bank, as well as interviews with the staff of the Central Bank, external stakeholders and market participants. The AFM accepts no liability for the content of this Report, or for the consequences of any actions taken on the basis of this Report.

## **1.7 Scope and structure of this Report**

The AFM's key findings and our high level recommendations are contained in chapters 2 and 3 of this Report. Chapter 2 provides an overview of the findings that can be referenced directly to each of the relevant Principles and its effective approaches. The effective approaches are meant to be illustrative only as they are designed to inspire and stimulate the implementation of the G20 Principles, as well as to share lessons learned and foster new insights on what works well under country-specific and sector relevant circumstances. All findings have been categorised under the relevant key aspects which are provided in the textboxes for ease of reference. Chapter 3 sets out several overarching recommendations that are not linked to any one specific Principle and build upon our observations contained in Chapter 2 and reflections following our on-site engagement with CPD management and staff and key stakeholders.

## CHAPTER 2: KEY FINDINGS

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### 2.1 Principle 1: Legal, Regulatory and Supervisory work

*Financial consumer protection should be an integral part of the legal, regulatory and supervisory framework, and should reflect the diversity of national circumstances and global market and regulatory developments within the financial sector.*

*Regulation should reflect and be proportionate to the characteristics, type, and variety of the financial products and consumers, their rights and responsibilities and be responsive to new products, designs, technologies and delivery mechanisms. Strong and effective legal and judicial or supervisory mechanisms should exist to protect consumers from and sanction against financial frauds, abuses and errors.*

*Financial services providers and authorised agents should be appropriately regulated and/or supervised, with account taken of relevant service and sector specific approaches.*

*Relevant non-governmental stakeholders – including industry and consumer organisations, professional bodies and research communities – should be consulted when policies related to financial consumer protection and education are developed. Access of relevant stakeholders and in particular consumer organisations to such processes should be facilitated and enhanced.*

#### **2.1.1 Institutional Arrangements**

*Financial consumer protection should be an integral part of the legal, regulatory and supervisory framework, and should reflect the diversity of national circumstances and global market and regulatory developments within the financial sector.*

- The Central Bank was established under the 1942 Act and under the Central Bank Reform Act 2010 (“**the 2010 Act**”), the Central Bank became the single integrated structure responsible for both central banking and financial regulation. Under the 1942 Act, the Central Bank’s statutory objectives include the “*proper and effective regulation of financial institutions and markets while ensuring that the best interests of consumers of financial services are protected.*” Schedule 2 of the Central Bank Act specifies the various primary and secondary legislation under which the Central Bank exercises its supervisory and regulatory functions. The consumer protection responsibilities of the Central Bank are clearly set out in legislation including national legislation transposing EU Directives into Irish law.

- In addition, enhanced supervisory and enforcement powers were recently conferred on the Central Bank under the 2013 Act which provides additional powers to the Central Bank in a number of consumer protection areas including, inter alia, enhanced powers to gather information, issue formal directions, require customer redress for widespread or regular defaults (such as overcharging or systems failures); the provision of a regulatory regime for debt management and debt advice; and regulation-making powers on a range of areas including conduct of business areas/consumer protection.
- The Central Bank is responsible for the regulation and supervision of almost all financial services providers in Ireland, including credit institutions, insurance undertakings, investment and stockbroking firms, credit unions, retail insurance, investment and mortgage intermediaries, moneylenders, retail credit firms, home reversion firms, payment institutions, electronic money institutions, money transmission businesses, debt management firms and bureau de change businesses.
- The State has transposed a number of EU Directives into national law which include provisions designed to protect consumers of financial services; some examples include the Insurance Mediation Directive, Payment Services Directive, Markets in Financial Instruments Directive, Consumer Credit Directive, the Unfair Terms in Consumer Contracts Directive and the Unfair Commercial Practices Directive. In addition to these mandatory EU requirements, a number of domestic legislative provisions apply in respect of the provision of financial services to consumers.
- The Central Bank has its own limited rule-making powers, which have been used to protect consumers by imposing a number of codes of conduct and requirements on regulated firms (namely, the Consumer Protection Code, the Code of Conduct on Mortgage Arrears, the Minimum Competency Code, the Code of Conduct of the Switching of Current Accounts with Credit Institutions, Code of Conduct for Business Lending to Small and Medium Enterprises and the Consumer Protection Code for Licensed Moneylenders). These codes are statutory and the Central Bank has the power to take steps to enforce them, including the power to administer sanctions for a contravention of these codes. The Central Bank cited various examples of administrative sanctions taken in respect of contraventions of the Consumer Protection Code (“CPC”).
- In relation to the EU and global market and regulatory environment, the Central Bank engages with EU and international stakeholders through membership of various international committees, subgroups and taskforces. The consumer protection function of the Central Bank plays an active role within the three ESAs (European Banking Authority, European Securities & Markets Authority, and European Insurance & Occupational Pensions Authority) and in

international bodies such as the OECD Taskforce on Financial Consumer Protection and FinCoNet, in order to further enhance its thinking on consumer protection and work towards common standards and regulatory convergence in the field of consumer protection. The Central Bank also engages with the European Commission and Council of the European Union by contributing to the development, agreement and subsequent transposition of European Directives related to consumer protection issues.

- Tasks and responsibilities specifically related to financial consumer protection are spread throughout multiple organizations and are not solely allocated to the Central Bank and the Central Bank has non-binding regulatory agreements in place with a number of domestic authorities. For example, the CCPC and the FSO have also been allocated with distinct yet complimentary tasks and responsibilities regarding financial consumer protection, and the Central Bank liaises with these agencies on consumer protection matters. Other relevant bodies/agencies in this area include the Citizens Information Board, the Pensions Authority, the Pensions Ombudsman, the Insolvency Service of Ireland, the Personal Injuries Assessment Board, the Health Insurance Authority, the Investor Compensation Company Limited, the Deposit Guarantee Scheme and the Insurance Compensation Fund, with whom the Central Bank also engages on relevant issues.
- The Central Bank is a cross-sectoral supervisor, which has responsibility for both consumer protection supervision and prudential supervision. The Central Bank has three sectoral prudential directorates (in the areas of insurance, banking and markets). In addition, a specific cross sectoral directorate, the CPD has been established which has the primary responsibility for consumer protection issues. There is a sound legal basis for giving clear explicit mandates to the Central Bank to ensure that financial consumer protection is at the centre of financial regulation and supervision, and this is explicitly embedded in the 1942 Act. CPD promotes a strong focus on consumer protection throughout the Central Bank.
- The Central Bank seeks to identify new trends and risks in the financial services environment which may impact consumers through:
  - on-going information sharing and periodic consultations with external stakeholders, including consumer organisations, industry associations and trade bodies, the FSO and the general public; and
  - a market intelligence team that focuses on identifying and addressing emerging risk issues at an early stage and to determine impact. The team extracts quantitative and qualitative information from a range of sources and then distributes it among supervisory teams. Sources of data and information include:
    - conduct of business returns from regulated firms

- social media activity (e.g. blogs, social networks) in addition to traditional media sources,
  - advertising monitoring, and
  - queries from members of the public to the Central Bank.
- The Central Bank follows a risk-based regulatory approach whereby firms are supervised under the Probability Risk and Impact System<sup>10</sup> (“PRISM”) engagement model. The model provides a baseline level of supervisory engagement for firms based initially on the potential impact of failure on financial stability and consumers and provides for intensified levels of supervision of regulated firms judged to face or represent risks unacceptable to the Central Bank. Supervision takes place through pro-active and reactive engagement and inspections and thematic supervisory work. There is an assessment of ‘conduct risk’ in firms which are subject to full risk assessment under the PRISM model and where necessary, the Central Bank devises action to be taken by individual firms where the conduct risk in an individual firm is beyond the Central Bank’s risk tolerance.
- The Central Bank also engages in sector specific and cross-sectoral thematic consumer protection inspections and the results of thematic work are publicised with the aim of raising standards of consumer protection in the industry generally. A list of consumer protection themed inspections and reviews completed by CPD since 2011 is included in Appendix 1.

#### **2.1.2 Market Considerations**

*Regulation should reflect and be proportionate to the characteristics, type, and variety of the financial products and consumers, their rights and responsibilities and be responsive to new products, designs, technologies and delivery mechanisms. Strong and effective legal and judicial or supervisory mechanisms should exist to protect consumers from and sanction against financial frauds, abuses and errors. Financial services providers and authorised agents should be appropriately regulated and/or supervised, with account taken of relevant service and sector specific approaches.*

- The Central Bank engages intensively with civil society, including consumer rights groups, for market monitoring purposes including identifying risk and collecting evidence on market misconduct. In this regard, the Market Intelligence function within CPD seeks to identify and report on new sectoral trends and risks in the financial services environment which may impact upon

<sup>10</sup> Further details on PRISM are set out in ‘PRISM Explained’, which is available on the Central Bank website [www.centralbank.ie](http://www.centralbank.ie)

consumers. Data and information is gathered and analysed from a variety of sources (including, inter alia, conduct of business returns from regulated firms, advertising monitoring cases, data from stakeholders and other Directorates, social media, whistle-blower contacts, media and public contact queries and engagement with other consumer protection bodies). The output of such data analysis is used to inform the supervision of firms, policy developments, public communications and work plans.

- The Central Bank also engages research and consultancy firms to undertake research work on its behalf to gain greater consumer insight on various consumer protection issues and to ensure responsiveness to changing markets. A recent example of such research includes an e-mobile technology review commissioned by the Central Bank in 2013, the objective of which was to report on technology developments in both Ireland and internationally and develop recommendations for action by the Central Bank to ensure that the best interests of consumers of financial services are protected going forward. The Central Bank also commissioned research, in 2013, on the licensed moneylender industry to see how moneylending firms were treating their customers and to inform the regulatory approach to the licensed moneylending industry in Ireland.
- In addition to monitoring of the domestic environment, CPD monitors emerging consumer protection issues/trends in co-operation with its European and International peers in that it is represented on, and contributes to, international groups established under the ESAs considering issues such as financial innovations and consumer trends.
- Codes of conduct are subject to review to ensure that they continue to provide high levels of protection for consumers in a changing financial services environment and allow for enhanced consumer protections where appropriate. For example, the Code of Conduct on Mortgage Arrears (“the CCMA”) which was first published in February 2009 setting out rules for lenders when dealing with borrowers facing or in mortgage payment difficulties, has been subject to review. In line with its commitment to continue to review the CCMA in the context of the changing mortgage arrears situation, the Central Bank published a revised CCMA in January 2011. In late 2012, the Central Bank began a further review of the CCMA protections in place for borrowers with a view to strengthening them, where necessary, while ensuring that the framework continues to facilitate and promote the effective and timely resolution, by lenders, of each borrower’s arrears situation. As part of this review, the Central Bank’s consumer protection function engaged in extensive consultation with a number of key stakeholders throughout the process, including various non-governmental industry bodies and consumer advocates. A revised CCMA was published in June 2013.

- The Central Bank has recently assumed responsibility for authorisation and supervision of a new industry sector, debt management firms, under the 2013 Act. This legislation requires that firms which provide or intend to provide debt management services are brought under the Central Bank's regulatory remit. Those services include the provision of advice to consumers who are in financial difficulty and/or negotiating on behalf of those consumers with their creditors. Additional conduct of business requirements now apply to this sector following a public consultation which began in November 2013, as well as new competency standards for staff dealing with consumers of debt management services.
- Introduced in the Central Bank in 2011, PRISM is the vehicle that the Central Bank has developed to put the theory of risk-based supervision into practice. PRISM assigns each firm supervised by the Central Bank to one of four possible impact categories (i.e. high impact, medium-high impact, medium-low impact and low impact) based on a quantitative assessment of the impact of the firm's failure upon (inter-alia) financial stability, the economy and citizens. Firms in each impact category are supervised through the completion of engagement tasks.
- During the engagement tasks on high, medium-high and medium-low impact firms, supervisors form judgements on the risks posed by them. Probability is the risk or likelihood that a firm will fail, and as such, is distinct from impact. Supervisors assess a firm's risk probability in a number of categories and sub-categories. These categories are as follows: credit risk, market risk, operational risk, insurance risk, capital risk, liquidity risk, governance risk, strategy/business model risk, environmental risk and conduct risk. The Central Bank assesses these risk headings in all supervised firms within the medium-low to high-impact categories in accordance with the PRISM model.
- In addition to analysing and identifying risks, supervisors are also required to ensure that appropriate and achievable mitigating actions are taken to address any risks deemed unacceptable. With the exception of Environmental Risk, any risk category which is probability rated as medium high or high must be mitigated and a Risk Mitigation Programme ("**RMP**") must be put in place and monitored.
- For high, medium-high and medium-low impact firms, CPD inputs into PRISM Full Risk Assessments through the assessment of "Conduct Risk", which is defined as the risk the firm poses to its customers from its direct interaction with them.

- The Central Bank cited various examples of instances where RMPs were put in place in individual regulated entities in order to reduce the 'Conduct Risk' in those firms. In addition, the PRISM model provides a framework for undertaking thematic work. Risk Governance Panels may also be established in respect of significant thematic consumer protection work projects in order to ensure that supervisors have access to a variety of senior expertise and perspectives to ensure quality consumer outcomes from thematic work.
- Where regular supervisory tools are insufficient to protect consumers, the Central Bank has a range of enforcement powers available to it. Further details on the Central Bank's enforcement framework are set out under Principle 2.2.2.

### **2.1.3 Consultation with External Stakeholders**

*Relevant non-governmental stakeholders – including industry and consumer organisations, professional bodies and research communities – should be consulted when policies related to financial consumer protection and education are developed. Access of relevant stakeholders and in particular consumer organisations to such processes should be facilitated and enhanced.*

- The 2010 Act provided for the establishment of an advisory group to advise the Central Bank on the performance of its functions and the exercise of its powers in relation to consumers of financial services. The 2010 Act further states that the advisory group shall advise the Central Bank in relation to:
  - the effects of the Central Bank's Strategic Plans on consumers of financial services,
  - initiatives aimed at further enhancing the protection of consumers of financial services, and
  - if the Central Bank so requests, documents, consultation papers or other materials prepared by the Central Bank.

Accordingly, the Central Bank has established the CAG, which functions as a distinctive tool in approaching consumer protection issues from an expert angle and a broader market perspective. The CAG is comprised of persons who have expertise, knowledge or experience relevant to the function of consumer protection and generates valuable input and gives an additional consumer perspective to the work of the Central Bank. In addition to formal meetings with the CAG, the Central Bank's consumer protection function consults with the CAG members individually and collectively on a number of key priority consumer protection areas.

Examples of some topics which have been considered during recent meetings by the CAG include:

- Each 'C' of the 5C's Strategy Framework
  - Codes:
    - a. Consumer Protection Code
    - b. Code of Conduct on the Switching of Current Accounts with Credit Institutions
    - c. Code of Conduct on Mortgage Arrears
    - d. Code of Conduct for Debt Management Firms
  - Mortgage Arrears Resolution Process
  - Section 149 of the Consumer Credit Act 1995
  - CPD's Strategic Priorities and Challenges
  - Input on emerging sectoral and cross-sectoral consumer risks, to inform CPD's annual work plans
  - Personal Insolvency Bill
  - Themed reviews and inspections being undertaken by CPD
  - European Commission proposals on a directive on Credit Agreements Relating to Immovable Property (now referred to as the Mortgage Credit Directive), Packaged Retail & Insurance-based Investment Products and Insurance Mediation Directive II
  - Crowd-funding and Peer-to-Peer lending
- The Central Bank has a strong dedication towards stakeholder engagement (both internal and external) as exemplified in the formal embedding of communication and engagement in CPD's Stakeholder Engagement Model. For example, as part of the development or review of any code of conduct, the Central Bank undertakes an open public consultation, usually for a period of 12 weeks. In such instances, the Consumer Protection function engages with both consumer and industry stakeholders both in advance of, and during, a wider consultation. Recent examples cited include the review of the CCMA and the development of conduct of business requirements for debt management firms. It is also usual practice for the Central Bank to provide feedback following a consultation process.
- The Central Bank has also engaged in consumer research to provide consumer insight into particular consumer protection issues and inform policy. For example, the Central Bank commissioned research in financial services advertising to input into the development of guidance notes for firms on advertising requirements of the CPC. Research was also carried out on private pension holders to determine their level of understanding regarding different pension statements and to understand their effect on consumers. This research on private pensions, which included focus groups as well as surveys among consumers, fed into a project on pensions annual benefit statements. Further to this project, the Central Bank set out to the life assurance industry its

expectations that firms would incorporate the findings of the review (including feedback from consumer focus groups) when communicating with consumers. The Central Bank also commissioned research, in 2013, on the licensed moneylender industry to inform the regulatory approach to the licensed moneylending industry in Ireland and to see how firms were treating their customers. This research involved interviews with representatives from three key stakeholder groups, namely external stakeholders (including consumer advocacy bodies), licensed moneylenders and customers of licensed moneylenders.

- There is a process in place for the interplay with the Department of Finance to address deficiencies in the available legislative powers identified by CPD; e.g. identified areas in which the CPD might be required or expected to act upon observed misconduct, malpractices or new products. For example, the Consumer Protection function of the Central Bank has advocated on domestic issues such as ensuring the continued protection of consumers in the context of the sale of loan books by regulated entities to unregulated entities.
- There are Memoranda of Understanding in place to coordinate activities with external stakeholders, most notably with the FSO and the CCPC. There is a strong relationship with these stakeholders, in which there is a separation of tasks and a sense of efficient and effective cooperation, and both institutions are actively engaged on consumer protection issues. The function of mediating and adjudicating on individual consumer complaints in financial services lies within the FSO and the FSO liaises with CPD on various consumer protection matters. The CCPC is responsible for enforcing certain consumer protection laws and competition law in Ireland. The CCPC also promotes consumer education and awareness.
- The Central Bank engages with industry stakeholders providing a mechanism to enhance liaison and dialogue. An example of this cited was the Central Bank's engagement with retail intermediaries. The Retail Intermediary Team within CPD has worked hard to enhance its engagement with regulated firms in order to offer helpful and timely compliance support and assistance. As a means of engaging with retail intermediaries and of providing compliance assistance to them CPD developed the Intermediary Times, which is a newsletter for retail intermediaries and is published at least three times a year. The newsletter highlights topics of interest, new items on the Central Bank's website and regulatory issues that retail intermediary firms need to be aware of. In addition, special editions of the Intermediary Times are published setting out, for example, the findings of themed inspections, new authorisation processes and other news. There were six publications in 2013. This approach has recently been rolled out to the licensed moneylending industry, with the publication of a moneylenders' newsletter in September 2014.

- Alongside publication of the Intermediary Times, CPD hosts a series of regional road shows each year throughout Ireland giving CPD a unique opportunity to interact directly with retail intermediaries and industry representatives in order to outline and discuss compliance requirements, and to listen to views and feedback. In addition to holding regional road shows in 2012/2013, CPD management also took the opportunity to do a number of local radio interviews and newspaper articles which were aimed at promoting awareness of regulatory requirements and protections among both regulated intermediaries and consumers.

**Table 2 - Compliance Motivation - Retail Intermediary Road-shows**

	Number of road shows	Number of attendees at road shows
2012	4	600
2013	3	250
2014	2	340

## **2.2 Principle 2: Role of Oversight Bodies**

*There should be oversight bodies (dedicated or not) explicitly responsible for financial consumer protection, with the necessary authority to fulfil their mandates. They require clear and objectively defined responsibilities and appropriate governance; operational independence; accountability for their activities; adequate powers; resources and capabilities; defined and transparent enforcement framework and clear and consistent regulatory processes. Oversight bodies should observe high professional standards, including appropriate standards of confidentiality of consumer and proprietary information and the avoidance of conflicts of interest.*

*Co-operation with other financial services oversight authorities and between authorities or departments in charge of sectoral issues should be promoted. A level playing field across financial services should be encouraged as appropriate. International co-operation between oversight bodies should also be encouraged, while specific attention should be considered for consumer protection issues arising from international transactions and cross-border marketing and sales.*

### **2.2.1 Oversight Body Function and Responsibility**

*There should be oversight bodies (dedicated or not) explicitly responsible for financial consumer protection, with the necessary authority to fulfill their mandates. They require clear and objectively defined responsibilities and appropriate governance; operational independence; accountability for their activities; adequate powers; resources and capabilities.*

- The Central Bank is an independent statutory body which must act in accordance with the Treaty on the Functioning of the European Union and the European System of Central Banks (“ESCB”) and within the confines of the statutory regime of Irish financial services law. The Central Bank has, under primary and secondary legislation, a clear mandate for maintaining financial consumer protection. As part of the Central Bank, the consumer protection function has control of its own budget, which is not a part of the State budget.
- The Central Bank is held accountable for its activities and, under legislation, is required to prepare an annual report of its activities during the year and present this report to the Minister of Finance within six months of the end of each financial year, copies of which are laid before the Irish legislature, the Oireachtas. The Central Bank is also required to prepare and publish, on an annual basis, an Annual Performance Statement on the regulation of financial services for submission to the Minister for Finance. Regarding the provision of information in responses to parliamentary questions, the Department of Finance noted to the AFM Engagement Team the satisfactory assistance of CPD in this respect.
- The amount of assessment and review regarding CPD’s own functioning is relatively high. The Central Bank is highly committed to a process of continued learning and improving its functioning (irrespective of legislative obligation to do so), as is evidenced by its participation in this Programme.
- The Central Bank faces many demands in terms of protecting consumers and performing its related statutory functions with limited resources. On the basis of discussions with both internal and external stakeholders, there appears to be a lack of resources within CPD to fulfil all of these consumer protection objectives.
- The Central Bank possesses well qualified staff members with both supervisory and industry experience. It also displays commitment to the training and development of its staff in that training and development is an explicit high level objective of the Central Bank and the organisation provides its personnel with a range of development training programmes and support to pursue relevant approved professional qualifications. In regard to consumer protection, CPD is

currently developing a Consumer Protection Curriculum which will be specific to the skills and needs of those working in the consumer protection area of the Central Bank.

### **2.2.2 Enforcement Framework**

*Defined and transparent enforcement framework and clear and consistent regulatory processes.*

- The Central Bank has adopted a defined and transparent enforcement framework embodied by a range of enforcement tools which it can deploy to suit individual circumstances and to achieve a range of outcomes. In this context therefore the term 'enforcement' is used broadly and ranges from 'supervision' which can include inspections, the imposition of directions and requirements to provide customer redress to the imposition of sanctions pursuant to the Central Bank's Administrative Sanctions Procedure under Part IIIC of the 1942 Act, fitness and probity powers or refusal/revocation of authorisation powers. In this regard, the Enforcement Directorate of the Central Bank supports the Central Bank's regulatory model which aims to provide assertive risk-based supervision underpinned by a credible threat of enforcement.
- An engagement structure is in place between CPD and the Enforcement Directorate in that there are Enforcement Relationship Managers appointed to liaise with supervision divisions and under this process CPD has two designated Enforcement Liaison Officers. The Consumer Protection team in the Enforcement Directorate is a multi-disciplinary team of regulators, investigative experts, lawyers and accountants and is responsible for dealing with referrals from CPD in respect of enforcement actions against firms supervised by CPD. These enforcement cases include administrative sanctions, supervisory warnings, revocations/refusals of authorisation and fitness and probity cases. In the course of the Programme, the Central Bank cited various examples of enforcement actions taken in respect of contraventions of Central Bank codes of conduct, including the CPC. Also of note in this area are the actions taken by the Central Bank against firms for failure to hold adequate professional indemnity insurance (an area that the Central Bank views as providing a key protection to consumers of financial services). Furthermore, during 2013-2014, a process was put in place by Enforcement to assist supervisors to deal with revocations and refusals more expeditiously and this has resulted in an increase in the volume of revocation and refusal decisions; some of these cases have been the result of consumer protection concerns e.g. a decision by the Irish Financial Services Appeals Tribunal in 2014 upholding the Central Bank's decision to revoke a moneylender's licence; the grounds for revocation included overcharging of consumers.

- In addition to the above, the 2013 Act has recently been enacted which provides the Central Bank with new powers in regard to enforcement, including a single wide ranging power of direction, wider powers for authorised officers, the ability to require 'skilled persons' reports and increased administrative sanctions penalties. More broadly it includes protections for whistle-blowers and the power to direct redress in cases of widespread or regular defaults ranging from breaches of financial service legislation or providing consumers with inaccurate information or selling them unsuitable products. In the case of the power to direct redress under the 2013 Act, the Central Bank now has the explicit power to publish such directions where appropriate.
- Under the 2010 Act, the Central Bank also has extensive powers in relation to the fitness and probity of persons performing 'controlled functions' within regulated financial services providers. These powers include powers to prevent the appointment or require the suspension or prohibition of a person from performing certain senior management and other roles within regulated entities.
- Where the Central Bank suspects that a criminal offence has been committed by a regulated entity, it is required to report the matter to the Irish police (An Garda Síochána) and any other appropriate statutory body identified in the 1942 Act. The Director of Public Prosecutions is responsible for the prosecution of offences on indictment in Ireland.
- The Unauthorised Providers Unit sits within the Enforcement Directorate of the Central Bank. It identifies and investigates suspected incidences of unauthorised activity carried out by individuals or firms that are not authorised or regulated by the Central Bank and exercises the enforcement powers of the Central Bank in respect of unauthorised activity. It receives internal and external reports of suspected unauthorised activity including reports provided by CPD.
- In regard to transparency, the Central Bank's website provides a range of guidelines regarding its enforcement regime and administrative sanction procedures. The Central Bank also publishes on its website details of settlement agreements concluded as part of the administrative sanctions process. The Central Bank has also provided the following overview of consumer related settlements for the period 2011-2014:

**Table 3 - Brief Overview of Consumer Related Settlements<sup>11</sup>**

Year	Number of Consumer Related Cases Settled	Monetary Sanctions Imposed	Largest Fine Imposed
2014	6	€4,097,450	€3,500,000
2013	10	€90,215	€65,000
2012	5	€556,900	€245,000
2011	4	€4,110,000	€3,350,000 <sup>12</sup>

**2.2.3 Professional Standards**

*Oversight bodies should observe high professional standards, including appropriate standards of confidentiality of consumer and proprietary information and the avoidance of conflicts of interest.*

- The Central Bank observes very high professional standards. There are clear procedures (legislation and internal codes) in place in order to avoid incidents in this respect. In particular, Central Bank staff are bound by a number of professional requirements including statutory confidentiality requirements under section 33AK of the 1942 Act, employee trading rules, and a Staff Code of Ethics and Behaviours which forms part of each Central Bank employee's terms and conditions of employment.

**2.2.4 Cooperation**

*Co-operation with other financial services oversight authorities and between authorities or departments in charge of sectoral issues should be promoted. A level playing field across financial services should be encouraged as appropriate. International co-operation between oversight bodies should also be encouraged, while specific attention should be considered for consumer protection issues arising from international transactions and cross-border marketing and sales.*

- The Central Bank engages and cooperates with other domestic organisations which have also been allocated with tasks and responsibilities regarding financial consumer protection and has regulatory agreements in place with a

<sup>11</sup>Figures cited include settlements relating to the failure of firms to hold professional indemnity insurance

number of such bodies. As aforementioned, the Central Bank has on-going engagement and memoranda of understanding in place with the CCPC and the FSO on consumer protection matters.

- The Central Bank cited a recent example of engagement with domestic stakeholders in the area of providing information to consumers in mortgage arrears. A number of government departments, state agencies and mortgage lenders worked together and developed an initiative called the Mortgage Arrears Information and Advice Service, and the Central Bank participated in the working group that developed this initiative. This initiative involved the provision of a central online access portal for general mortgage information and advice; the provision of general over-the-phone information in relation to mortgage arrears; and the provision of specified financial advice which is available to borrowers from independent accountants at the cost of their participating mortgage lender where borrowers are presented by their lender with proposals for long-term mortgage-resolution.
- In addition, the Central Bank engages with the CCPC on various consumer protection issues. For example, the Central Bank and the CCPC share information on particular emerging consumer risk issues and priorities. In this regard, CCPC provides regular data on 'hot topic' issues which CPD considers as part of its overall Risk Outlook Report. CPD also provides background information on key issues to assist CCPC's Consumer Contacts staff who engage directly with consumers on queries relating to firms including for example bank branch closures, payment processing difficulties, IT systems issues and issues with debt management firms.
- In addition to cooperating with authorities on a domestic level, the Central Bank is actively influencing and shaping the consumer protection agenda at European level and at international level, particularly through continued participation in a number of ESA committees and also inputting into changes to a number of European Directives including the Markets in Financial Instruments Directive II, the Payment Services Directive II, the Payment Account Directive, the Mortgage Credit Directive, the Insurance Mediation Directive II and the Regulation on Packaged Retail & Insurance-based Investment Products. The Director of Consumer Protection of the Central Bank has recently been appointed chairman of the EBA's Standing Committee on Consumer Protection and Financial Innovation. The Central Bank is also active in the OECD Task Force on Consumer Protection, and also FinCoNet which is currently chaired by the Central Bank's Director of Consumer Protection.
- The 2013 Act also includes enhanced provisions on co-operation with overseas regulators and the Central Bank is a party to various international Memoranda of Understanding including through the ESA's and other International bodies.

## 2.3 Principle 3: Equitable and Fair Treatment of Consumers

*All financial consumers should be treated equitably, honestly and fairly at all stages of their relationship with financial service providers. Treating consumers fairly should be an integral part of the good governance and corporate culture of all financial services providers and authorised agents. Special attention should be dedicated to the needs of vulnerable groups.*

### 2.3.1 Fairness

*All financial consumers should be treated equitably, honestly and fairly at all stages of their relationship with financial service providers.*

- The Central Bank's employs a "5 C's Framework", which is a high-level strategy framework that helps to bring coherence in the Central Bank's engagement to promote that consumers are treated fairly. The central focus of the 5 C's framework is the **Consumer**. This central focus is complemented by promoting **Compliance** and a consumer protection focused **Culture** within regulated entities, instilling consumer **Confidence** in financial services, products and regulation and the Central Bank providing **Challenge** to itself and others to deliver a better outcome for consumers.
- The CPC is the primary source of conduct rules for firms on treating consumers fairly throughout their relationship with the firm. In the case of firms subject to the CPC, the explicit requirement to treat consumers fairly is set out as a general principle in sections 2.1 and 2.2 of the CPC.
- In relation to the fair treatment of consumers of investment products, sections 3.52 – 3.55 of the CPC set out a number of provisions setting out responsibilities on product producers which seek to ensure, inter alia, greater transparency in terms of the target market of consumers for investment products and the key features, characteristics and risks of investment products. However, the Central Bank is encouraged to pay further attention to the Product Approval & Review Process ("**PARP**") carried out by regulated firms and thereby the extent to which they ensure that consumers are treated fairly through the financial products they sell. In particular, attention should be paid to product categories which are deemed a relatively high risk to consumers' financial well-being.
- Other sector specific consumer protection requirements also apply in regard to treating consumers fairly in respect of certain business activities. For example, the CCMA sets out specific provisions which seek to ensure the fair treatment of borrowers in, or facing, mortgage arrears and seeks to support and facilitate meaningful engagement between lenders and borrowers. The Consumer Protection Code for Licensed Moneylenders also provides that moneylenders must act honestly, fairly and professionally in the best interests of its consumers

and the integrity of the market. In addition, in relation to bank charges, Section 149 of the Consumer Credit Act 1995 provides that credit institutions must notify the Central Bank if they wish to introduce a new charge or increase an existing customer charge for providing services such as maintaining and administering transaction accounts, providing and granting credit, making and receiving payments. As part of the Central Bank's consideration of a request for a new or increased charge, the effect on the consumer or group of consumers is considered.

- The Central Bank engages with regulated firms in various formal and informal ways to promote that financial consumers are treated equitably, honestly and fairly. This has been embedded as part of the CPD's Stakeholder Engagement Model. Examples of initiatives implemented as part of this model include formal engagement with a number of key stakeholders on an annual and on-going basis, outreach engagement through presentations and roadshows, information sharing with the Central Bank's Public Contacts Unit, and work undertaken in relation to the 'consumer proofing' of public communications. The Central Bank also engages with industry stakeholders, including firms and industry representative bodies, on an on-going basis with a view to ensuring that consumers are treated fairly.
- The Central Bank extensively plans its operational supervisory activities regarding the protection of consumers on a yearly and on-going basis. As for long term strategic planning, the Central Bank's Strategic Plan 2013-2015 sets out various action items on the consumer protection agenda, at a high level only, over a three-year period.
- The emphasis in practice seems to lie on eliciting good governance by the regulated firms.
  - The Central Bank seems to have a firm and comprehensive view on what is required to obtain and maintain such good governance as set out under section 2.3.2 below.
  - This is founded in a rigorous risk-based approach to assessment of and engagement with regulated firms.
- The Central Bank's consumer protection function is increasingly focusing on outcomes. Currently the Central Bank does not appear to systematically measure the extent to which regulated firms deliver on their commitment to treat customers fairly (outcome measurement).
- Central Bank has the intention to systematically apply current behavioural economics insights in its consumer protection function, as evident from its recent pilot in this area jointly with other stakeholders, which is to be welcomed. In this regard, since January 2013, the Central Bank funded a three-

year multi-partner research programme initiative which aims to develop experiments to test how consumers attribute values to products and choose between complex products. This initiative, established by the Economic and Social Research Institute's ("ESRI") Price Lab (Programme of Research Investigating Consumer Evaluation), is jointly funded by the Central Bank, CCPC, Commission for Energy Regulation and Commission for Communications Regulation. The programme is overseen by a Steering Group comprising representatives of each of the four funding partners, an independent international academic expert, a senior representative from the ESRI and the Principal Investigator.

### **2.3.2 Governance and Culture**

*Treating consumers fairly should be an integral part of the good governance and corporate culture of all financial services providers and authorised agents*

- The Central Bank cited provisions of the CPC in relation to the organisational and governance requirements on regulated firms. For example, the CPC provides that a regulated entity must have and employ effectively the resources, policies, procedures, systems and control checks, including compliance checks, and staff training that are necessary for compliance with the CPC. In relation to complaints, regulated entities are required to undertake analysis of patterns of complaints to identify widespread issues and such analysis must be escalated to the regulated entity's senior management.
- Other sector specific consumer protection requirements also apply in this area in respect of certain business activities. In addition the CCMA contains detailed protections for the fair treatment of customers in mortgage arrears and includes provisions on the governance of this process within firms. Various EU Directives, transposed into Irish law, also set out requirements in this area for certain products/services, including the Markets in Financial Instruments Directive and the Payment Services Directive.
- The Central Bank has undertaken a cross-sectoral themed inspection on remuneration and sales incentives paid to front-line staff and their managers in insurance undertakings, credit institutions and investment firms. The aim of this work was to promote a customer-focused ethos in all financial service providers, where acting in the best interests of consumers is at the core of their culture and practices. Further information on this supervisory work is set out under section 2.5.4 below.
- The Central Bank has a firm and comprehensive view of what is required to obtain and maintain good governance in regulated firms, and has made endeavours to promote putting consumer protection at the heart of senior

corporate culture within regulated firms (a recent example cited was the regular high level meetings between the Director of Consumer Protection, senior officers and boards of financial institutions). However, the AFM is of the view that further effort is required by the Central Bank to explicitly and systematically engage with regulated firms with high or medium-high impact on corporate culture issues (complementing the initiatives in progress, such as meetings with board members of regulated firms).

- ‘Governance Risk’ is a separate risk category assessed by the Central Bank under its PRISM framework and where appropriate, the Central Bank can require RMPs to be taken under the ‘Governance Risk’ or ‘Conduct Risk’ headings within PRISM.
- The Central Bank engages with regulated firms in various formal and informal ways to promote that financial consumers are treated equitably, honestly and fairly. However the AFM would encourage on-going strategic engagement with regulated firms concerning what the concept of ‘treating consumers fairly’ practically means in terms of specific business strategies and what it entails to deliver on this commitment in practice.

### **2.3.3 Vulnerable Groups/ Access**

*Special attention should be dedicated to the needs of vulnerable groups.*

- The revised CPC issued in 2012 introduced a new requirement on regulated entities in relation to vulnerable consumers. This requirement is set out as a general principle in section 3.1 of the CPC and provides that, where a regulated entity (that is subject to the CPC) has identified that a personal consumer is a vulnerable consumer, the regulated entity must ensure that the vulnerable consumer is provided with such reasonable arrangements and/or assistance as may be necessary to facilitate him or her in his or her dealings with the regulated entity. A vulnerable customer is defined as *“a natural person who:*
  - a) has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example, hearing impaired or visually impaired persons); and/or*
  - b) has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties)”.*
- The Central Bank dedicates considerable attention to the needs of vulnerable groups, for example, the Central Bank is also involved in the area of financial inclusion. The Central Bank is committed to broadening the provision of basic or introductory bank accounts and promoting those accounts to socio-economic groups where the holding of bank accounts was less prevalent and to those who find that a current account does not suit their basic banking needs. In this

regard, the Irish State made a commitment that it would undertake a review of the options available to achieve financial inclusion in Ireland. The Central Bank has been involved in a strategy for financial inclusion, which was concluded in 2011 by the Financial Inclusion Working Group led by the Department of Finance. The strategy was adopted by the Irish Government and led to the implementation of a Standard Bank Account pilot project, which ran from June 2012 to March 2013. The Report of the Financial Inclusion Working Group on the Standardised Bank Account pilot project was published by the Department of Finance in January 2014, and the details of which are currently under consideration by the Department of Finance. The Central Bank has advised that it will continue to participate in this initiative as required to ensure that all consumers have access to basic financial services.

- Another notable example of supervisory and policy work in this area is the comprehensive and sustained approach to ensure that consumers in, or facing, mortgage arrears are treated fairly. The Central Bank dedicates considerable capacity and senior management attention to this topic. In this regard, the Central Bank's consumer protection function has, inter alia,:
  - carried out a review of the CCMA to seek to ensure it continues to provide a high level of protection to borrowers in the context of a changing mortgage arrears situation, which was preceded by a themed inspection to inform the code review;
  - undertaken themed inspections on the implementation of the revised CCMA in 2013/2014;
  - initiated a themed inspection of mortgage lenders to test compliance with the statutory requirements of the revised CCMA. The CCMA is also an explicit enforcement priority for 2014; and
  - participated in working groups involving government departments, state agencies and mortgage lenders which devised the Mortgage Arrears Information and Advice Service, an initiative developed to provide information to consumers in mortgage arrears. In addition, CPD engaged with its prudential colleagues in the Banking Supervision Directorate in the development of a multi-debt framework for arrears cases.

## **2.4 Principle 4: Disclosure and Transparency**

*Financial services providers and authorised agents should provide consumers with key information that informs the consumer of the fundamental benefits, risks and terms of the product. They should also provide information on conflicts of interest associated with the authorised agent through which the product is sold.*

*In particular, information should be provided on material aspects of the financial product. Appropriate information should be provided at all stages of the relationship with the customer. All financial promotional material should be accurate, honest, understandable and not misleading.*

*Standardised pre-contractual disclosure practices (e.g. forms) should be adopted where applicable and possible to allow comparisons between products and services of the same nature. Specific disclosure mechanisms, including possible warnings, should be developed to provide information commensurate with complex and risky products and services. Where possible consumer research should be conducted to help determine and improve the effectiveness of disclosure requirements.*

*The provision of advice should be as objective as possible and should in general be based on the consumer's profile considering the complexity of the product, the risks associated with it as well as the customer's financial objectives, knowledge, capabilities and experience.*

*Consumers should be made aware of the importance of providing financial services providers with relevant, accurate and available information.*

#### **2.4.1 Key Information about the Product or Service**

*Financial services providers and authorised agents should provide consumers with key information that informs the consumer of the fundamental benefits, risks and terms of the product. They should also provide information on conflicts of interest associated with the authorised agent through which the product is sold. In particular, information should be provided on material aspects of the financial product. Appropriate information should be provided at all stages of the relationship with the customer. Standardised pre-contractual disclosure practices (e.g. forms) should be adopted where applicable and possible to allow comparisons between products and services of the same nature.*

- For firms subject to the CPC, the CPC is the primary source of conduct rules on providing key information to consumers. In particular, section 2.6 of the CPC provides that regulated entities must make full disclosure of all relevant material information, including all charges, in a way that seeks to inform the consumer. In addition, Chapters 4 and 6 of the CPC contain specific conduct rules regarding the provision of information to consumers throughout their relationships with regulated entities.
- The CPC puts in place standardised pre-contractual disclosure requirements in relation to certain structured products known as 'tracker bonds' and pension products known as 'Personal Retirement Savings Accounts'. Product providers are required to provide consumers with certain standard information in respect

of such products in accordance with Chapter 4 and Appendices A & B of the CPC. The Central Bank also actively participated at EU level in relation to the Packaged Retail and Insurance-based Investment Product Regulation under which an EU wide standardised Key Information Document for retail investors will be developed. In relation to UCITS funds, Key Investor Information Documents are required in accordance with the EU wide UCITS regime.

- Chapter 3 of the CPC also contains provisions concerning the relationship between product providers and their authorised agents (intermediaries). These provisions are aimed at ensuring the necessary flow of information on products and services between the product provider and its intermediaries in order that clear, accurate and up to date information is ultimately provided to consumers. In relation to disclosure of potential conflicts of interest between product providers and their authorised agents, further details are included under sections 2.4.2 and 2.5.4 below.
- Other sector specific consumer protection requirements also apply in respect of key information disclosure for certain business activities. Examples of other specific disclosure requirements include those set out in the CCMA, the Code of Conduct on the Switching of Current Accounts with Credit Institutions and the Consumer Protection Code for Licensed Moneylenders. Requirements relating to disclosure of key information are also set out in various domestic and European legislation, for example, the Consumer Credit Act 1995, the Life Assurance (Provision of Information) Regulations 2001 and the European Communities (Markets in Financial Instruments) Regulations 2007 (**“MiFID Regulations”**).
- In addition to the above, supervisory work has been undertaken by CPD to check whether key information is provided as required by codes and legislation. The Central Bank cited a number of examples of such work in this area including the following:
  - A review of the sale of payment protection insurance (**“PPI”**) by credit institutions took place in 2012/2013 which focused on the timing of the provision of key information to consumers and whether firms brought key information on policies explicitly to the attention of individual consumers. One of the findings of this review was that firms had failed to bring key information on policies explicitly to the attention of consumers, and this review subsequently resulted in refunds of €67.4 million, including interest of €4.9 million, being made to consumers.
  - A review of the provision of annual benefit statements took place in 2013/2014 to establish how life assurance undertakings complied with the requirement to provide annual statements outlining the position of consumers’ personal pension products. In its press release and letter to the life assurance industry issued on foot of this review, the Central

Bank set out its expectation that firms would incorporate the findings of the review when communicating with consumers.

- CPD's advertising monitoring function proactively monitors advertisements to ensure compliance with advertising requirements. Where issues arise, the Central Bank pursues regulatory action, and if necessary, can take enforcement action in the event of a breach of applicable requirements. During 2013, on foot of advertising monitoring, 128 were amended, 26 were withdrawn and an additional 28 were reviewed and further information sought from the firm but no further action was deemed necessary. In addition, in 2013, the Central Bank also issued Guidance on the Advertising Requirements of the CPC which was a culmination of an extensive review of issues arising from advertising monitoring.

#### **2.4.2 Conflicts of Interest<sup>13</sup>**

*Financial services providers and authorised agents should also provide information on conflicts of interest associated with the authorised agent through which the product is sold.*

- For firms subject to the CPC, the CPC is the primary source of conduct rules for firms on providing key information to consumers, including information relating to conflicts of interest.
- In particular, the CPC provides that a regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it seeks to avoid conflicts of interest. If a conflict of interest cannot reasonably be avoided, a regulated entity must take measures to disclose the conflict of interest to the consumer and ensure that the conflict does not result in damage to the interests of the consumer. Further details on conflicts of interest between financial service providers and their authorised agents, including the issue of remuneration, is included under section 2.5.4 below.
- Other sector specific consumer protection requirements relating to disclosure of conflicts of interest also apply in respect of certain business activities. For example, conflicts of interest disclosure requirements for investment firms are set out in the MiFID Regulations, which provide that disclosure of conflicts to clients in a durable medium should occur where arrangements made by a firm to manage conflicts are insufficient to ensure, with reasonable confidence, that risks of damage to the client interests will be prevented.

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<sup>13</sup> Conflicts of Interest is further discussed under Principle 6

- The Central Bank supervises whether the conflict of interest provisions are met by regulated firms. An example cited by the Central Bank included a recent themed inspection on the pension sales process which was undertaken in 2013 to assess the process utilised by intermediaries when selling and/or advising consumers in respect of pension policies and on their compliance with the relevant provisions of the Code. As part of this inspection, authorised officers assessed firms' compliance with the CPC's conflicts of interest provisions (Sections 3.28 and 3.29). Further to these inspections, compliance issues identified and Central Bank expectations were communicated to the intermediary sector. A second phase of this work has now commenced, a report has been prepared and correspondence to industry is due to be issued shortly.

#### **2.4.3 Provision of Advice**

*The provision of advice should be as objective as possible and should in general be based on the consumer's profile considering the complexity of the product, the risks associated with it as well as the customer's financial objectives, knowledge, capabilities and experience.*

- The CPC provides that firms, in all their dealings with customers, and within the context of their authorisation, must act with due skill, care and diligence in the best interests of their customers. The CPC also sets out prescriptive requirements on firms in relation to 'Knowing the Consumer' and suitability. In particular, Section 5.1 of the CPC sets out various information that a firm must gather from consumers prior to offering, recommending, arranging or providing a product/service so as to provide a professional service to the consumer. This information includes, inter alia, information relating to the consumer's knowledge and experience of financial products, their attitude to risk and their need for access to funds. Firms are required to ensure that any product/service offered to a consumer is suitable to that consumer, having regard to the facts disclosed by the consumer and other relevant facts about that consumer of which the regulated firm is aware.
- In relation to the objectivity of advice provided, the CPC contains various disclosure requirements designed to ensure that the consumer is aware of the basis upon which any advice is provided. In particular, Chapter 4 of the CPC contains restrictions in relation to the use of the word 'independent' by intermediaries and requirements in relation to indicating to consumers whether advice is provided on the basis of a broader (fair analysis), or more restricted, analysis of the market.
- Other sector specific consumer protection requirements also apply in respect of the provision of advice for certain business activities. For example, requirements are set out in the European Communities (Insurance Mediation)

Regulations 2005 and the MiFID Regulations. In addition, in relation to mortgage arrears, the CCMA provides that in order to determine which alternative repayment arrangement options are viable for each particular case, a lender must explore all options offered by that lender having considered the case on its own individual merits and having assessed the borrower's financial circumstances (including using a defined standard financial statement).

- The Central Bank has undertaken supervisory work in this area to assess compliance with the 'Knowing the Consumer' and suitability provisions of the CPC. For example, the advising and selling of PPI by credit institutions was reviewed in 2012/2013 which considered compliance with the CPC's 'Knowing the Consumer' and suitability requirements in the provision of PPI. One of the Central Bank's main concerns from this inspection was that firms had not gathered sufficient information to enable them to determine whether the product sold was suitable for the consumer. On foot of the findings of the inspection, the Central Bank instructed credit institutions to conduct a compliance review of PPI sales; and refunds of €67.4 million were subsequently made to consumers.

#### **2.4.4 Promotional Material**

*All financial promotional material should be accurate, honest, understandable and not misleading.*

- The CPC requires firms to make full disclosure of all relevant material information in a way that seeks to inform the customer. In addition, Chapter 9 of the CPC contains detailed requirements aimed at ensuring that advertising by financial services providers is fair, clear and not misleading. In October 2013, the Central Bank also issued Guidance on the Advertising Requirements of the CPC. This Guidance was a culmination of an extensive review of issues arising from the advertising monitoring function, engagement with key consumer and industry groups and research of consumer attitudes towards financial services advertising.
- Other sector specific consumer protection requirements also apply in respect of advertisements and promotional material for certain business activities. For example, the Consumer Credit Act 1995 sets out specific requirements that must be adhered to when advertising home loans to ensure greater transparency for consumers. The Consumer Protection Act 2007 (**"the 2007 Act"**) also provides that unfair and misleading trading practices are banned if they would be likely to cause appreciable impairment of the average consumer's ability to make an informed choice in relation to the product concerned and would cause the average consumer to make a decision about a transaction that they would not otherwise make.

- CPD's advertising monitoring function undertakes proactive monitoring of advertising and promotional material to ensure compliance with advertising requirements. Printed advertisements and specific websites are monitored on a regular basis. All advertisements that are picked up in the monitoring are dealt with thoroughly. Where issues arise, the Central Bank pursues regulatory action, and if necessary, can take enforcement action in the event of a breach of applicable requirements. During 2013, on foot of advertising monitoring, the Central Bank advised that 128 advertisements were amended, 26 were withdrawn immediately and an additional 28 were reviewed and further information sought from the firm but no further action was deemed necessary. The level of regulatory action considered depends on the firm's compliance history, the severity of the issue and if the issue is recurring. For example, in 2013 three firms were directed to carry out a complete review on their advertisement activities and procedures. In 2013 the Central Bank facilitated a workshop for advertising companies, to clarify requirements and answer questions.
- The proactive supervision of advertisements does not extend to all types of promotional material and media and, in this regard, the Central Bank should consider broadening the scope of material and media which it systematically monitors for compliance with advertising requirements.

#### **2.4.5 Specific Disclosure Measures**

*Specific disclosure mechanisms, including possible warnings, should be developed to provide information commensurate with complex and risky products and services.*

- The CPC sets out various disclosure requirements, including warning statements, to be included in certain documentation and advertisements. The CPC also provides that such warning statements are boxed, in bold type and of a font size that is at least equal to the predominant font size used throughout the document or advertisement. In particular, there are various warnings required under Chapter 4 of the CPC and the conduct rules for advertising set out in Chapter 9 of the CPC prescribe that warnings must be shown on advertisements for specific products and in specific circumstances.
- Other sector specific consumer protection requirements also apply in respect of disclosure measures for complex and risky products and services. For example, the Consumer Protection Code for Licensed Moneylenders (published January 2009) requires specific disclosure measures for licensed moneylenders, for example, the obligation to disclose, before providing a loan, the high-cost nature of the loan and also the cost of credit. Research commissioned by the

Central Bank in 2013 on the licensed moneylending industry in Ireland found there has been an increase in consumer understanding in regard to cost of credit and interest charged. Specifically, the research found that a majority of customers (84%) knew the cost of credit on their loan and 65% understood the amount of interest charged on their loans; which is a significant improvement from 2007 where 71% of customers did not understand the amount of interest being charged on their loans. The Consumer Credit Act 1995 provides that various warning statements must be included in information documents and application forms for housing loans and any document approving a housing loan. In addition, the MiFID Regulations also set out specific requirements on investment firms relating to information disclosure which seek to ensure greater transparency for consumers of investment products.

- Whilst firms are subject to a number of disclosure requirements set out in codes of conduct and legislation, the AFM notes that there are no mechanisms to supervise transparency and disclosure before a product is available on the market other than in the context of authorised funds such as UCITS.

#### **2.4.6 Consumer Research**

*Where possible consumer research should be conducted to help determine and improve the effectiveness of disclosure requirements.*

- The Central Bank has commissioned consumer-based research, the objective of which was to consider the application of disclosure requirements and the impact on consumer attitudes and behaviour. The Central Bank cited examples of such research, undertaken in 2013, including the following:
  - Qualitative consumer research on financial services advertising was commissioned to understand what consumers perceive to be clear, fair, accurate and not misleading advertisements and to identify issues from current advertising that may have impeded the application of the advertising requirements of the Central Bank's CPC. The output of this research was used to provide feedback into the development of guidance notes for firms on the advertising requirements of the CPC.
  - Research was undertaken on private pension holders to determine their level of understanding regarding different pension statements and understand their requirements as consumers. This research fed into a project on the annual benefits statement for pensions. A public statement and industry letter subsequently issued setting out the Central Bank's expectations when communicating with consumers in the context of annual benefits statements for pensions.
  - As aforementioned, the Central Bank commissioned research on the licensed moneylender industry to inform the regulatory approach to the licensed moneylending industry in Ireland and to see how firms were treating their customers. The research, which was conducted in 2013,

used a mix of quantitative and qualitative methodologies and interviews were held with representatives from three key stakeholder groups including customers of licensed moneylenders. Further to this research, a report of the licensed moneylending industry in Ireland was published.

- In addition, the Central Bank recently started conducting research on the assessment of information by consumers in cooperation with other stakeholders. External stakeholders expressed their desire that the Central Bank further develops its knowledge/undertakes research in this field of applied behavioural economics.

#### **2.4.7 Consumers' Awareness**

*Consumers should be made aware of the importance of providing financial services providers with relevant, accurate and available information.*

- The Central Bank has dedicated significant attention to disclosure and transparency for consumers.
- Under the general principles in the CPC, regulated entities are required to seek from customers' information relevant to the product or service requested. In addition, before offering, arranging, recommending or providing a product/service, a regulated entity must gather and record sufficient information from the consumer, and the CPC provides that regulated entity must endeavour to have the consumer certify the accuracy of the information he/she provides.
- Other sector specific consumer protection requirements also apply in this area in respect of certain business activities. For example, consumers are advised of the importance of providing relevant and accurate information in relation to mortgage arrears and a standard financial statement is prescribed to facilitate this. Appendix 1 of the CCMA sets out Guiding Principles for the completion of the standard financial statement which must be provided by lenders to borrowers with the standard financial statement. One of these principles provides the following: *"It is important to fill out the standard financial statement fully and accurately and to provide any relevant documentation that we may seek to assess your situation; we will only seek information that is relevant to this assessment."* The borrower also signs a declaration that the information he/she provided represents his/her financial situation and a commitment that he/she will inform his/her lender if their situation changes. In addition, the Central Bank published "A Consumer Guide to the CCMA" which sets out 10 steps that borrowers can take to make the process as smooth as possible, including accurate completion of the standard financial statement and disclosure of all necessary information.

- Regarding the awareness of consumers there is a shared responsibility between the Central Bank and the CCPC, with the primary responsibility for financial consumer education resting with the CCPC.

## **2.5 Principle 6: Responsible Business Conduct of Financial Services Providers and their Authorized Agents**

*Financial services providers and authorised agents should have as an objective, to work in the best interest of their customers and be responsible for upholding financial consumer protection. Financial services providers should also be responsible and accountable for the actions of their authorised agents.*

*Depending on the nature of the transaction and based on information primarily provided by customers financial services providers should assess the related financial capabilities, situation and needs of their customers before agreeing to provide them with a product, advice or service. Staff (especially those who interact directly with customers) should be properly trained and qualified. Where the potential for conflicts of interest arise, financial services providers and authorised agents should endeavour to avoid such conflicts. When such conflicts cannot be avoided, financial services providers and authorised agents should ensure proper disclosure, have in place internal mechanisms to manage such conflicts, or decline to provide the product, advice or service.*

*The remuneration structure for staff of both financial services providers and authorised agents should be designed to encourage responsible business conduct, fair treatment of consumers and to avoid conflicts of interest. The remuneration structure should be disclosed to customers where appropriate, such as when potential conflicts of interest cannot be managed or avoided.*

### **2.5.1 Best interest**

*Financial services providers and authorised agents should have as an objective, to work in the best interest of their customers and be responsible for upholding financial consumer protection.*

- The interests of consumers are placed at the heart of Irish financial services legislation by virtue of the statutory objective of Central Bank regulation being the “proper and effective regulation of financial institutions and markets while ensuring that the best interests of consumers of financial services are protected.” In the case of firms subject to the CPC, the CPC is the primary source of conduct rules for firms on acting in the best interests of consumers. The requirement to act in the best interest of the consumer is set out as a general principle in sections 2.1 and 2.2 of the CPC.

- In addition to provisions concerning acting in the best interests of consumers, there are product producer responsibilities in place (sections 3.52-3.57 of the CPC) which oblige product providers to implement adequate product approval processes to ensure that certain products are fit for the targeted group of consumers. However, the AFM is of the view that the Central Bank should be involved in prohibiting or setting limits regarding the product design of certain risky or complex financial products, which is currently not undertaken by the Central Bank.
- Other sector specific consumer protection requirements also apply which require firms to act in the best interests of consumers. For example, the CCMA sets out the framework that lenders must use when dealing with borrowers in mortgage arrears or in pre-arrears. The CCMA provides that all cases must be handled sympathetically and positively by the lender, with the objective at all times of assisting the borrower to meet his/her mortgage obligations. The Consumer Protection Code for Licensed Moneylenders also provides that licensed moneylenders must act in the best interests of their consumers.
- In relation to the 'best interest' provisions set out in the Central Bank's codes of conduct, external stakeholders interviewed by the AFM expressed the view that the Central Bank might more often consider providing guidance concerning what 'acting in the best interest of the consumer' means in terms of their specific business strategy and what it entails to deliver on this general principle in practice.
- The 2007 Act contains provisions in relation to unfair commercial practices. The 2007 Act provides that a range of unfair, misleading and aggressive trading practices are banned if they would be likely to cause appreciable impairment of the average consumer's ability to make an informed choice in relation to the product concerned and would cause the average consumer to make a decision about a transaction that they would not otherwise make. The AFM observed that the Central Bank could optimize its use of the 2007 Act, in those areas where the CPC does not provide for sufficient powers
- The Central Bank has carried out a programme of risk-based thematic supervisory work in this area including, for example, themed inspections on household property claims, the pension sales process, and remuneration and incentives for sales staff. In addition, in 2011/2012, the Central Bank conducted a themed inspection into best execution in investment and stockbroking firms subject to MiFID Regulations to assess whether such firms, when purchasing or selling financial instruments on behalf of their retail and professional clients, were doing so on a best execution basis. The inspection examined whether firms were taking all reasonable steps to get the best possible result for their clients taking account of price, speed, costs and other factors, and whether

firms were ensuring that the information provided to clients was of a sufficient quality for the client to make a properly informed decision about whether to use the investment services offered by the firm. This review (which was both desk-based and on-site) raised a number of issues in relation to the best execution practices in the firms reviewed and as a result, the Central Bank required those firms to review their best execution arrangements and take remedial action.

- The Central Bank publishes the results of themed inspections, investigations and enforcement actions that have been taken as a means to encourage compliance and deter adverse behaviour.

#### **2.5.2 Assessing consumer needs**

*Depending on the nature of the transaction and based on information primarily provided by customers, financial services providers should assess the related financial capabilities, situation and needs of their customers before agreeing to provide them with a product, advice or service.*

- For firms that are subject to the CPC, the CPC is the primary source of conduct rules for firms on assessing consumer needs. Chapter 5 of the CPC sets out the requirements on regulated entities to gather information to know their consumer and to assess suitability. The CPC sets out prescriptive requirements in relation to what is termed the 'Knowing the Consumer' process (section 5.1 – 5.8 of the CPC). In addition, where a consumer refuses to provide the information sought in compliance with the 'Knowing the Consumer' requirements, the regulated entity must inform the consumer that it cannot offer the product or service sought.
- Other sector specific consumer protection requirements also apply in respect of certain business activities. For example, the CCMA provides that lenders must assist borrowers when they are in, or facing, mortgage arrears. In particular, lenders must examine each arrears case on its individual merits and base their assessment of the case on the full circumstances of the borrower including the personal circumstances of the borrower and his/her overall indebtedness (section 37). The CCMA also requires that a lender, in determining which options for alternative repayment arrangements are viable for each particular case, must explore all of the options for arrangements offered by that lender (section 39). The lender must document its consideration of each option examined including the reasons why the option(s) offered to the borrower is/are appropriate and sustainable for his/her individual circumstances and why the options considered and not offered to the borrower is/are not appropriate and not sustainable for the borrower's individual circumstances (section 40).

The Central Bank dedicates considerable attention (through the PRISM full risk assessments and thematic work) to check compliance with assessing consumer needs. Recent examples of supervisory work in this area were cited, including a review of PPI sales by credit institutions in 2012/2013 to identify where CPC provisions, including suitability requirements, were not complied with. This review resulted in refunds of €67.4 million, including interest of €4.9 million, being made to consumers. In addition, a themed inspection on the pension sales process was carried out in 2013 whereby a number of on-site inspections were undertaken, which focused on the process utilised by intermediaries when selling and/or advising consumers in respect of pension policies and on their compliance with certain CPC requirements including, inter alia, the 'Knowing the Consumer' and suitability provisions. Further to this inspection, industry feedback was provided for firms setting out issues identified and the Central Bank's expectations in terms of compliance with CPC requirements. A second phase of work in this area has commenced, a report has been prepared and correspondence to industry is to be issued shortly.

### **2.5.3 Staff training**

*Staff of financial services providers and authorised agents (especially those who interact directly with customers) should be properly trained and qualified.*

- The Central Bank dedicates considerable attention to ensure that staff in regulated firms meet certain minimum education and training requirements.
- Minimum Competency Requirements were first introduced on 1 January 2007 to ensure that consumers obtain a minimum acceptable level of competence from individuals acting for or on behalf of regulated firms in the provision of advice and associated activities in connection with retail financial products. During 2010, the Central Bank undertook a review of the requirements and, following a consultation process, the Minimum Competency Code ("**MCC**") was developed and came into effect on 1 December 2011. The MCC is now the primary source of legal provisions for regulated entities on staff training.
- The MCC sets out in detail the specific competencies which individuals must attain to advise on each of the eight categories of retail financial products (namely, life assurance; pensions, savings & investments; personal general insurance; private medical insurance and associated insurances; housing loans, home reversion agreements and associated insurances; and consumer credit agreements and associated insurances). In addition to financial advisors and salespersons, the MCC also applies to those who carry out certain 'specified functions' which have a potentially high impact on consumers. Such 'specified functions' include assisting consumers in making a claim, determining the

outcome of claims by consumers, reinsurance mediation, direct management of accredited persons and adjudicating on complaints.

- Currently three main educational bodies jointly offer one single professional qualification (the Qualified Financial Advisor), which is now the predominant qualification for financial advisors in Ireland.
- In 2009 and 2010, the Central Bank conducted themed inspections on compliance with the Minimum Competency Requirements in three industry sectors, namely, credit institutions, life assurance undertakings and retail intermediaries. Compliance issues identified during the inspections were followed up with individual firms concerned and the Central Bank incorporated the findings of these themed inspections into the review of initial Minimum Competency Requirements introduced in 2007 which were subsequently replaced by the MCC in 2011.

#### **2.5.4 Remuneration**

*The (internal) remuneration structure for staff of both financial services providers and authorised agents should be designed to encourage responsible business conduct, fair treatment of consumers and to avoid conflicts of interest. The remuneration structure should be disclosed to customers where appropriate, such as when potential conflicts of interest cannot be managed or avoided.*

- With respect to remuneration, the legal requirements are in place. In the case of firms subject to the CPC, the CPC is the primary source of conduct rules for firms regarding remuneration. Section 3.25 of the CPC sets the requirement on regulated entities to ensure that their remuneration structure does not create a conflict of interest. Sections 3.28 – 3.36 of the CPC also set out specific requirements in relation to conflicts of interest. In particular, section 3.32 provides that regulated entities must ensure that their remuneration structure does not create a conflict of interest. In addition, sections 4.57 – 4.61 set out requirements on regulated entities regarding the provision of information about remuneration to consumers.
- Other sector specific consumer protection requirements also apply in relation to remuneration. For example, the Life Assurance (Provision of Information) Regulations 2001 require life assurance firms to disclose certain information to consumers at the point of sale, including the intermediary/sales remuneration payable. In addition, these Regulations require a table of projected intermediary/sales remuneration to be provided at the point of sale.
- The Central Bank dedicates considerable attention to remuneration arrangements in regulated firms. Most notably, since 2012, the Central Bank

has undertaken a cross-sectoral themed inspection on remuneration and sales incentives paid to front-line sales staff and their managers in insurance undertakings, credit institutions and investment firms. The aim of this work was to promote a consumer-focused ethos in all financial service providers, where acting in the best interests of consumers is at the core of their culture and practices. In this regard, the Central Bank expects firms to design, implement and oversee incentive schemes that ensure good behaviours and reward quality consumer sales and service. Further to this review, the Central Bank issued findings to firms involved and has recently published Guidelines on Variable Remuneration Arrangements for Sales Staff and has set out specific requirements on firms in light of these. For example, the Chairperson of all banking, insurance and investment firms within the scope of the Sales Incentives Review were required to report back to the Central Bank confirming that they had undertaken a review of the sales incentive / remuneration arrangements within their firms, including sales, management, governance and monitoring, and that relevant changes had been implemented by 1 January 2015. In addition, in the first half of 2016, all firms in the three sectors are required to have their Internal Audit function conduct a review of changes implemented in their remuneration arrangements in line with these Guidelines.

- Aside from remuneration of staff, the legal/regulatory framework currently allows intermediaries to receive inducements from product producers in respect of a product or a service, provided this is accompanied by full transparency and disclosure of all benefits received by the intermediary including all forms of commission. The Central Bank has not published guidance or good and poor practices on the topic of inducements.

#### ***2.5.5 Responsibility for authorised agents***

*Financial services providers should also be responsible and accountable for the actions of their authorised agents.*

- As a general matter of Irish law, where a person is subject to a statutory obligation (e.g. under Irish financial services legislation) that person remains responsible for compliance with that obligation notwithstanding that they may use an agent to carry out an activity on their behalf.
- In addition, where a firm is subject to the CPC, General Principle 2.10 of the CPC specifically places a requirement on the firm to ensure that any outsourced activity complies with the requirements of the CPC.
- Other sector specific consumer protection requirements, regarding responsibility for authorised agents, also apply in relation to certain business activities. For example, Authorisation Standards and Requirements for Bureau de Change Businesses provide that such businesses “remain fully and

*unconditionally responsible for any act or omission on the part of the agent when/where acting on behalf of the Bureau de Change Business.” (Requirement 9.3). Similar requirements are set out for electronic money institutions and payment institutions as set out in the European Communities (Electronic Money) Regulations 2011 and European Communities (Payment Services) Regulations 2009, respectively. For example, the European Communities (Payment Services) Regulations 2009 states that a payment institution remains fully liable for “the acts of its employees, or any agent, branch or entity to which activities are outsourced.” These Regulations also place a requirement on the payment institution, where it relies on a third party to perform an operational function, to “take reasonable steps to ensure that the third party complies with the requirements of these Regulations so far as those requirements are capable of application to the third party.”*

- The Central Bank has undertaken supervisory work in this area. An example cited was work between 2011-2014 where the Central Bank investigated a specific insurance undertaking on a number of compliance issues, including, compliance with the requirement to ensure it had resources and procedures, systems and control checks necessary to ensure compliance with the CPC. As part of the investigation, the Central Bank identified a number of breaches, including the failure by the firm to ensure that the regulated activities it outsourced to other entities were compliant with the CPC. Further to the investigation, the Central Bank reprimanded the firm and required it to pay a monetary penalty of €490,000.

#### **2.5.6 Conflicts of interest**

*Where the potential for conflicts of interest arise, financial services providers and authorised agents should endeavour to avoid such conflicts. When such conflicts cannot be avoided, financial services providers and authorised agents should ensure proper disclosure, have in place internal mechanisms to manage such conflicts, or decline to provide the product, advice or service.*

- The CPC sets out a number of requirements in relation to conflicts of interest. (Sections 2.7, 3.28 - 3.29 of the CPC)
- In particular, the CPC requires that regulated entities must have in place and operate in accordance with a written conflicts of interest policy appropriate to the nature, scale and complexity of the regulated activities carried out by the regulated entity. In addition, the CPC sets out other regulatory rules designed to ensure that intermediaries clearly indicate to consumers whether they are independent or whether they are linked to particular product providers. (Sections 4.16 – 4.20 of the CPC).

- The Central Bank indicated that it does not consider disclosure of conflicts of interest alone to be a self-standing measure for the management of conflicts of interest. The CPC requires regulated entities, in the first instance, to seek to avoid conflicts of interest, failing which, conflicts of interest must be managed in accordance with specified procedures set out in a conflicts of interest policy. Where conflicts cannot be avoided, the regulated entity must (i) disclose the conflict to the consumer; (ii) receive acknowledgement from the consumer that he/she is aware of the conflict of interest and still wishes to proceed; and (iii) ensure that the conflict does not result in damage to the interests of the consumer (section 3.29 of the CPC). As such, disclosure is only an acceptable tool where this latter element of the test in (iii) above can be met. If, by proceeding to provide a particular product/service, damage to the interests of a consumer would result, a regulated entity would be expected in such circumstances to decline to provide the product or service in question.
- Other sector specific consumer protection requirements also apply in this area in respect of certain business activities. For example, General Principle 7 of the Code of Conduct for Licensed Moneylenders provides that a moneylender must ensure that in all its dealings with consumers and within the context of its license, it seeks to avoid conflicts of interest. The MiFID Regulations also set out requirements in relation to conflicts of interest including, for example, the requirement for investment firms to disclose conflicts of interest where arrangements made by a firm to manage conflicts are insufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented. The Consumer Credit Act 1995 sets out particular provisions on mortgage agents/intermediaries which seek to prevent conflicts of interest when providing home loans. For example, the Consumer Credit Act 1995 prohibits a mortgage agent from making a mortgage offer to a consumer conditional on any financial services, conveyancing/auctioneering services or other services relating to land which that person may require, whether or not in connection with the loan, shall be provided by the agent or through a subsidiary or other associated body of such agent.
- Given that potential conflicts of interest may impact on a firm's obligations to act in the best interests of its consumers, the Central Bank has undertaken a number of inspections on firms to assess their compliance with the Code's conflicts of interest provisions. Recent examples include a themed inspection on pension sales which, amongst other things, assessed firms in terms of their compliance with sections 3.28 and 3.29 of the CPC. In addition, as aforementioned, a cross-sectoral themed inspection on remuneration and sales incentives was also undertaken to assess whether such structures and incentives pose potential conflicts of interest to the firm in carrying out its obligation to act in the consumers' best interests.

## CHAPTER 3: OVERARCHING RECOMMENDATIONS

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In this Chapter the AFM provides key observations and recommendations for consideration by the Central Bank regarding its approach to consumer protection as the context within which it regulates continues to evolve over the coming years. These observations and recommendations are based on the findings as set out in Chapter 2, and are overarching in nature in that they are not necessarily linked to one specific G20 Principle.

### 3.1 Problem-based approach

- The Central Banks's current supervisory approach is primarily firm-specific.
  - However, although a firm-based approach is a logical supervisory approach for prudential supervision, it may result in over-looking market-wide consumer protection risks (which of course may include firm-specific problems). This may result in not giving market-wide consumer protection risks the appropriate attention and/or not addressing them in the most effective manner.
  - Experience indicates that impactful consumer protection problems in financial retail markets are most often not limited to a single firm.

As such, the Central Bank may wish to consider implementing a more problem-based approach with regard to its consumer protection supervision.

- It should be stressed that undertaking problem-based supervision is a fundamentally different concept than conducting thematic reviews. Thematic reviews are regarded as one useful potential instrument in a problem-based supervisory approach, but only as one of many possible interventions. Furthermore, problem-based supervision requires a different approach to the analysis phase of regulatory practice and to accountability for outcomes. A problem based approach involves seeking to identify the most serious market wide conduct risks on a cross-sectoral basis and targeting resources at addressing only those risks.
- The Central Bank should apply its risk-based regulatory approach to monitoring of advertisements.

### 3.2 Probability Risk and Impact System (“PRISM”)

- The Central Bank applies a risk-based model of supervision, which is supported by the PRISM model. The rigorous and systematic supervisory process that follows from the PRISM model is regarded as a good practice.
- The PRISM model symbolizes the Central Bank’s innovative outlook on the financial sector and its drive to look into new ways to enhance effective

supervision (other examples are the use of skilled persons reports and its approach to consumer redress).

- The integrated supervisory approach that follows from the PRISM model allows CPD to have full insight into the activities of regulated firms. It provides for a comprehensive overview of the compliance strengths and weaknesses of a regulated firm, both from a prudential and a conduct of business perspective.
- While primarily a prudential regulatory model, PRISM also includes functionality in respect of conduct of business matters through the assessment of 'conduct risk' in individual firms and incorporates useful supervisory tools including the thematic and triage functionalities. Further work is required however to operationalise the Central Bank's 5 C's Consumer Protection model to better identify and prioritise key consumer risks (including market wide risks) and from that, to devise consumer protection actions to deal with those key risks. It is noted that the supervisory approach for branches and inward passporting firms under PRISM relies mainly on reactive processes and there is no prescribed minimum frequency of on-site reviews and engagement with such firms. In addition, under PRISM all retail intermediaries are currently categorised as 'low impact' resulting in limited prescribed supervisory engagement under the PRISM model.
- On-site reviews and intrusive supervision techniques are mainly allocated to higher impact firms on a proactive basis under the PRISM model. The majority of regulated firms have been categorised as low impact under the PRISM model (including retail intermediaries) and supervision of those firms therefore mainly involves reliance on reactive processes and thematic reviews. Such reactive processes can include all those processes (on-site engagements, meetings, skilled person reports, stress tests etc.) that apply to higher impact firms.
- The AFM observed that it is not always apparent to market participants how the themed inspections conducted and the inspections following from PRISM relate to each other. This is especially the case for entities that are subject to both thematic reviews and inspections stemming from PRISM.
- Information on market signals is collected through the monitoring of all sorts of social media. The Central Bank might wish to further improve the quality of the output by grouping signals and to analyse structural market issues. The monitoring of social media might also be beneficial for the discovery of structural issues, such as the sustainability of new business models.
- While recognising both the usefulness and the limitations of PRISM in relation to the CPD consumer protection mandate, a lot of CPD managerial attention is dedicated to the governance process of PRISM (for example, in relation to

participation in Risk Governance Panels and overseeing the implementation of RMPs in individual firms).

- The Central Bank should consider how its consumer protection function should interact with the PRISM system in the light of the abovementioned observations.
- A shift in emphasis towards a more problem-solving supervisory mechanism may be particularly beneficial for the 'low impact' intermediaries. All risks associated with these firms may not emerge from the current risk-based supervision framework (PRISM).
- In making the above observations, it is important to re-iterate that consumer protection is a relatively new area in regulation with limited harmonized standards. It is also an area in which regulatory models are evolving and being re-shaped worldwide as policy makers recognise that regulatory models traditionally used for prudential purposes are not always easily adaptable as appropriate models for consumer protection supervision.

### **3.3 Prioritization, capacity and planning**

- The Central Bank faces many competing demands in terms of protecting consumers and performing its related statutory functions with limited resources. In its strategic plan for 2013-2015, the Central Bank sets itself 5 clear areas of priority in terms of its consumer protection strategy as follows:
  - Mortgage Arrears
  - Enhance the Consumer Protection Framework
  - Ensure Consumers are treated fairly by Financial Institutions
  - Low Impact Firms – deal with emerging risks in each sector
  - Engagement with Key Stakeholders

The Central Bank has made substantial progress in advancing these priorities as evidenced by the policy and supervisory work cited in Chapter 2 of this report. Nonetheless, with an ambitious and challenging work program, it is important to continue to ensure that resources are allocated to target key priorities.

- The Central Bank uses PRISM to allocate resources and to plan supervisory activities based on probability of failure and impact of failure on the financial system, the economy and citizens. The AFM is of the view that the system of supervisory resource allocation within the PRISM model is extremely rigorous, systematic and continuous in its approach. However, not all consumer protection activity is covered by the PRISM model.

- CPD seems to combine a quite rigid prioritization model for part of its activities (within the PRISM scope) with a quite loose model for the remaining part of its consumer protection activities (outside of PRISM scope). The Central Bank might wish to move towards a more integrated prioritisation model for its consumer function, which combines the advantages of rigour and flexibility of the two current models.
- Additionally, there are mechanisms for identifying new products and market risks in place such as the market intelligence function and PRISM supervisory work. However, CPD could benefit from having policies and systematic procedures in place for reprioritizing projects/works streams in the case of sudden serious issues arising.
- The Central Bank might wish to consider the following recommendations:
  - The Central Bank currently prepares its strategic plan on a forward looking basis with a future time horizon of three years. The AFM engagement team were advised that this three year time horizon for strategy is derived from a statutory requirement under the 1942 Act. Nonetheless, the Central Bank may wish to consider drafting and executing a more elaborate long-term strategic plan to promote that customers are treated fairly. Such a plan could connect the 5 C's Framework and the high level strategic goals mentioned in the Central Bank's Strategic Plan to the tactical and operational planning of consumer protection activity and outcomes that are performed on a yearly and on-going basis within the PRISM system and on the team level.
  - Introduction of a formalized and systematic process prior to establishing the 'long' thematic prioritization list (and introducing the rationale to justify the areas on the list). The 5 C's framework is regarded as a good reference point when establishing these priorities.
  - If priorities need to shift during a period of time, it should be made easier to systematically adjust these priorities.
  - The procedures for changing priorities already set in the strategic plan (or underlying work programs) or the instant prioritisation of significant new consumer protection issues and the allocation of supervisory resources to such issues would benefit from being formalised.
- The CPD seems reluctant to deprioritize.
  - Both the organizational culture and the relevant procedures do not appear to allow supervisors to de-prioritise known risks, even though these may not be the most important risks to address.
  - An example is the heavy workload of the CPD policy team, reflecting the extent of developments not only in Ireland but at a European level.

- There is a risk of taking on too many issues such that it becomes very difficult to have a satisfactory impact on the most impactful issues.
- CPD might therefore wish to consider focusing resources on only the highest priorities. This requires the establishment of more stringent criteria and processes for prioritization/deprioritization. It also requires firm support by top management for deprioritization decisions and proactive stakeholder management.
- Regardless of reprioritization, the capacity of CPD seems to present challenges in terms of protecting consumers into the future.
  - The feedback that the AFM gathered from external stakeholders of the Central Bank confirms this observation.
  - Should the Central Bank consider implementing some of the recommendations made in this Report, the Central Bank might wish to consider whether sufficient resources are dedicated to consumer protection. Stricter deprioritization as recommended above will contribute to the freeing up of resources, but it seems doubtful that the recommendations that require substantial additional supervisory activity can be implemented successfully with the current capacity.

### 3.4 Low impact firms/intermediaries

- Currently the supervisory approach for firms that fall into the low impact category relies heavily on the reactive processes, no minimum frequency of on-site reviews and engagement with these firms is prescribed.
- This is of material importance, as experience indicates that large impact consumer protection issues on financial retail markets regularly originate from smaller firms that are 'low impact' each by themselves.
- The Central Bank should consider developing a more elaborate supervisory strategy for 'low impact' intermediaries, with a particular focus on developing a prescribed engagement model for such firms. Such a strategy would ensure that such firms are supervised on a systematic proactive basis, in line with the Central Bank's supervisory approach for higher impact firms.
- In relation to enforcement in respect of low impact intermediaries, please see 'Enforcement' section below.
- The annual online return employed for the low impact firms could be used to better effect for consumer protection purposes. The queries in the online

return, insofar as they relate to consumer protection issues, are mainly limited to requiring the firm to report the volume of complaints received.

### 3.5 Compliance motivation and corporate culture

- The Central Bank seems to be relatively well aware of the complexity of inducing compliance motivation as a regulator, such as:
  - the interplay between intrinsic and extrinsic compliance motivation factors;
  - the risk of ‘crowding out’ intrinsic motivation by enforcement or the threat of enforcement;
  - the need of a ‘license to operate’ (credibility) as a regulator to effectively engage in compliance motivation through moral suasion;
  - the intricacies of employing social motivation.
- However, in practice these insights do not seem to be a systematic and integral part of the approach the Central Bank uses to determine which interventions to employ.
- The Central Bank might wish to consider developing a more systematic approach towards promoting consumer protection compliance motivation within regulated firms.
- We recommend a more focused effort to explicitly engage regulated firms with large or medium-high impact more systematically and intensely on corporate culture issues (complementing the initiatives in progress, such as meetings with board members of regulated firms). This would require inter alia:
  - Time, substantial investment of capacity and building the requisite knowledge.
  - A shift in regulatory relations with the regulated firms involved.
  - Preparedness to experiment and, at times get things wrong.
- In investigations the Central Bank can provide straightforward mechanisms to refund consumers when compliance with the CPC could not be demonstrated. The Central Bank has recently secured the establishment of firm-based voluntary redress schemes to refund consumers, for example, in the context of compliance issues around the sale of PPI and a recent information technology outage in a major bank. The risk of a requirement to provide redress or refunds could have a preventive effect on regulated firms thus improving the motivation for compliance of financial institutions. The recent introduction of enhanced supervisory powers to require the provision of redress to consumers will assist in that regard.

### 3.6 Enforcement

- A number of Administrative Sanctions cases have been taken by the Central Bank against retail intermediaries (for example, settlements entered into on foot of the themed inspection on professional indemnity insurance in 2012/2013). However, in our view, there has not been a sufficient number of consumer detriment cases taken on with respect to low impact intermediaries. In addition, having regard to the high number of low impact intermediaries under supervision by CPD, the Central Bank may wish to further develop its strategy in order to make more efficient and robust enforcement decisions for this sector.
- A number of positive examples of enforcement were cited where the Central Bank's Consumer and Prudential functions and Enforcement Directorate worked together to achieve positive outcomes for consumers. For example, the Central Bank cited a recent settlement agreement with a major bank in relation to an information technology outage which resulted in substantial customer redress (required and overseen by the Central Bank under which the bank paid approximately €59 million to affected customers) and a regulatory fine of €3.5m.
- Nonetheless, it is important that CPD and Enforcement continue to share ownership in the process of prioritizing individual cases and selection of enforcement priorities based on a common or converging risk appetite and shared explicit goals to be achieved by targeting these cases and themes. This includes considerations both on a tactical level (e.g. what is to be achieved towards the targeted firms) and a strategic level (e.g. how does this enforcement action contribute to the long term goals of the Central Bank). Evidently, during this process CPD and Enforcement should pay due respect to their separate functions. However, this does not preclude both Directorates from engaging in such intensified deliberations. The Central Bank may therefore wish to consider further strengthening its policy and practice in this regard.

### 3.7 Measuring and reporting effectiveness

- There seems to be room for improvement in systematically measuring the outcomes of CPD's interventions. A lot of the separate data and systems required for outcome measurement seem to be available within the Central Bank (PRISM, Balanced Score Cards, self-reported data, thematic review data, etc.). The Central Bank should consider bringing these together systematically, as an integral part of its supervisory process.
- Outcome-based accountability of CPD's efforts will also improve if such a systematic outcome measurement approach is adopted. For instance, the

current Annual Report provides limited information on consumer protection outcomes achieved, focusing more on fulfilled activities and output such as formal enforcement measures.

- Not only will such an approach promote external accountability, but also – and equally important – it will show whether supervisory actions have contributed to the desired results. This information is important in order to improve the regulatory process and to ensure that the correct priorities are set.

### **3.8 Stakeholder engagement**

- The Central Bank has an enhanced stakeholder engagement model which is an integral part of CPD's 5 C's strategy. This stakeholder engagement, together with the advisory role of the CAG, is regarded as a good practice. Given its involvement in numerous recent consumer protection initiatives, the CAG plays an important role in ensuring the voice of the consumer is represented within the Central Bank.
- All external stakeholders interviewed by the AFM confirmed the willingness of the Central Bank to consult with them when introducing new codes, regulations, standards or guidelines. However, external stakeholders feel the need to be better informed about the follow up actions after they have been consulted.
- Therefore, the Central Bank might wish to consider putting more emphasis on the process of reporting back to stakeholders on whether their concerns will be addressed and how they will be addressed, as well as explaining which concerns or suggestions were not addressed and the reasons why.
  - Reporting back can help establish credibility, manage expectations, and create sustainable long term commitment by stakeholders (and thus reduce the risk of possible consultation fatigue or cynicism).
  - All of these are important when taking a long-term view of stakeholder engagement.
- Some external stakeholders expressed their need to engage with the Central Bank more in strategic conversations about the developments in the financial markets, in order to define the best strategy for their businesses. It is recommended that the Central Bank considers addressing this need.
  - This provides a valuable opportunity to influence market participants' consumer protection strategy, which can contribute substantially to the Central Banks long term objectives.
  - Such conversations also provide crucial insight into future risks and opportunities that the Central Bank may wish to focus on proactively.

### 3.9 Prudential/conduct risk

- The Central Bank has an integrated supervisory structure. It is therefore important that consumer protection supervision can continue to function separately from prudential supervision. Although in the current organizational structure of the Central Bank there is a separate Directorate for Consumer Protection, it is still important to monitor that there is not an unbalanced supervisory approach between prudential supervision and consumer protection supervision.
- The Central Bank has an integrated supervisory structure and potential conflicts of interest may arise between the prudential supervision and conduct-of-business supervision mandates of the Central Bank.
  - With this embedded potential for conflicts of interest to arise, the Central Bank might wish to consider developing appropriate mechanisms to ensure that any such conflicts are addressed appropriately having regard to the overall statutory mandate of the Central Bank and the Central Bank's stated mission of both *"Safeguarding Stability"* and *"Protecting Consumers"*.

### 3.10 Staff Motivation

- The AFM has been impressed by positive attitude of staff consistently observed during its on-site visit. Staff members showed great dedication to consumer protection and to the further improvement of the quality of their work. The feedback that the AFM gathered from external stakeholders of the Central Bank confirms this observation.
- Together with top management support, engaging this positive approach is the most quintessential component required to successfully implement any of the recommendations made in this Report.

### 3.11 Behavioral economical insights

- The Central Bank is to be commended for its intention to systematically apply current behavioural economics insights in its consumer protection function, as evident from its recent pilot in this area jointly with other stakeholders on the issue as to how consumers evaluate and choose between complex products. This may contribute considerably to effectively addressing the needs of vulnerable groups. The Central Bank also cited other examples of consumer research undertaken to determine consumers' awareness and understanding of financial products, for example, research involving interviews with consumers of licensed moneylenders which was used to inform the Central Bank's regulatory

approach. The Central Bank might wish to reflect on further opportunities to employ behavioural economical insights in its work in the area of consumer protection.

- Further attention to behavioural economics would require inter alia:
  - Time, substantial investment of capacity and building the requisite knowledge.
  - A strategic vision on the desirable balance in the Irish market between reliance on the personal responsibility of vulnerable financial consumers to make decisions in their best interests, 'nudging' these consumers to act in their best interests, and forcing regulated firms and/or vulnerable consumers in their choices in the interests of the consumers involved.
  - Anchoring of behavioural economics insights and of the associated regulatory perspective in the structure, processes and culture of the consumer protection function of the Central Bank.
  - Encouraging a shift in the financial market from a legal to a behavioural perspective on consumer protection.

## **Appendix 1 – Themed Inspections & Reviews Undertaken by CPD (2011 – 2014)**

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### **Credit Institutions and Mortgage Lending**

CCMA Compliance Theme – 2014-2015

Review of Sales Incentives to direct employees of Insurance Companies, Credit Institutions and Investment Firms - July 2014

Review of the Advertising relating to the Requirements of the European Communities (Consumer Credit Agreements) Regulations - 2014

Themed Review on the Code of Conduct for Business Lending to Small and Medium Enterprises - 2014

Implementation of the Revised CCMA Themed Review – 2013

CCMA Inspection – Report on Review of Credit institutions to Inform CCMA Review – 2013

CCMA Inspection – Level of Contact and Appeals - 2012

Themed Inspection: Sale of Payment Protection Insurance - June 2012

Review of Implementation of Consumer Protection Code 2012 - June 2012

Review of Implementation of the Code of Conduct on the Switching of Current Accounts with Credit Institutions - December 2011

Review of Out of Order Activity Fees on Current Accounts - December 2011

Review of Lenders Compliance with the CCMA - June 2011

Inspection of Bank's promotional interest rates - May 2011

Review of Tracker Bonds' Key Features Documents - March 2011

### **Insurance Companies**

Review of Sales Incentives to direct employees of Insurance Companies, Credit Institutions and Investment Firms - July 2014

Review of Annual Personal Pension Statements - May 2014

Household Property Claims Themed Inspection - October 2013

Review of Implementation of Consumer Protection Code 2012 - June 2012

Third Party Personal Injury Claims - October 2011

Complaints Handling by Insurance Firms - April 2011

### **Stockbroking & Investment Firms**

Theme on the provision of information on costs and charges by MiFID Firms – December 2014

Review of Sales Incentives to direct employees of Insurance Companies, Credit Institutions and Investment Firms - July 2014

Best Execution under MiFID Themed Inspection of Investment & Stockbroking Firms - July 2012

Complaints Handling by Investment & Stockbroking Firms - June 2011

Review of CFD/Spread Betting Firms' Compliance with MiFID Regulations - June 2011

### **Retail Intermediaries**

Professional Indemnity Insurance Themed Review – 2014, 2013, 2012

Financial Position Theme – 2014, 2013, 2012

Loss Assessors conduct of business – 2014

Sale of Pensions theme – 2013

Code of Conduct & Other Supervisory Issues theme – 2011

Top 30 firms review – 2011

### **Moneylenders**

Review of the Advertising relating to the Requirements of the European Communities (Consumer Credit Agreements) Regulations - 2014

Inspection of Licensed Moneylenders APRs and Costs of Credit - March 2013

Inspection of Licensed Moneylenders - February 2011

## List of Abbreviations

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### A

AFM: Netherlands Authority for Financial Markets

### B

### C

CAG: Consumer Advisory Group

Central Bank: Central Bank of Ireland

CCMA: Code of Conduct on Mortgage Arrears

CCPC: Competition and Consumer Protection Commission

CMF: OECD Committee on Financial Markets

CPC: Consumer Protection Code

CPD: Consumer Protection Directorate

### D

### E

EBA: European Banking Authority

EIOPA: European Insurance and Occupational Pensions Authority

ESA: European Supervisory Authority – (EBA, EIOPA & ESMA)

ESCB: European System of Central Banks

ESMA: European Securities and Markets Authority

ESRI: Economic and Social Research Institute

### F

FinCoNet: International Financial Consumer Protection Organisation

FRA: Full Risk Assessment

FSB: Financial Stability Board

FSO: Financial Services Ombudsman

### G

G20 Principles: G20 High-level Principles on Financial Consumer Protection

### I

IOSCO: International Organisation of Securities Commissions

### M

MiFID Regulations: European Communities (Markets in Financial Instruments) Regulations 2007

MCC: Minimum Competency Code

### N

## **O**

OECD – Organisation for Economic Co-operation & Development

## **P**

PARP: Product Approval and Review Process

PPI: Payment Protection Insurance

PRISM: Probability Risk and Impact System

Programme: Mutual Learning Programme

## **R**

RMP: Risk Mitigation Programme

## **S**

## **T**

The 1942 Act: the Central Bank Act 1942

The 2007 Act: the Consumer Protection Act 2007

The 2010 Act: the Central Bank Reform Act 2010

The 2013 Act: the Central Bank (Supervision and Enforcement) Act 2013

## **U**

UCITS – Undertakings for Collective Investment in Transferable Securities

## **V**

## **W**

## **X**

## **Y**

## **Z**

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