

### Irish Banking Culture Board Submission on Issue 4: Financial Abuse

The Irish Banking Culture Board (IBCB) is an independent industry initiative established and funded by the five retail banks in Ireland, (Allied Irish Banks, Bank of Ireland, KBC Bank Ireland, Permanent TSB, and Ulster Bank), with the aim of rebuilding trust in the sector through demonstrating a change in behaviour and overall culture. The IBCB's goal is to act as a transformative influence on culture within the banking sector. The Board is independent with a non-banking majority, whose members are drawn from across Irish society. The role of the IBCB is to be an independent voice advocating for cultural change in the Irish banking industry. 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.

The IBCB welcomes the opportunity to respond to the [Law Reform Commission's Issues Paper](#). Two pillars of our work are **bank customers**, with a focus on vulnerable customers and **bank staff**, to protect and provide a voice to staff and consequently this issues paper is of interest to us. Our submission is based on **Issue 4: Financial Abuse**, which impacts on bank customers, staff, and institutions.

The categories of financial abuse raised in the issues paper are issues noted by banks, with some pre-existing supports in place.

1. Thefts and Scams
2. Financial victimisation
3. Coercion
4. Signs of possible financial exploitation
5. Money management difficulties.

It is noted in the issues paper that these categories of abuse can be difficult to manage because of:

- Lack of understanding of financial decisions
- Inadequate provision of staff training
- Inadequate support for staff
- Absence of mandatory reporting
- Absence of inter-sectoral collaboration.

These issues are recognised challenges for banks and for bank staff. We note the primary focus of this document is on health or social care professionals working in adult safeguarding. We believe the practicality of the framework should consider the role of bank staff, who are not health or social care professionals.

### Regulatory Framework

In our opinion, the introduction of a new regulatory framework should take existing legislation and regulation for financial services into consideration to avoid any contradictory regulation and should highlight any appropriate pre-existing regulation. The document outlines current legislation, such as the Consumer Protection Code (2012)<sup>1</sup> and the Criminal Justice Act (Withholding of Information on Offences against Children and Vulnerable Persons) (2012), with regards to reporting of possible

offences against a vulnerable person. The Central Bank of Ireland (CBI) is undertaking a review of the Consumer Protection Code (2012) in 2020, which it expects to continue into 2021<sup>2</sup>. We think this is a timely opportunity to include adult safeguarding requirements into the principal consumer protection code and regulations for banks. This review will also consider the effect of digitalisation of services on consumers, which is highlighted in the issues paper as an increased risk of financial abuse. We believe the revised Consumer Protection Code, once adapted to accommodate adult safeguarding requirements, should suffice, given it represents a well-established comprehensive regime on consumer protection.

### **Assisted Decision Making Act**

We consider that the implementation of a new regulatory framework for adult safeguarding should align to the implementation of Part 7 of the Assisted Decision Making Act (2015) with appropriate allocation of resources including the availability of Civil Legal Aid where appropriate.

### **Bank Staff Impact, Training and Competency**

Individual banks and the Banking and Payments Federation Ireland have pre-existing systems, processes, and customer activities to prevent scams and theft from customers' accounts. Whilst this addresses some categories of financial abuse, it is a complex area. The paper highlights the importance of training for Bank staff. In many cases this training takes the form of online training in banks, with some specialist training. It can be very difficult, even with training, for bank staff to identify instances of diminished capacity which can lead vulnerable customers to have a poor understanding of their financial decisions or for banks to identify financial abuse, in particular with the increased use of self-service options for customers. Staff report significant challenges in identifying impairments or customers may be offended when offered additional support for vulnerable customers. Any changes arising from the requirements outlined may result in significant changes to bank processes, systems and staff.

Vulnerable customers are defined in the Consumer Protection Code (2012) Chapter 12 as "*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)".*

The Consumer Protection Code (2012) Chapter 5 covers knowing your customer and suitability in selling to customers which address issues such as mis-selling. Similarly, the Minimum Competency Code (2017) Minimum Competency Regulation (2017) cover staff competency. However, we think a more specific definition and a new banking protocol or code of practice would support an improved focus on and better outcomes for vulnerable consumers.

### **Draft Code of Practice for Financial Services Professionals**

We understand there is currently a draft Code of Practice for Financial Services Professionals (Mental Health Commission Decision Support Service – Draft Code of Practice for Finance Professionals), arising from the Assisted Decision Making Act (2015). This will be significant in guiding banks in

relation to their obligations. Any protocol or code of practice would need to align to banking regulations and legislation. We look forward to reviewing and commenting on this in due course.

### **Other Regulatory Challenges**

There are additional challenges with existing legislation such as the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 regarding Anti-Money Laundering requirements, which impact on vulnerable adults. This can result in vulnerable adults being unable to open and utilise a bank account if they are unable to complete ID verification processes in a bank, resulting from a cognitive or verbal impairment.

### **Privacy and Disclosures**

The issues paper notes the reluctance of bank staff to breach data privacy laws. This can be particularly problematic given the sensitive nature of bank details. There may also be concerns among bank staff about reporting regarding Subject Access Requests.

We believe that bank staff need to be enabled to make a good faith disclosure notwithstanding the fact that they are not mental health/ social care professionals. A 2018 survey of bank staff undertaken by the IBCB showed that whilst most staff state they do speak up where they have a concern, a number of staff reported that they felt raising concerns would be held against them and they are unsure if processes are secure and confidential<sup>3</sup>. We think it would be very helpful to extend the Protected Disclosure Act (2014) to apply to financial institutions and staff who make reports in good faith, where they have suspicions of suspected financial abuse (safe harbour) and which also addresses the current lack of offences on coercion. In addition, there are potential legal and system (e.g. IT) challenges arising from sharing of bank customer information with external services.

However, further consideration would be required to ensure appropriate safeguards for both bank customers and staff in this regard and for legal reporting responsibilities and alignment to the Assisted Decision Making Act (2015) and General Data Protection Regulation (2018) and data privacy requirements.

The issues paper references measures by banks in other jurisdictions including UK Bereavement Principles. The equivalent principles in Ireland are the “Common Commitment of Care”, which is a voluntary practice operated by IBCB member banks, developed by the Irish Banking Culture Board workshop in 2019.

## Questions

*Q. 4.1 Do you consider that sectoral regulators and bodies such as the Central Bank of Ireland and the Department of Employment Affairs and Social Protection currently have sufficient regulatory powers to address financial abuse in the context of adult safeguarding?*

It is our view that the current banking regulations will need to be reviewed against any proposed safeguarding legislation or regulation to assess the impact of any conflicts or overlapping regulation. Whilst the CBI and Financial Services and Pensions Ombudsman regulate and adjudicate on financial services for consumers, in our opinion, the current banking regulation is not sufficiently detailed to prevent financial abuse for vulnerable adults. It may be possible to include the requirements of the Assisted Decision Making Act (2015) and other adult safeguarding requirements in the CBI review of the Consumer Protection Code (2012), underway in 2020 and due for completion in 2021. We believe the revised Consumer Protection Code, once adapted to accommodate adult safeguarding requirements, should suffice, given it represents a well-established comprehensive regime on consumer protection.

*Q. 4.2 If the answer to 4.1 is no, do you consider that either or both of the following would be suitable to address financial abuse:*

*(a) a statutory financial abuse code of practice or protocol;*

*(b) a statutory form of protected disclosure, along the lines of the Protected Disclosures Act 2014, for financial institutions that engage in responses to suspected financial abuse in good faith.*

(a) In our view a statutory financial abuse code of practice or protocol would be suitable. However, any code of practice would need to consider existing regulation and codes for banks, such that it is simplified and comprehensive, rather than an overlay of an additional code of practice. This includes the Consumer Protection Code (2012), CBI Fitness and Probity Regime, Minimum Competency Code (2017) Minimum Competency Regulation (2017). These regulations and codes define vulnerable consumers, address consumer protection and risks of mis-selling by bank staff to vulnerable customers but may not be sufficiently detailed in the area of adult safeguarding. We think it should also take into consideration the practicality of operating any such abuse code in a branch banking, telephony, or online environment, which may be different to the other areas covered in the issues paper (such as health or social care).

(b) Yes, we believe a statutory form of protected disclosure would be suitable. However clear information regarding protected disclosures would be required, with a potential extension to the Protected Disclosure Act (2014) to apply to financial institutions and staff who make reports in good faith, where they have suspicions of suspected financial abuse (safe harbour) and which addresses the current lack of offences on coercion. It should also consider the potentially limited interaction between vulnerable adults and bank staff, which would differ from health or social care settings and the operating environment of banks (i.e. branch banking, telephony, online environment). As noted, we think further consideration would be required to ensure appropriate safeguards for both bank customers and staff and for legal reporting responsibilities and alignment to the Assisted Decision Making Act (2015) and GDPR and data privacy requirements.

*Q. 4.3 Do you consider that further additional regulatory powers are required to address financial abuse? If yes, please give examples.*

We believe a review of the requirements against existing regulatory powers is needed, to ensure clarity and to remove any potential contradictions. It may be possible to include the requirements in the review of the Consumer Protection Code (2012), as previously noted. A detailed review should highlight any potential gaps, with a view to addressing any such gaps.

**Sources:**

<sup>1</sup> Central Bank of Ireland: *Consumer Protection Code 2012* <https://centralbank.ie/docs/default-source/regulation/consumer-protection/other-codes-of-conduct/4-gns-4-2-7-cp-code-2012.pdf?sfvrsn=6>

<sup>2</sup> Central Bank of Ireland: *Consumer Protection Outlook Report* <https://centralbank.ie/docs/default-source/regulation/consumer-protection/consumer-protection-outlook-report/consumer-protection-outlook-report-2020.pdf?sfvrsn=4>

<sup>3</sup> Irish Banking Culture Board: *Employee Survey 2018* <https://www.irishbankingcultureboard.ie/wp-content/uploads/2020/03/Irish-Banking-Employee-Survey-2018-summary-report.pdf?x35664>

<sup>4</sup> Irish Banking Culture Board: *Common Commitment of Care for Bereaved Customers* <https://www.irishbankingcultureboard.ie/wp-content/uploads/2020/03/The-Common-Commitment-of-Care.pdf?x35664>