European Journal of Risk Regulation (2025), 1–10
doi:10.1017/err.2024.98

CAMBRIDGE UNIVERSITY PRESS

BOOK REVIEW

Consumer and SME Credit Law by Nora Beausang, Bloomsbury Professional, November 2021, pp 2,362.

Dr Karen Lynch Shally

School of Law and Criminology, Maynooth University, Maynooth, Ireland
Email: karen.lynchshally@mu.ie

Consumer and SME Credit law is a notable and important addition to the current rostrum of books profiling Irish financial services law.[1] Its *raison d'etre* is to profile and analyse the full spectrum of conduct of business obligations imposed on the provision of credit to relevant borrowers, the consequences of non-compliance and the remedial frameworks available to borrowers under national law.[2] Whilst other publications subsume credit law within a broader legal or financial services frame of reference,[3] Beausang has adopted a discrete and holistic "regulatory" focus in her contribution, thereby delivering the most expansive and forensic examination of the national framework of credit regulation to date. It is in particular distinguishable for the extent of its examination of the obligations emanating from the Central Bank of Ireland alongside those imposed through legislative frameworks of credit regulation and, more generally, for the rigour of its analysis on the significance and import of the various legal norms.

The book guides the reader through a well-structured journey of the multiple constituents of the national framework. This exploration is undertaken over 2,272 pages, prefaced by the introductory chapter which contextualises the scope of the subject matter to follow and outlines some fundamental concepts that are returned to throughout.[4] It identifies the scope of "credit" addressed,[5] the range of "regulated lenders"[6] as well as the scope of borrower comprised in "consumer" and "SME" under the various components of

[1] Credit law may be conceived as a term which encompasses a composite of legal frameworks prescribing the rights and obligations of borrowers and lenders in the transactional context of credit provision.

[2] The analysis incorporates the public and private law frameworks linked to non-compliance and redress – eg, the administrative sanctions frameworks, criminal offences linked with non-compliance, the dynamic between non-compliance and enforceability of the contract, the capacity to seek damages through the courts or redress by virtue of the Financial Services and Pensions Ombudsman or the Central Bank – see chapters 7, 14 and 16 as well as the text more generally.

[3] See for example, M Donnelly, *The Law of Credit and Security* (3rd edn, Round Hall 2021); J Breslin and E Corcoran, *Banking Law* (4th edn, Round Hall 2019); F Murphy, *Financial Services Law in Ireland: Authorisation, Supervision, Compliance and Enforcement* (Round Hall 2018); and W Johnston, *Banking and Security Law in Ireland* (2nd edn, Bloomsbury 2020). Interestingly, the origins of *Consumer and SME Credit Law* lie in an invitation by Johnston to contribute a couple of chapters on consumer protection in his text and the subsequent realisation that the scope of relevant content necessitated its own publication.

[4] Chapter 1 Acts, Statutory Instruments, Codes and Guidelines relevant to Consumer and SME Credit.

[5] 1.01. Credit in the form of cash loans including overdraft and credit card facilities.

[6] 1.02. Regulated lenders are comprised of Irish and EEA banks, retail credit firms and credit servicing firms.

the relevant legal framework.[7] It also sets an overarching frame of reference for the subsequent component chapters by identifying the capacity for legally binding requirements to be imposed by the legislature, the relevant Minister or the Central Bank. Even at this stage, the author highlights subtleties and intricacies in the parameters of the regulatory landscape which point to the technicality of this area of law, and accordingly, the significance of the book from a compliance-orientated perspective.[8]

Towards the end of Chapter 1, the author seeks to summarise and offer clarity as to the applicability of the various legislative and code-based requirements by providing a series of credit scenarios with variance in aspects such as the date of the agreement, the purpose of the loan and the nature of any related security.[9] This approach is novel among texts in the field and provides a quick, engaging and accessible reference point, enabling clearer understanding of the temporal and subject matter delineations within the national framework.

The subsequent chapters, 2–16, analyse the normative and institutional framework of credit regulation in Ireland. These include multiple chapters with a singular primary focus of analysis, eg, chapter 3 on the Consumer Credit Regulations 2010,[10] chapter 6 on the Code of Conduct on Mortgage Arrears,[11] chapter 13 on the Credit Reporting Act 2013,[12] and chapter 16 on the Financial Services and Pensions Ombudsman. Elsewhere, chapters deal simultaneously with a number of linked regulatory components of primary relevance, eg, chapter 15 on 'Regulation of Mortgage Lending[13] or chapter 16 on "Redress on Regulatory Breach and Enforceability of Contracts Affected by Illegality".[14]

However, in keeping with the text's holistic and integrative approach, the examination of these "primary" provisions is not disjointed from the broader regulatory landscape. Where relevant, other legislative or code-based conduct of business requirements are highlighted and addressed in each chapter.[15] This is notwithstanding that these ancillary provisions are the primary focus of another chapter of the text and the inevitable degree of duplication.[16] While contributing to the significant length of the tome, the result is a complete compliance and liability-orientated profile, not simply in the book as a whole,

[7] At 1.03–1.05. For example, the author highlights the varying scope of a consumer under relevant legislation and the Consumer Protection Code (CPC), as well the parameters which delineate micro, small and medium size enterprises under the framework for business lending.

[8] 1.11–1.17. These include for example the distinction between what is or is not a "regulated activity"; the context in which authorisation requirements may be triggered; and the theoretically, if not practically important, distinction between requirements applying to regulated lenders and those applying irrespective of the lenders' regulated status.

[9] 1.26–1.36.

[10] National legislation which transposes Directive 2008/48/EC on credit agreements for consumers and repealing Council Directive 87/102/EEC [2008] OJ L133/66.

[11] The Code of Conduct on Mortgage Arrears (CCMA) is the Central Bank framework imposing requirements on lenders in addressing existing or potential payment difficulties encountered by borrowers in respect of their principal primary residence.

[12] The 2013 Act established the first statutory credit register and imposed reporting requirements in respect of lending to any natural or legal person where the borrower is resident in Ireland.

[13] Eg, Chapter 5 on mortgage lending; Part IX of the Consumer Credit Act 1995 and the EU (Consumer Mortgage Credit Agreements) Regulations 2016 provide respectively a national and an EU derived legislative framework applicable to "housing loans" and "mortgage credit" respectively, and in addition the Consumer Protection Code (CPC) imposes requirements in the provision of "mortgage credit".

[14] Chapter 16 profiles the public and private law consequences of regulatory breach.

[15] The analysis incorporates, where relevant, guidance from national or EU supervisory bodies, eg, at 8.58 in discussing the implications of the requirement to act in the best interests of customers as a general principle, the author frames the requirement against insights provided in speeches by senior Central Bank officials and international benchmarks on consumer protection by the OECD.

[16] Similarly, in each profile chapter, the remedial avenues in the event of lender non-compliance are identified notwithstanding that chapter 16 addresses these mechanisms in detail.

but also in each component chapter. Accordingly, in discussing the requirements of the Consumer Credit Act 1995 (CCA) in chapter 2, the author identifies the overlapping applicability of the Consumer Protection Code (CPC) 2012 and identifies, for example, the requirements to ensure compliance in the context of an unsolicited visit to a borrower who is classified as a "consumer" under the CCA. In doing so, the author considers the scope and context of the obligations imposed under the CCA, the CPC 2012 and related guidance provided by the Central Bank.[17] At another point, in a discussion on the capacity for the transparency related obligations of the EC (Unfair Terms in Consumer Contracts) Regulations 1995 (1995 Regs) to generate liability for lenders based on the content of their contracts, the author identifies the potential for offending terms to also breach a number of principles of the CPC.[18] These examples provide an insight into the complexity of compliance in the current fragmented landscape and hint at the contemporary significance of the CPC as a bedrock of consumer protection.

The book's approach to the CPC merits highlighting. Beausang understandably considers it "the centrepiece of our consumer protection framework", therefore giving considerable attention to it. Its requirements are deconstructed and extensively analysed over four chapters; an approach which is in part attributable to the variance in the orientation and applicability of its requirements.[19] Code-based obligations are recognised not as an adjunct of legislative provisions, but as the core of the national framework.[20] The regulatory significance of the codes from a liability perspective was recently highlighted by the extent to which breach of the principles of the codes were cited as one of the bases of administrative sanction in the Tracker Mortgage scandal.[21]

The book weaves the relevant EU and national policy and political economy backdrop through its analysis of obligations, identifying the stimulus to existing obligations and, in some contexts, unsuccessful proposals. In the realm of secured lending, the author notes the national policy emphasis on protection of the primary residence and the inherent policy tension between the home as financial collateral and access to housing; noting that the "balancing of constitutional rights and proportionality has very much been a live issue in the context of mortgage arrears resolution strategies".[22] Unsuccessful proposals in the

[17] 2.122–2.124.

[18] 4.12. EC (Unfair Terms in Consumer Contracts) Regulations 1995, SI 27/1995, transposing Directive 93/13/EEC on Unfair Terms in Consumer Contracts [1993] OJ L95/29.

[19] The CPC adopts a life-cycle approach to interaction with financial service users; thus, it has provisions with varying applicability in terms both of the transactional context and the classification of borrower. The deconstruction of the code allows the reader to review in detail discrete aspects of the code's requirements including, for example, the import of the general principles (chapter 8) applicable in respect of customers, the general requirements applicable to customers who are consumers as defined in the code (chapter 9), and substantive requirements to know the consumer and provide a suitable product which underpin national responsible lending obligations and which variously apply to consumers or a narrower range of personal consumer (chapter 10). Further, chapter 11 combines a number of aspects of the code including arrears protocols for credit outside the scope of the CCMA (applicable to personal consumers) advertising errors and requirements in respect of complaints.

[20] This reflects for example, the universal applicability of the general principles to all financial services users, and the broader scope of the "consumer" more generally, notwithstanding that some requirements are applicable only to "personal consumers".

[21] 16.81. On the Tracker Mortgage scandal more generally see chapter 16. This scandal related to lenders' conduct leading to borrowers losing their "tracker" interest rates, ie, interest rates linked to the main ECB refinancing rate in the post 2009 period. Lenders' actions variously constituted breach of contract or regulatory requirements and led to the cumulative imposition of €283,288.520 fines on seven lenders by September 2022. The final Central Bank report noted that there had been 40,100 affected customers with redress in excess of €683 million being provided up to May 2019 as a consequence of a Central Bank examination. See https://www.centralbank.ie/consumer-hub/tracker-mortgage-examination.

[22] At 6.133. This observation is with reference to lenders' constitutional property rights, the scope of which can be limited with reference to the "exigencies of common good".

Irish parliament to impose a consent requirement on the transfer of loans secured on a principal private residence (PPR) are highlighted, as is the suggested conferral on the Central Bank of a power to cap variable rates over PPR loans.[23] It further identifies the inclusion of certain information and transparency-based requirements in the CPC as reflecting commitments given by the Irish state to the European Commission in the context of its bailout.[24] In respect of the Central Bank's supervisory competence for charges, the book highlights policy discussion seeking to balance profitability for banks with the risk inherent in unfettered price-setting capacity.[25] Further, the author profiles, for example, the socio-economic importance of SME's to the Irish economy as a pre-cursor to analysis of the regulatory framework for business lending in chapter 12, and charts the evolution of EU consumer protection policy through maximum harmonisation of consumer credit provisions and the imposition of responsible lending obligations in both consumer and mortgage credit.[26]

A point of interest is the author's intermittent use of the terms "statutory" and "regulatory" to refer to the legislation and codes which comprise the national framework. There is no direct discussion of the purpose or significance of the distinction but it could be inferred that it is intended to demarcate between norms imposed by the Central Bank as the national supervisory authority with regulatory capacity, from those imposed by the legislature.[27] As all conduct of business measures profiled in the book "regulate" market activity, indeed on its broadest framing all law could be said to be instrumental and regulatory, the use of differential terminology is interesting and the question is whether it has a practical or conceptual significance.[28] Certainly, in EU consumer and financial services literature the concept of European Supervision Private law has in the past been used to identify a subset of European Regulatory Private law imposing contract-related conduct of business requirements set as public supervision standards. However, one of the distinguishing characteristics of the former was the restriction to public law enforcement mechanisms.[29] Notably in the evolution of the Irish remedial framework in 2013 there has been a fusing of public and private enforcement mechanisms with applicability to the full spectrum of regulatory obligations.[30] The question is therefore whether the distinction between the source of norms (or indeed forms of norm) has any substantive significance in

[23] At 5.336 and 5.125–5.127 respectively on the No Consent No Sale Bill 2019 and the Central Bank (Variable Rate Mortgages) Bill 2016. The 2016 proposal would have allowed the Central Bank to intervene in respect of loans over primary dwellings where a lender exceeded a rate that was "reasonably and objectively justified" with no provision for appeal against the Central Bank decision. The author notes Central Bank resistance to the proposal and expression of concern by the European Central Bank (ECB).

[24] At 8.02.

[25] At 2.156. A review by the Department of Finance and the Competition and Consumer Protection Commission (CCPC) suggested that together with the Central Bank they should regularly review the appropriateness and implementation of charges. Competitiveness in the national banking market is an issue of particular concern as both Ulster Bank Ireland DAC (a division of National Westminster Bank plc) and KBC Bank Ireland plc (subsidiary of KBC Group NV) withdrew from the Irish market in 2023 having signalled their intention to do so in 2021.

[26] 3.15–3.34, 3.98–3.108 and 5.140–5.159.

[27] Ie, The scope of the Central Bank's competence is in effect determined by what is regulated activity and who are regulated lenders. As a slight variation on the "statutory" and "regulatory", in the preface the author refers to "legislative" and "regulatory". Theoretically, the distinct terminology could be intended to differentiate between forms of regulation – ie, legislation (whether primary or secondary) and codes, however the point regarding the universality of function and consequence remains.

[28] The author herself acknowledges the common objective in referring to "the three separate strands of regulatory requirements" in discussing the fragmentation of consumer mortgage lending obligations in the preface.

[29] OO Cherednychenko, "Public Supervision over Private Relationships: Towards European Supervision Private Law?" (2014) 22(1) European Review of Private Law 37.

[30] Accordingly, under current national law, Central Bank Regulations and code-based requirements are as amenable to the redress power of the Central Bank and the statutory private right of action as Acts of the Oireachtas and Ministerial Regulations. These redress mechanisms were introduced under the Central Bank

the current framework where the measures have the same regulatory function, and are subject to the same compliance and remedial consequences.[31] Perhaps the question is whether there should be, a point which is implicit in the author's critique of the private right of action's applicability to the general principles of the CPC.

Further, the common law contractual foundation on which the conduct of business framework is overlaid, is not addressed within its own chapter. This is consistent with the orientation of the work as one anchored in conduct of business regulation. Accordingly relevant aspects of common law doctrine, and private law more generally, are embedded in the regulatory analysis at appropriate junctures. Common law principles on penalty charges are, for example, included in the context of a discussion on regulatory obligations applicable to default charges and fees eg, whether a clause imports a disproportionate penalty on a consumer under the 1995 Regs.[32] Similarly, the property law framework attendant to secured credit is not the focus of a standalone chapter but relevant aspects are interwoven through the examination of regulatory obligations. Accordingly, a legislative amendment to expand the scope of formal consideration by the courts in enforcement proceedings in respect of a borrower's primary residence, is highlighted in the context of a discussion as to whether acceleration clauses could potentially be deemed unfair under the 1995 Regs as well as in the context of analysis of the role of compliance with the Code of Conduct on Mortgage Arrears 2013 (CCMA) in the granting of a possession order over a borrower's primary residence.[33]

Finally, one of the challenges of such an extensive profile in a dynamic legal arena is ongoing development. The author has admirably incorporated reforms pending at the time of publication into the profile and has analysed the significance of these developments. Of particular note are new national provisions on unfair contract terms which serve largely to embed contemporary EU jurisprudence on the directive and the proposed imposition of requirements under the Consumer Rights Bill 2022, including a subjective requirement for conformity of the service contract, which the author views as unnecessary and inappropriately applied to financial services.[34]

Fundamentally, this book represents a compliance *tour de force* in which the author offers an in-depth and complete profile of the credit-related obligations contained in national law, informed where relevant, by national and EU caselaw, and guidance from the Central Bank and counterpart EU competent bodies.[35] Within the analysis of the obligations imposed, at relevant junctures, process-oriented advice is offered to lenders and those in compliance-orientated roles. This is manifest, for example, in the identification of the potential for a single protocol conforming to the highest regulatory

(Supervision & Enforcement) Act 2013, supplementing the then existing remedial framework of the Financial Services Ombudsman (subsequently the Financial Services and Pensions Ombudsman).

[31] The Central Bank's administrative sanctions regime encompasses all and the Central Bank (Supervision & Enforcement) Act 2013, s 43 redress and s 44 right of action are applicable to all.

[32] 4.139. EC (Unfair Terms in Consumer Contracts) Regulations 1995, SI 27/1995, transposing Directive 93/13/EEC on Unfair Terms in Consumer Contracts [1993] OJ L95/29.

[33] 4.121 and 6.196. The discussion in chapter 6 for example, profiles the evolution of the national framework of enforcement pursuant to the Land and Conveyancing Law Reform (Amendment) Act 2019. The author identifies a stimulus to this legislation in the Supreme Court judgment in, *Irish Life and Permanent plc v Dunne and Irish Life and Permanent v Dunphy* [2015] IESC 46, that limited the scope of requirements of the CCMA that could be considered in determining whether or not to grant a possession order.

[34] The recast unfair contract terms provisions were also contained in the bill, now the Consumer Rights Act 2022, pt 6, the original measures having been transposed in the EC (Unfair Terms in Consumer Contracts) Regulations 1995, SI 1995/27. See 8.62 for discussion on the new duties.

[35] For example at 11.07–11.10 outlining the context of arrears falling outside the scope of the CCMA 2013 that are subject to the CPC and 2016 Regulations the author profiles relevant guidance from competent EU bodies, i.e., EBA Guidelines on arrears and foreclosure to credit within the scope of the 2016 Regs and European Central Bank (ECB) guidance on non-performing loans applicable to significant institutions directly supervised by the ECB.

threshold to resolve the inefficiency and cost stemming from a multiplicity of processes linked to differential requirements, eg, arrears-related obligations under the CPC and the CCMA.[36] Similarly, advice is provided as to the prudence of borrower representations as a practical step in rebutting assertions of "consumer" lending under the CCA.[37] In other contexts it offers reassurance or suggests caution regarding potential sources of liability, for example, the relative ineffectiveness of broadly drafted consent clauses regarding unsolicited visits to a borrower's home in respect of the CPC requirements in contrast with their potential utility in respect of CCA based requirements,[38] The analysis offers practical guidance regarding the extent to which buy-to-let borrowing falls within the scope of various frameworks.[39] It also offers reassurances that the procedural framework for mortgage enforcement is robust in vindicating the rights conferred under the Unfair Contract Terms Directive (UCTD) and EU guaranteed fundamental and human rights, and lender enforcement is thus immune from challenge on these basis.[40] The book thereby is an essential guide for those practicing in the field or in related areas.

However, of particular note is the book's critique of unnecessary complexity, uncertainty and lack of transparency in aspects of the national framework. The assertion repeated at several junctures and exemplified through the profiles is that the fragmentation of regulation has increased the complexity of compliance for lenders, supervision for enforcement authorities, and, in some instances, reduced the effective level of consumer protection for borrowers. This observation is centrally focused on the normative framework of consumer and mortgage credit regulation. The author suggests it is "confusing", "labyrinthine" and "entirely unsatisfactory".[41] Notwithstanding that the bifurcation of normative requirements as between the *Oireachtas* and the Central Bank is broadly acknowledged as a contributory factor in the preface and introduction, a significant point of discussion is the contributory role of the legislature through its approach to the transposition of relevant EU directives.

The use of standalone statutory instruments, ie, Ministerial Regulations, to transpose is characterised as time-efficient but suboptimal in ensuring a sufficiently integrative and holistic incorporation of EU obligations into the national framework.[42] An example which illustrates the resulting difficulties is the transposition of the second consumer credit directive (CCD1).[43] The existing national framework (including elements derived from the first EU directive addressing consumer credit, ie, Directive 87/102/EEC) at the time was laid out in the Consumer Credit Act 1995 (CCA). Rather than repeal the CCA and introduce a revised framework incorporating the new EU requirements, Ireland transposed the second consumer credit directive via the EC (Consumer Credit Agreement) Regulations 2010 (2010 Regs), with disapplication of relevant provisions of the CCA. The inevitable result was structural fragmentation of the legislative framework of consumer credit regulation into parallel but differential regimes under the CCA and the 2010 Regs.[44] Further, Beausang

[36] 11.06.

[37] 2.61.

[38] 2.125. A separate informed consent would be required under the CPC for each visit, irrespective of a pre-exiting consent in the contract.

[39] At 2.15, 5.12–15 and 5.290 on the respective applicability of the framework of consumer credit and mortgage lending to the buy-to-let context.

[40] At 4.228 and 6.202 respectively.

[41] See preface, and chapters 3 and 5.

[42] In particular, they do not receive the pre-legislative scrutiny committee review that is inherent in an Act of the *Oireachtas*.

[43] Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC [2008] OJ L133/66.

[44] The dual regime is addressed over chapters 2 and 3. The CCA continues to regulate consumer credit outside the scope of the current EU framework.

notes an "overenthusiastic" and "precautionary" disapplication of domestic protections contained in the Consumer Protection Code 2012 and the CCA in respect of credit covered by the 2010 Regs.[45] The key point raised is that the issue appears to be one of an insufficiently considered national approach, rather than actual constraints arising from the EU instrument.[46] In other words, there was scope for Ireland to transpose the second directive in an integrative manner that aligned its requirements with existing national law, thereby enhancing rather than diminishing consumer protection.

The area of secured credit raises similar issues. The comparative strength of the pre-existing national regulation is substantiated by the author's assertion that transposition of the EU's Mortgage Credit directive by the EU (Consumer Mortgage Credit Agreements) Regulations 2016 (2016 Regulations) provided only a limited enhancement of the existing framework contained in the "Housing Loan" provisions of the CCA and the obligations imposed under the CPC.[47] Further, the author highlights the lack of conceptual alignment between a "housing loan" in the CCA and "mortgage credit" in the 2016 regulations[48] and conflict between the respective substantive requirements, notwithstanding a purported disapplication of conflicting national provisions.[49]

Both examples highlight challenges posed by an approach which overlays EU law rather than integrating it more holistically within the regulatory ecosystem; they also raise the questions of (i) whether this reflects a conscious policy decision, a lack of awareness of the inherent capacity to retain national rules or a lack of awareness of the content of existing obligations, and (ii) whether transposition undertaken through an Act of the *Oireachtas*, thereby enabling parliamentary scrutiny, would definitively yield a more holistic and integrative output.

The fragmentation and complexity exposed in the profile of the normative frameworks could perhaps be juxtaposed with chapter 16's consideration of the comparatively streamlined and holistic national remedial framework which has evolved in the post-crisis context. Redress through the Financial Services and Pensions Ombudsman (FSPO) has been supplemented with a redress power imbued in the Central Bank and a private right of action conferred on "customers" of financial services providers. All these remedial avenues incorporate the broad framework of conduct of business obligations and financial

[45] 3.28–3.34, 3.97. The author cites restrictions on enforcement of agreements per CCA ss 54 (1)–(2), the weakness of the creditworthiness obligation under the 2010 Regs in contrast to CPC requirements, the lack of an obligation to notify ongoing changes in APR. and that the disapplication of the requirements of the CPC 2012 removed a "substantial body of advertising related consumer protections", eg, extensive warning statements. The author notes that the rationale for disapplication of the CPC requirements was unclear, as minimal advertising-related provisions were included in the 2010 Regs, and this was a weakness noted by the Commission in its subsequent review of the directive.

[46] The author notes that EU caselaw can be interpreted as encouraging additional obligations on creditors that do not offend against the maximum harmonisation principle.

[47] 5.04. The "knowing the consumer" and suitability requirements of the CPC are of particular relevance. The author identifies the foreign currency provisions and the prohibition on provision of credit in the context of a negative creditworthiness assessment as being the main additions to the existing framework.

[48] A "housing loan" under the CCA overlaps with, but does not fully encompass mortgage credit within the 2016 regulations as it excludes lending for the purpose of acquiring or retaining property rights in land or building where the loan is not secured on the borrowers PPR. Conversely, the narrower scope in terms of the security limitation may be juxtaposed with the fact that it encompasses a broader scope of loan, ie, commercial borrowing secured on the borrower's PPR.

[49] 5.25. The author points to conflict arising from overlapping applicability eg, permissibility or prohibition of tying dependent on whether mortgage credit falls within the scope of "housing loan" and variation in circumstances that require a credit assessment. For credit assessment, in the CPC an affordability and suitability assessment must be undertaken before any further credit is provided to a "personal consumer" (concept corresponding to "consumer" under the CCA/2016 Regs) per 5.15 CPC (provision applies to mortgage credit or credit falling outside the 2010 Regs). In contrast the 2016 Regs require a reassessment of creditworthiness before any "significant increase" is provided after conclusion of credit agreement.

services user protected by the relevant regulatory provisions.[50] The private right of action in particular has been a focus of prior academic commentary[51] and Beausang contributes to the growing academic consensus as to the susceptibility of the CPC to an action under this provision but queries whether it is desirable that the general principles of the code should be capable of grounding a relevant action. She notes that more generally the action may be "too widely drawn, particularly when compared with the carefully calibrated development of common law principles governing recovery by persons who have suffered loss arising from breach of a providers duty of care".[52] It is perhaps of note that since publication, transposition of the EU Representative Actions directive has been undertaken through an Act of the *Oireachtas*.[53] Notwithstanding the form of transposition, it has resulted in a degree of remedial fragmentation, through its provision of a collective action applicable only to EU-derived components of the regulatory framework. The previously raised questions of whether this reflects inadvertence or a deliberate policy choice remain pertinent.[54]

A further issue of inherent significance raised in respect of the 2010 Regulations is the legal dynamic between its requirements and regulation of unfair commercial practices under the Consumer Protection Act 2007 (CPA 2007).[55] The author notes that EU law mandates the applicability to financial services of the Unfair Commercial Practices Directive (UCPD), which the 2007 Act transposes. However, the Irish transposition is, she observes, contrary to the intended role of the respective measures from an EU perspective. This assertion is premised on the stipulation in the 2010 Regulations that the advertising-related requirements of the 2010 Regulations are without prejudice to the applicability to the requirements of the CPA 2007.[56] As a result, the 2010 Regulations ostensibly give precedence to the requirements of the 2007 Act in the event of conflict, and this, the author notes, is "not necessarily consistent" with EU law.[57] The assertion that compliance-related complexity arises from the varying content of requirements is supported by an examination of the implications of provisions in CPA 2007 requiring the inclusion of the price in an invitation to purchase.[58] Whilst the author's analysis of the inference of the legislative drafting is undoubtedly correct, an interesting question which is not explored,

[50] Chapter 16. Central Bank (Supervision & Enforcement) Act 2013, s 43 and s 44 confer power on the Central Bank to order redress and provide for a statutory right of action through the courts respectively. Notwithstanding initial divergence of academic opinion on the susceptibility of code based provisions on a standalone basis, Beausang concurs that these are within the scope of the right of action.

[51] See J Breslin and E Corcoran, "New Private Right of Action or Damages in Financial Services Litigation' (2015) 38(1) *Dublin University Law Journal* 17, 23.

[52] Ix and 16.07–16.09.

[53] Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC [2020] OJ L409/1 transposed via EU (Representative Actions for the Protection of the Collective Interests of Consumers) Act 2023 (2023 Act).

[54] See K Lynch Shally, "The European Union Representative Redress Action in Irish Financial Services: Convergence or Differentiation and Potential Clarification?" (2022) 24(1) Irish Journal of European Law 53–105 and K Lynch Shally, "The Emerging Frontier of Collective Action in Irish Law – A Change in the Status Quo of Financial Services Enforcement and Redress" Law and Financial Markets Review (forthcoming 2025) on the fragmentation of the remedial framework consequent to transposition.

[55] The 2007 Act transposes the generally applicable Unfair Commercial Practices Directive (UCPD) ie, Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council [2005] OJ L149/22.

[56] Reg 7(5) CCR 2010. The UCPD permits specialized measures in financial services to supersede its requirements per art 3(9).

[57] 3.66.

[58] At 3.66, the author notes that this "is also not necessarily consistent with the characterisation of the CPA as a safety net filling . . . . . applicable gaps for credit within the scope of the CCR that are not covered by those regulations".

is the likely judicial response at national or EU level if this question of precedence were raised in proceedings.

Notwithstanding the noted prevalence of issues where EU directives are transposed, an interesting lack of coherence between stated policy and its implementation in wholly national law is exposed in the analysis of the scope of "housing loan" provisions under the CCA. The author identifies an extension in the scope of protection through a revised definition of "housing loan" which encompassed commercial borrowing where the borrower's home provided security for the loan. Commercial borrowing is outside the EU framework of mortgage credit regulation and the provision represents a longstanding and stated policy decision at national level to afford protection to the primary dwelling of the borrower; a theme noted at various points throughout the text. However, the subsequent failure of the legislature to amend the scope of what constitutes a credit agreement to expand beyond a "consumer" transaction rendered nugatory much of the purported benefit, as such transactions are framed to exclude commercial borrowing.[59]

A related point of law of both theoretical interest and practical importance examined in the analysis is the certainty of the outer parameters of "consumer" transactions under the CCA.[60] Consumer was defined in the Act and the originating directive as a natural person acting outside trade, business or profession. In chapter 2, Beausang analyses national caselaw with reference both to CJEU jurisprudence and a comparative UK perspective, noting that there is a "grey area" between what is definitively a commercial or consumer transaction.[61] The Irish High Court, in a minority of cases, challenged the orthodoxy in its willingness to consider arguments that a borrower was a consumer where, for example, an investment for profit was asserted to be for personal consumption, eg, pension, etc. This thread of caselaw is broadly set within the context of summary proceedings challenging the enforceability of credit agreements for non-compliance with relevant provisions of the CCA.[62]

Notwithstanding that the preponderance of superior court caselaw adopts a strict approach, the author opines that an element of uncertainty persists regarding the viability of such argument in the absence of a definitive ruling by the Irish Supreme Court.[63] The author queries whether EU caselaw could provide for a more expansive applicability, noting the latitude in classifying as "consumer contracts" sophisticated investment or complex financial instrument contracts entered into by individuals. Whilst this is set within the context of determination of jurisdiction under the recast Brussels Regulation and there is, as the author notes, a policy argument for a more restrictive approach in consumer law framework, she points to the lack of any indication that the CJEU would support differential applicability of the concept.[64] The issue of any expansion or restriction in the scope of what is considered to be consumer activity under any framework premised on the EU definition is thus fundamentally in the hands of the national and, in particular perhaps, the EU courts pending any change in EU or national legislation. The author

[59] A "credit agreement" under the Act is in effect a consumer contract, where the "consumer" is defined as transacting outside trade, business or profession thus excludes commercial borrowing.

[60] This is a point which has had particular vitality in the period following the Irish property crash in 2008.

[61] The exploration is conducted over 51 pages and prefaced with a six-page distillation of key insights from caselaw; albeit even this summary is extensive.

[62] 2.15. The author notes of the Court Of Appeal decision in *Allied Irish Banks v O'Callaghan* [2020] IECA 318 "it was observed (obiter) that, on the facts of a particular case, engaging in 'pure investment' activity was 'obviously outside' the individuals trade and profession – ie, that the individuals in the case who were conducting foreign exchange investment activity were acting as consumers – although the court also made clear that a determination of that issue was a matter for an appropriate case".

[63] Beausang points to the role of certification as a practical point for lenders in rebutting any assertion of a consumer transaction.

[64] Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2012] OJ L351/1. See for example the discussion at 2.15. The author notes a correlation with decisions in courts in England, Wales and Northern Ireland on this point.

advocates for a narrower applicability noting that "exacting consumer protections should be faithfully safeguarded and, in turn applied to those most in need of them",[65] and accordingly investment for profit should be subject to less stringent protection regardless of its ultimate usage but cautions that the CJEU jurisprudence at least may be developing otherwise. Although the author does not directly address the point, any expansion in the scope of applicability of the statutory definition through national or EU caselaw would have significant compliance implications not just in respect of the CCA but any legislative framework with an equivalent definition.

From a regulatory compliance perspective, Consumer and SME credit law is state of the art in offering a deconstruction of all facets of the Irish regulatory framework and is, in particular, distinguishable for its forensic detail and holistic approach to the national regulatory regime. It is an indispensable addition to the bookshelves of the judiciary, practitioners, lenders and those in compliance-oriented roles interested in the Irish regime. However, this is not a book for light reading – literally or metaphorically. The sheer volume and detail of the content, in conjunction with the complexity or technicality of the regime may prove challenging for the non-specialist. However, this in effect substantiates the book's main critique, that the national framework is complex, fragmented and inaccessible and in need of reform.

As Beausang notes, the complexity arises from a mix of factors, including the evolution of the (important) regulatory framework imposed by the Central Bank and the legislature's approach to transposing EU measures. And more EU laws are in the pipeline such as a new Consumer Credit Directive (Directive (EU) 2023/2225 ("CCD2").[66] For an area where regulation is largely focused on protecting the consumer, it is ironically, and as noted by the author, becoming increasingly inaccessible.

Beausang's consequent argument raised in favour of consolidation is entirely logical but the process, depending on the extent of consolidation envisaged, could be complex. The author highlights the area of consumer credit as a potential first step (and arguably "easy win"). The recent adoption of the CCD2 need not add further complexity, but instead it provides an opportunity for the Irish legislature to reflect on and ameliorate its current approach.[67] This could provide the necessary impetus for Ireland to engage in a streamlining and consolidation exercise, including via legislation with proper parliamentary scrutiny.

Finally, while Beausang has focussed on Ireland, the text is a valuable resource for anyone considering the EU's regime or approaches within EU Member States, as there are considerable lessons to be learnt from Ireland's regime, both in the scope and content of regulation and the difficulties arising therein.

[65] See preface and 2.38.

[66] Directive (EU) 2023/2225 of the European Parliament and of the Council of 18 October 2023 on credit agreements for consumers and repealing Directive 2008/48/EC. (The directive is referred to as CCD 2, as the 2008 directive was labelled CCD1, notwithstanding that in substance it was the second directive addressing consumer credit).

[67] The Irish government opened a public consultation on transposition in September 2024 and received lengthy and detailed submissions from various stakeholders – see https://consult.finance.gov.ie/en/print/node/2060/submissions/submitted.