

Consumer Protection Code CP 47



**Response Document to Consultation Paper
CP47 Consumer Protection Code
January 10th 2011**

**Irish Brokers
association** 

Consumer Protection Code CP 47 Consultation Paper

Scope

This submission outlines the Irish Brokers Association's response to the consultation paper CP47 Consumer Protection Code review. The Central Bank is to be congratulated on including recommendations from the pre-consultation paper submission from the Association and as a result this document focuses only on the provisions that we consider should be amended. These suggested amendments ensure that the Central Bank's objective of consumer protection is accomplished without an undue administration burden being placed on small or medium sized intermediary businesses.

Chapter 3	Provision 2	Common rules
<p>A regulated entity must ensure that all instruction from or on behalf of a consumer are processed properly and promptly. Where an instruction cannot be acted on within two business days, the regulated entity must acknowledge in writing receipt of the instruction, outline the reason for the delay and confirm when it will be processed.</p>		
<p>Issue</p>		
<p>We would like to ask what is the reasoning behind the two day limit being introduced which is impractical to implement in every case. Has there been consultation with business groups on this point?</p>		

Chapter 3	Provision 5	Common rules
<p>A regulated entity must acknowledge in writing, the receipt of a completed direct debit mandate or payroll deduction mandate, received from a consumer as a payment instruction for a financial product or service provided by that regulated entity.</p>		
<p>IBA Proposal</p>		
<p>We would ask you to reconsider our proposal that for ALL products (regardless of payment method) a Section 30 receipt be issued by the intermediary and where the consumer wishes to pay by DD that the obligation to acknowledge receipt of DDM or payroll deduction lie with the product producer.</p> <p>DDM and PDM acknowledgements should be the responsibility of the product producer.</p>		

Chapter 3	Provision 18 (B)	Common rules
<p>A regulated entity must not charge a consumer a fee for any optional extra(s) offered in conjunction with a product or service, unless that consumer has confirmed that he/she wishes to purchase the optional extra.</p>		
<p>Issue</p>		
<ul style="list-style-type: none"> ○ A definition of an optional extra does not currently exist but “tying” and “bundling” are defined which can cause difficulty. ○ As an example of the difficulty in practice of this provision is the sale of Legal Expenses Insurance ○ As previously mentioned, the Financial Regulator made a clear link between this Rule and Legal Expenses insurance in its letter of the 6th of March 2008. ○ The consumer has to ‘positively indicate’ that they wish to purchase the optional extra. ○ With most forms of Insurance this is not problematic, as there is a Proposal form or a Statement of Fact, the completion of which evidences the consumer’s decision to purchase the product. ○ The problem with the Legal Expenses insurance product is that there is currently no proposal form or statement of fact. ○ In the absence of these documents how does the Broker evidence the positive indication on the part of the consumer? 		
<p>IBA Proposal</p>		
<p>The Association would ask for a definition of “optional extra” be included in the revised Code.</p> <p>We would suggest that where an optional extra has been clearly identified, has been priced separately and where the client has paid the premium, that this be accepted as a “positive indication” that the client wants this optional extra.</p> <p>We should also bring up the related matter of the ‘statement of suitability’ for optional extras such as Legal Expenses Insurance. We would suggest a pre populated wording for products such as this.</p>		

Chapter 3	Provision 20	Common rules
<p>Remuneration</p> <p>A regulated entity may pay a fee, commission, other reward or remuneration in respect of the provision of regulated activities only to a person that is;</p> <ul style="list-style-type: none"> a) a regulated entity; b) a certified person; c) an individual for whom a regulated entity has taken full and unconditional responsibility under the investment intermediaries Act 1995; d) an authorised ‘credit intermediary’ (within the meaning of the Consumer Credit Act, 1995) and the European Communities (Consumer Credit Agreements) Regulations 2010; or e) a former regulated entity where the fee, commission, other reward or remuneration is in respect of activities that the entity provided when it was regulated 		
<p>Issue</p> <p>A regulated entity may pay a fee, commission, other reward or remuneration only to a person that is regulated. This goes beyond statutory instrument No. 13- European Communities (insurance Mediation) Regulations 2005 (IMD)</p> <p>The procedure currently in place creates ‘regulated insurance mediators’ of persons who are not involved in insurance mediation, simply by the fact that they must register under the IMR to receive remuneration from regulated entities that are subject to the Consumer Protection Code.</p> <p>These regulated insurance mediators (even though they do not provide insurance advice) must:</p> <ul style="list-style-type: none"> o Pay ICCL levy o Pay FR levy o Pay FSO levy o Have in place a Terms of Business Agreement o Have Minimum level of Professional Indemnity Insurance o Disclose on their letter heads that they are “Regulated by the Financial Regulator” <p>This not only places significant burdens on persons making referrals but also on the staff of the Central Bank who will be required to register such firms and regular monitor their activity.</p>		
<p>IBA Proposal</p> <p>Provision 20 should be clarified as follows <i>“Where a person’s only insurance mediation activity is to refer consumers to a regulated entity either verbally or by provision of documentation and such referrals are incidental to that person’s main business activity, that person shall not be considered as undertaking insurance mediation in respect of that referral activity, however remuneration may be received in connection with the referrals made.”</i> Note, the position of referral only is already acknowledged by the Central Bank in the Competency requirements (MCR) where a significantly lower competency standard applies (page 3).</p> <p>We would ask you to review this provision as a matter of urgency.</p>		

Chapter 3	Provision 29	Common rules
<p>A regulated entity must not make an unsolicited personal visit or telephone call for the purpose of offering a product or service to a consumer except where the purpose of the contact is limited to offering a protection policy</p>		
<p>Issue</p>		
<p>The restriction of offering protection policies should be widened to include products that could be seen as beneficial to a consumer such as pensions, private medical insurance and travel. The timescale should also be extended to twenty four months to take into consideration client relationships. Additionally, telephone contact should be allowed where the Broker has written to the consumer about a product or service which the broker believes may be beneficial to the consumer.</p>		
<p>IBA Proposal</p>		
<p>The restriction to keeping within the same product as previously provided should be removed as this can be detrimental to the consumer. If there are other products that would/may be beneficial to their requirements, calls and personal visits as a means of informing the consumer should be allowed. The restriction should be on a pure cold-calling basis, i.e. contacting someone who is not a customer/consumer/client.</p> <p>Is there a reason why this reasonable point has not been considered?</p> <p>A query was raised with the Central Bank to clarify cold-calling in which the Central Bank advised this provision is specific to personal contact. While this is clear and accepted, clarity needs to be stated in the provisions that follow-up personal contact following the issuance of a mailshot also falls into the above provision and is allowed.</p> <p>Could the Central Bank clarify their position on this point?</p>		

Chapter 3	Provision 44	Common rules
<p>A product producer must ensure that the information it provides to an intermediary about its investment products is clear, accurate, up to date and not misleading, and includes information outlined in Chapter 4, Provision 32. This product information must be sufficient to enable those who sell the product to understand it so as to be able to determine whether it is suitable for a consumer.</p>		
<p>IBA Proposal</p>		
<p>We would suggest that non-investment products should be included in this provision, particularly with regard to disclosure of conditions and warranties in non-life products.</p>		

Chapter 4	Provision 11	Provision of information
<p>In the case of a website, a regulated entity must have separate sections for the activities that fall inside and those that fall outside of its Central Bank authorisation, registration or licence.</p>		
<p>Issue</p>		
<p>This requirement can be difficult to enforce and consideration should be taken to instruct that a disclosure is located beside an activity that is outside the Central Bank's authorisation, registration or licence or at worst on a linked page.</p>		
<p>IBA Proposal</p>		
<p>We would suggest moving this provision to chapter 10 which deals with advertising It would be helpful if all regulatory warnings, advertising requirements and other communication restrictions/disclosures were listed together in one chapter or in an Appendix which summarised them and cross referenced them to their location in the Code.</p>		

Chapter 4	Provision 28	Provision of information
<p>A regulated entity must provide each consumer with the terms and conditions attaching to a product or service, before the consumer enters into a contract for that product or service, or before the cooling-off period (if any).</p>		
<p>Issue</p>		
<p>This provision is one which many intermediaries who transact business by phone will find difficult to implement. Many consumers ring for a quotation and accept the price over the phone as they need immediate cover for their car, home, travel insurances. Clarity is required on how intermediaries can implement this provision without detriment to the consumer.</p>		

Chapter 4	Provision 55	Provision of information
<p>A regulated entity must, before completing a proposal form for a permanent health insurance policy, explain to the consumer the meaning of disability as defined in the policy, the benefit available under the policy, the exclusions that apply and the reductions applied to the benefit where there are disability payments from other sources.</p>		
<p>Issue</p>		
<p>The concern with definitions and general exclusions is also relevant to Private Medical Insurance products.</p> <p>In order for an advisor to explain exclusions under policies such as PHI or PMI products the proposal form needs to be assessed by the underwriters as medical and standard exclusions may apply so this is not feasible in practice. For example: A client presenting for a PHI policy with a coagulation disorder would have to be assessed by the medical underwriters in order to ascertain any exclusions that may or may not apply. This cannot be done without a completed proposal form.</p>		
<p>IBA proposal</p>		
<p>The provision should be expanded to include the non-life product, private medical insurance as there are similarities in the health product such as pre-existing conditions. The concern would also have to be the level of medical knowledge known by the sales person as they will be dealing with products that require answers to sensitive questions and to which, unqualified answers given by the sales person, can give cause for concern to a client.</p> <p>We would suggest amending the wording of the provision to read:</p> <p>A regulated entity must, before completing a proposal form for a permanent health insurance policy, explain to the consumer the meaning of disability as defined in the policy, the benefit available under the policy, the general exclusions that apply and the reductions applied to the benefit where there are disability payments from other sources.</p>		

Chapter 4	Provision 57	Provision of information
<p>A regulated entity must issue policy documents to the consumer within 10 business days of all relevant information being provided by the consumer and cover being underwritten. This provision also applies in the case of renewals.</p>		
<p>Issue</p>		
<p>This can cause issues for brokers where the provider is slow in getting policy documentation out to them as it refers to the underwriting date and not the issue date.</p>		
<p>IBA proposal</p>		
<p>We would suggest that the Insurance Undertaking be allowed 5 business days to transfer documents to the Intermediary and from point of receipt the Intermediary has 5 business days in which to transfer documents to consumer: Consumer still receives documents in 10 business days, from the date that the policy has been produced.</p>		

Chapter 4	Provision 66	Provision of information
<p>Tracker Bonds</p> <p>A regulated entity must provide a consumer with a 'Key Features Document', of a type referred to in the Appendix to this Chapter before the consumer signs an application form for a tracker bond. Where the information required by the Key Features Document is already provided to the consumer under a legal requirement to do so, the regulated entity is not obliged to include that information in the Key Features Document.</p>		
<p>Issue</p>		
<p>Clarity should be given to the term 'regulated entity' as intermediaries, like Product Producers, too are regulated entities and as this requirement is drafted both Product Producer and intermediary are required to issue the Key Features document.</p> <p>It should be clear that the responsibility for preparing the Key Features document rests with the Product Producer.</p>		
<p>IBA Proposal</p>		
<p>The key features document should be prepared by an Insurance Undertaking/ product producer and distributed to clients by the Intermediary or Product Producer if direct.</p> <p>The emphasis should be put solely on the insurers to produce the Key Features document and the provision amended to read "A Product Producer must provide, or where appropriate have an intermediary who acts as Product Producer provide a consumer....."</p>		

Chapter 4	Provision 69	Provision of information
<p>Tracker Bonds</p> <p>Where a regulated entity offers a consumer the facility to borrow funds to invest in a tracker bond, the regulated entity must give the consumer an illustration showing:</p> <ol style="list-style-type: none"> a) the year-by-year and total interest payments the consumer is likely to have to pay in respect of the funds borrowed to invest in the tracker bond until the date the product matures; <ol style="list-style-type: none"> (i) For this purpose the fixed interest rate offered by the lender for the period to the date of the promised payment under the tracker bond should only be used. (ii) Where the lender does not offer the fixed interest rate over this period, an equivalent open market fixed interest rate should be used for this purpose. b) the compound annual rate equivalent of the promised payment under the relevant tracker bond must be shown prominently; and c) the difference between the promised payment under the tracker bond and the total projected outgoings of the consumer (i.e. interest payments related to the funds borrowed to invest, any capital repayments related to such borrowings and any capital investment by the consumer other than the borrowed funds) over the period to the date of promised payment under the tracker bond. 		
<p>Issue</p>		
<p>This does not specify enough as to the basis of the gearing; e.g. pre-funded or on the drip?</p>		
<p>IBA Proposal</p>		
<p>Product producers should provide one of two numeric tables, as applicable: one for interest rolled up and paid upfront; and the other for interest payable on the drip. This will more accurately reflect the true cost of the borrowing in each case and will provide consumers with a more meaningful understanding of the real borrowing costs.</p> <p>This will have the effect of ensuring more transparency in the pricing of geared tracker bonds and will provide less opportunity for product producers to conceal interest margins, fees and charges within the headline rate.</p>		

Chapter 4	Provision 71	Provision of information
<p>A regulated entity must, where applicable:</p> <p>a) Provide the consumer with a written breakdown of all charges, including third party Charges, which the regulated entity will pass on to the consumer, prior to providing a product or service to the consumer. Where such charges cannot be ascertained in advance, the regulated entity must advise the consumer that such charges will be levied as part of the transaction;</p>		
<p>Issue</p>		
<p>As previously submitted, on many occasions' intermediaries/brokers acting as product producers are not required to show charges that they have added to premiums and consequently create a breach situation for the intermediary dealing with the consumer as the charges are unknown. In many cases the consumer's intermediary is unaware of charges added by a broker who is acting as a product producer.</p>		
<p>IBA Proposal</p>		
<p>The reference to 'third party charges' should be removed and only the charges levied by the consumer's intermediary should be clearly explained.</p>		

Chapter 5	Provision 10	Knowing the consumer and suitability
<p>When assessing the suitability of a product or service for a consumer, the regulated entity must, at a minimum, consider and document whether;</p> <p>a) the product/service meets the consumer's needs and objectives;</p> <p>b) the consumer is able to meet the financial commitment associated with the product on an ongoing basis and/or is financially able to bear any related risks consistent with their needs and objectives;</p> <p>c) the consumer has the necessary experience and knowledge in order to understand the risks involved; and;</p> <p>d) the consumer may be a vulnerable consumer, and as such, has particular needs and circumstances that require due consideration</p>		
<p>IBA Proposal</p> <ul style="list-style-type: none"> • For intermediaries there are practical work load issues here for the volume non-life products which are similar in nature. • The issues of suitability assessment in pt 10 relate more to investment, pension and large commercial non-life risks. • The assessment of suitability should therefore apply only where there is an investment risk to the consumer, and not where the product is one of protection only. • The Central Bank should consider the relevance of the risk for the consumer with volume non-life products and reword this point accordingly 		

Chapter 5	Provision 19	Knowing the consumer and suitability
<p>The regulated entity must give a copy of this statement to the consumer before providing a product or service and retain a copy. In the case of non-life insurance policies, a statement of suitability may be issued to the consumer immediately after the product has been provided only in urgent situations.</p>		
<p>Issue</p>		
<p>This provision should be amended to exclude certain non-life insurance products which can be considered basic insurance products such as Home, Motor, travel etc. For basic insurance products such as these a statement of suitability is of no advantage to a consumer and in certain instances can hinder the timely provision of cover which is a disadvantage to a consumer.</p> <p>Clarity should be given to the term 'urgent situations' as this will induce a variation of explanations.</p>		
<p>IBA Proposal</p> <p>The Association would call for a list of Basic Insurance Products which would be exempt from this requirement such as: Home, Motor, Travel, Legal Expenses and other volume products.</p> <p>Home, Motor, Travel, Legal Expenses and so forth.</p>		

Chapter 8	Provision 2	Rebates and claims processing
<p>An insurance intermediary must transfer a premium rebate to a consumer within five business days after receiving payment of such rebate amount from a regulated entity or being notified by a regulated entity that such premium rebate is due to the consumer, as applicable</p>		
<p>IBA Proposal</p>		
<p>The broker market is reliant on third parties forwarding rebated premiums which they in turn forward to their clients. On this basis a broker should be able to adopt the approach of rebating within 5 days of receipt of the rebate from the product producer..</p> <p>The IBA proposes that the regulated entity must document their process re premium rebates in their terms of business and adhere to same as provision 2 outlined above lacks transparency for the client.</p>		

Chapter 8	Provision 4	Rebates and claims processing
<p>An insurance intermediary must transfer the rebate amount to a consumer in full. Any charges that the consumer may owe the intermediary must not be recovered from the rebate amount due to the consumer without the prior written agreement of the consumer in each instance and a record of such agreement is maintained by the intermediary. Where the consumer has agreed to the deduction of any charges these must be clearly outlined on the accompanying notification of the rebate to the consumer.</p>		
<p>IBA Proposal</p>		
<p>Once a term of business agreement clearly outlines a firm's policy in relation to fees and premium rebates and this agreement is signed by the consumer, this should constitute the consumer's acceptance and prior written agreement of the fee policy of that firm.</p> <p>Signed evidence of the original signed terms of business outlining fee policy of the regulated entity could be forwarded to the consumer with the rebate notification for clarification.</p>		

Chapter 8	Provision 5	Rebates and claims processing
<p>Where a premium rebate is due to a consumer, and the value of a rebate cheque is €10 or less, the regulated entity may offer the consumer the choice of:</p> <ol style="list-style-type: none"> a) Receiving payment of the rebate or; b) Receiving a reduction from a renewal premium or other premium due to that regulated entity or; c) Agreeing that the regulated entity may make a charitable donation of the rebate amount <p>In respect of options (b) and (c), the regulated entity must maintain a record of the consumer's decision.</p>		
<p>Issue</p>		
<p>Clarification is needed on the administration of this provision.</p> <p>If the choices as listed above are clearly written into a terms of business document and signed by the consumer with their agreement to a particular clearly indicated choice – is this an acceptable record of the consumer's decision?</p>		

Chapter 8	Provision 10	Rebates and claims processing
<p>An insurance intermediary who assists a consumer completing a claim must, on receipt of the completed claims documentation, transmit such documentation to the relevant regulated entity without delay.</p>		
<p>Issue</p>		
<ul style="list-style-type: none"> • The Insured and the Claimant aren't always the same. • Conflict of Interest surrounding the sharing of data between these two parties • The key issue, with regard to Claims Processing, is that no distinction has been made between the obligations of Insurance Undertakings on the one hand and Insurance Intermediaries on the other. In most paragraphs the nondescript and imprecise term 'regulated entity' is employed. • A distinction needs to be drawn between the obligations to claimants of, on the one hand, the Insurance Undertaking that underwrote the risk that has given rise to the claim and, on the other, the Insurance Intermediary that has obligations only to its own clients and not third party claimants • If the Central Bank will not amend the Consumer Protection Code to exempt Insurance Intermediaries with delegated claims handling authority from the obligations towards third party claimants under this section the issue of conflicts of interest needs to be addressed. 		
<p>IBA proposal</p>		
<ul style="list-style-type: none"> • In the revised Code the term 'regulated entity' needs to be defined for the purposes of the Claims Processing Rules: Chapter 8 • The definition should clarify that, unless otherwise stated, the obligations owed to Claimants under these sections are owed only by Insurance Undertakings and by Insurance Intermediaries with written delegated authority from the relevant Insurance Undertaking to handle/manage the claim on its behalf. • Delegated claims handling authority constitutes a conflict of interest that must be disclosed to purchasers of insurance at the point of sale e.g. in the Terms of Business document and, perhaps, in the Reasons Why / Statement of Suitability document. • We would ask that you review these proposals as there is some confusion in relation to obligations under the Data Protection Act. 		

Chapter 11	Provision 2	Errors and complaints
<p>A regulated entity must have procedures in place for the effective handling of errors, which must include procedures for the:</p> <ul style="list-style-type: none"> a) the identification of all affected parties; b) appropriate analysis of patterns of errors; c) proper control of the correction process; and d) Escalation of errors to compliance/risk units and senior management. 		
<p>IBA Proposal</p>		
<p>In keeping with Central Bank's expectations during a regulatory visit, it is suggested that the provisions should refer to 'written' procedures. This would also alleviate any possibility of mis-interpretation.</p>		

General Suggestion

The Association would suggest that an Index be added to the revised Code which will enable regulated entities to cross reference relevant provisions of the Code when considering their compliance with the code.

Conclusion

We would welcome the opportunity to meet with the Financial Regulator to discuss any of the issues raised in this submission document.