



**Submission to the Oireachtas Committee on Children, Equality,
Disability, Integration and Youth on the General Scheme of the Assisted
Decision-Making (Capacity) (Amendment) Bill 2021**

20th January 2022

1. Overview and area of expertise

The Irish Banking Culture Board (“IBCB”) was established in April 2019, and is an independent industry initiative, fully funded by the five retail banks operating in Ireland (Allied Irish Banks, Bank of Ireland, KBC Bank Ireland, Permanent TSB & Ulster Bank). The IBCB’s purpose is to work with our member banks to build trustworthiness in order to assist the industry in regaining public trust. To do this, it is essential that culture and behavioural change are prioritised at the most senior levels in our member banks, from Board level down. We work with our member banks and a wide range of other stakeholders to achieve this with the aim of promoting an environment where ethical behaviour and culture lies at the heart of banking; fair customer outcomes are achieved; staff are supported and reputation for competence is rediscovered.

The Board is independent with a non-banking majority, whose members are drawn from across Irish society. The IBCB’s goal is to act as an independent, transformative influence on culture within the banking sector. Rooted in the knowledge that a changed culture will change outcomes, the IBCB promotes ethical behaviour and advocates for humanity, decency, and respect in the banking sector.

Our strategic plan focuses on three pillars which we believe will assist in rebuilding the trust and reputation of our member banks: Customers, Staff, and Citizenship and Society. Support for customers in a vulnerable position has been identified as an important area of focus by our member banks and by external stakeholders within these pillars. This is particularly pertinent for bank customers who may be relevant persons, under the definition of the Assisted Decision-Making (Capacity) Act 2015 and may require additional support from their financial services provider, whilst enabling them to make decisions in a manner that is both safe, protects from financial and other forms of abuse, and upholds their rights.

The IBCB welcomes the opportunity to respond to the Oireachtas Committee on Children, Equality, Disability, Integration and Youth on the General Scheme of the Assisted Decision-Making (Capacity) (Amendment) Bill 2021. The IBCB is responding to this consultation in the context of managing Property and Affairs within the Bill, and more specifically in managing financial affairs. The Bill, along with the creation of the Decision Support Service and associated supports are positive changes to empower relevant persons to make their own financial decisions, with support as needed. Our interest in this consultation is aligned to our goal to demonstrate positive behaviour and cultural change in banking. In particular, our work programme with our member banks and stakeholders focuses on improving financial awareness for all customers and specifically for customers in a vulnerable position, and by demonstrating support for communities and society, as a demonstration of the banking industry’s commitment to positive change. By contributing to the successful implementation of this Bill and the associated services and supports, the IBCB and the banking industry can ensure that it is well-prepared for the launch of this new legislation and service, staff are appropriately trained, and supports are available for both customers and staff. There are, therefore, some considerations that we believe are important to ensure a successful implementation. Direct and ongoing engagement with the banking industry would be welcome to achieve this goal.

2. Implementation of the Assisted Decision-Making (Capacity) (Amendment) Bill 2021.

Our initial research with key stakeholders and members of the public highlighted the need for more support for customers in a vulnerable position, with some respondents expressing a view that banks have a particular responsibility to support communities and society. Consumer protection and empowerment were highlighted as an important requirement.¹

Further internal research which we undertook in 2020 sought feedback from a range of stakeholders and included focus groups with bank staff. Staff outlined experiences of customers presenting in bank branches with issues such as dementia and cognitive impairment, impacting on their ability to conduct their banking business. Experiences highlighted that frequently customers do not have any instrument in place (i.e., enduring power of attorney etc.) to enable a spouse or family member access the customer's account and conduct important financial transactions (e.g., pay household bills, pay for appropriate care and support of the individual etc.). Staff reported a clear gap in public awareness regarding the need for an enduring power of attorney to be in place in order to facilitate access to a parent's/spouse's bank account. In such circumstances, branch staff are often unable to facilitate a spouse/other family member access a customer's account given current regulations. This can and does result in considerable frustration and stress for family members and often involves a protracted administrative process to resolve. The current situation allows for few alternatives to an enduring power of attorney or ward of court process if customers are in a position to manage their financial affairs but require some support. Furthermore, customers can be at risk of financial and other forms of abuse if appropriate supports are not in place and therefore additional supports to safeguard customers are welcome.

The Assisted Decision-Making Act and this amendment bill are therefore important to address these issues and enable customers to manage their own financial affairs where possible.

2.1. Assessment of Capacity

The proposed changes in the Assisted Decision-Making (Capacity) (Amendment) Bill 2021 are very welcome. They will enable customers to continue to manage their own affairs (with support as required) where possible. The process to ensure customers can receive assistance with their decision-making is critical. It represents a significant change for banks and other financial services providers. We understand that the draft Code of Practice for Financial Professionals and Financial Service Providers anticipates financial professionals or financial services providers may be required to assess customers' capacity to make financial decisions.² We believe it is important to note that this represents a change of practice for bank staff, who today generally rely on medical assessments for this purpose. The IBCB believes that it is important to be fair to bank staff by ensuring they have the required support, and training to successfully deliver this change for bank customers.

Customers may also carry out financial transactions with several providers (i.e., many customers have bank accounts or other financial accounts with a range of providers) and therefore may require

¹ IBCB Public and Stakeholder Consultation Report 2019

<https://www.irishbankingcultureboard.ie/publications/ibcb-public-and-stakeholder-consultation-report-2019/>

² Section 2.1.3 Code of Practice for Financial Professionals and Financial Service Providers

https://decisionsupportservice.ie/public-consultation/public-consultation-phase-1#section_3

different support depending on account type or provider. It may be beneficial to ensure that there is strong guidance and industry-wide training to support this process and ensure it takes account for staff, who are not health or care providers, undertaking assessments of customers' capacity and ensuring that such assessments are undertaken in a fair and consistent manner. A further consideration may be how this information is accessed as required by customers and staff. We believe this will benefit both customers and staff.

2.2. Alignment with existing legislation and regulation

Financial Services, and in particular the banking industry, is a heavily regulated sector of the economy. The banking industry is required to follow a range of regulation and legislation, to ensure consumers are protected and the conduct of those working in the industry is supervised and monitored by the Central Bank of Ireland (CBI). As outlined by the CBI, financial services providers are required to demonstrate a positive consumer-focused culture and to treat customers in a fair and transparent way, ensuring that they are fully compliant in this regard. The CBI has developed a consumer protection framework that supports this and ensures that consumers' best interests are protected.³ The Consumer Protection Code (2012) (CPC) is the primary regulatory code used in this regard, with other codes and regulation applicable also.⁴ Separately the Financial Services and Pensions Ombudsman provides an important free service to customers if they have cause to complain about their financial services provider, as outlined in the Financial Services and Pensions Ombudsman Act 2017.

We believe that it is important to ensure that the existing regulation and legislation aligns with the new Assisted Decision-Making (Capacity) (Amendment) Bill 2021 and codes of practice, such that it is clear to customers, to decision-supporters, to supervisors and to financial services providers and their staff how the legislation and regulation supports the effective implementation of this important change and by doing this, reduces the risk of unclear or contradictory codes. This is particularly pertinent for bank staff, where there is a risk that it may create confusion. Bank staff have personal responsibility to support consumers within existing regulation, through minimum competency requirements and the obligations outlined in the current codes and will need clear instruction and training to ensure the provisions for assisted decision-making are included.

An example of this is the definition of a vulnerable customer in CPC, which states that a *"vulnerable consumer"* means 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). Whilst CPC differentiates between those who may require assistance to carry out their banking and those who have reduced capacity and require assistance, it does not distinguish between the types of assistance required by relevant parties, as defined in the Assisted Decision-Making (Capacity) Act 2015.

³ <https://www.centralbank.ie/regulation/consumer-protection>

⁴ <https://www.centralbank.ie/docs/default-source/Regulation/consumer-protection/other-codes-of-conduct/4-gns-4-2-7-cp-code-2012.pdf>

CPC further outlines how financial services providers should support vulnerable customers, in that *‘where a regulated entity 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 that may be necessary to facilitate him or her in his or her dealings with the regulated entity’*, (section 3.1). This section does not reference the varying levels of support as provided for in the Assisted Decision-Making (Capacity) Act 2015 and Code of Practice. It may be necessary to ensure that CPC is aligned with the provisions of the Assisted Decision-Making (Capacity) (Amendment) Bill 2021 and the codes of practice, to ensure that the code allows for the provisions of assisted decision-making and the various decision support arrangements.

2.3. Communication of change

Communication was identified as a key concern for stakeholders and members of the public in the IBCB’s 2019 consultation report. Furthermore, financial awareness has also been identified as a concern for many customers and stakeholders. It is therefore vitally important that the new Assisted Decision-Making supports, and processes are communicated to both relevant persons, their supporters, to financial services providers and professionals in an appropriate and consistent manner.

3. Summary

In summary, we believe that to ensure the effective implementation of the Act, as it applies to customers and their financial services providers, there are some important considerations. These are:

- Supports for bank staff newly undertaking functional capacity assessments;
- Consistent approach to legislation and regulation, such that it is complimentary and supports staff in financial services providers to effectively implement and operate the Act;
- Clear communication to all parties involved in the Act.

We suggest a flexible approach as the Act and new codes of practice are implemented, with ongoing engagement to identify and address areas for improvement, such that relevant persons receive the best possible support from the banking industry and the industry, and its staff can demonstrate positive behaviour and a strong customer focus. It may be beneficial to have an initial implementation period, which allows for new services and processes to be commenced, to learn lessons and adjust accordingly which would lead to better outcomes for relevant persons, their supporters and for bank staff. This is a significant and welcome change for customers, banks and bank staff and can be made more successful in this way.

As an organisation focused on behaviour and culture in the banking industry, with initiatives to support customers in a vulnerable position and to improve overall financial awareness, the IBCB welcomes this focus on assisted decision-making. While we have no role in product design or implementation, we are committed to doing our part to assist with the successful roll-out of this Bill. On this basis, if the Committee felt it would be useful, we would be happy to participate in a public session at a committee meeting. We thank the Committee for the opportunity to submit a response to this bill.