

Insurance Ireland response to CBI Consultation Paper CP106 – Review of the Minimum Competency Code 2011

Introduction

This response deals with issues arising for Insurance Ireland's domestic life and non-life insurers.

QUESTION 1 Do you agree that persons carrying out a relevant function in respect of any retail financial product that falls within the scope of the MCC should obtain a minimum level of experience prior to working without supervision? Please outline the reasons for your view.

We are of the view that the proposal to impose a minimum level of experience is unnecessary and disproportionate given the existing MCC regime.

This position is based on the argument that existing requirements/practices are already fit for purpose:

- The existing MCC regime is comprised of tailored qualifications for each retail product category
- The Fitness and Probity regime already includes an experience requirement
- There are mandatory CPD requirements in place

In addition, the definition of "experience" is not clear. The paper outlines "experience within industry sector", the draft code outlines "experience relevant to a function". In our view there would be severe practical difficulties with making the requirement specific to each function or to individual product types. Take the following examples:

- Typically, an individual might be tasked with arranging life and pensions products concurrently. Not to be able to do this would present significant problems for industry.
- There will be scenarios where a person's experience to date, albeit related to one retail product, will be relatable to another product line e.g. claims handling experience.
- The 6-month experience requirement would also represent a potential barrier for experienced and highly qualified individuals in one area of the financial system to gain valuable experience in other areas. There is a concern that talented and highly qualified individuals are "pigeonholed" within one sector as there would effectively be a 6-month barrier before they could operate in another sector.
- The 6-month experience requirement would impact a firm's ability to transfer/promote members of staff to new roles particularly in areas that comprise of small teams/branches.
- If an experienced financial adviser is promoted to a supervisory role, his/her own experience makes him/her appropriate to supervise others but the code would appear to require sign-off of each instance of supervision for the first six months.

- Sole traders would have particular problems. An experienced employee who offers financial advice wishes to become a broker. He/she may have no complaints handling experience which would cause difficulties with meeting the requirements of the proposed code. However, that does not seem an appropriate basis to exclude him/her.
- Product development actuaries are as likely to come from financial reporting backgrounds as from product pricing backgrounds. Small insurers are unlikely to have other resources in place to supervise product development staff if these have been recruited on the basis of qualifications and extensive industry experience.
- This requirement may also impact a person's ability to move between organisations within the wider insurance/financial services industry.
- The 6-month experience requirement potentially creates a barrier for companies looking to innovate and release new products or operate in new markets.

Related to the above, the broad definition of 'new entrant' to include both true new entrants and qualified, experienced staff taking on a new role is likely to lead to difficulties e.g. the requirement to be studying for a recognised qualification is listed without any exclusions.

Any requirement in relation to the degree of supervision involved should be reasonable. This should also cover the transitional arrangements to a new regime that would need to be put in place to cater for individuals recently (or about to become) qualified.

Any requirements around supervision should also be practical – it is not possible to review all documentation. Supervision should take the form of 'sampling' a percentage of an individual's consumer interactions or reviewing a sample of key outputs produced on the basis of consumer interactions at the discretion and judgement of the firm with the CBI having an opportunity to appraise the standard of oversight. The degree of the supervisory requirement should also reflect an individual's experience to date and whether they are a new entrant or an already qualified experienced individual.

QUESTION 2 If you agree with (1) above, do you consider a minimum six-month period to be sufficient? Or should the length of experience depend on the role(s) being carried out, the complexity of the product or a qualification already held by a person? Please outline your view.

We do not support a blanket six-month requirement for the reasons given above. It would not take into account the different situations which can arise. Some less complex roles or products may not require this level of experience for qualified individuals and a more tailored approach might be based on a range of criteria, such as the individual's experience to date, their qualifications to date, the intended role to be carried out and the complexity of the product / function.

It also does not take into account the level of training individuals receive e.g. induction training and on-going training that's tailored to the individual's training needs.

QUESTION 3 Do you agree with the proposal on how the experience requirement should be evidenced? i.e. That a regulated firm should sign a “certificate of experience” and retain supporting documentation to support the certificate? Please outline your views.

If the decision is made to proceed with the experience requirement there are a number of practical issues which would have to be addressed.

- Guidance would be required on the level of documentation – i.e. Is this dates of employment, general role profiles or more specific details on actual tasks completed?
- Would firms be obliged to share details of the supporting documentation when a person moves employment / can firms request this information from a previous employer?
- For how long would firms be required to retain the supporting documentation?
- Would there be a template for the Certificate of Experience and guidance as to who needs to complete the cert?
- Would the employer be responsible for providing a Certificate of Experience for all staff who complete 6 month’s experience (for each product/role/controlled function/proposed industry sector) or if this is just for individuals who are already qualified or is it only required on request?
- As per 1.3 and 1.6 of the draft code, new entrants and individuals working under a prescribed script function would need to be supervised by an individual who meets the proposed "new" requirements and not just simply be a 'qualified individual'. We would therefore request clarity as to whether firms would have to apply this level of due diligence to their existing qualified individuals.
- Would there be any obligation to staff who worked previously for the employer but have now moved on prior to the introduction of the new requirements?

The introduction of such a requirement could create a significant administrative burden and we would welcome further clarity on the proposal.

QUESTION 4 Do you agree with the proposal set out above? Please set out the reasons for your view.

We agree with the proposal to ensure that at a minimum one person with material influence on the final decision regarding product design obtains a relevant MCC qualification.

However, a separate list of appropriate qualifications for this activity should be put in place. This should include actuarial and accounting qualifications as well as ACII and the qualification relevant for each product category.

Again, the any 6-month experience requirement would need to be teased out further. Product Development may form one part of a person’s overall role. The need for 6 months’ experience on one specific retail product would prove very challenging. An industry level approach as opposed to retail product approach would be preferable.

QUESTIONS 5 to 8 relate to other industry sectors and we do not propose to respond in detail.

However in relation to Question 6 our members would support the proposal that MCC should apply to Credit Unions for all products under the scope of MCC as it is in the interests and protection of consumers that all financial providers are on the same level playing field and required to meet the same regulatory requirements.

Our response to QUESTION 9 is being formulated with input from our reinsurance members and will be contained in a separate document.

The following issues, although not the subject of specific questions in the Consultation Paper present issues of significant importance to the insurance industry.

Definition of Advice

The definition of advice under the draft MCC includes the 'provision of *information*'. This is inconsistent with the definition of advice under MCD, MIFIDII and IDD which relate to the provision of a *personal recommendation*. Recital 14 of IDD says this "Directive should not apply ... to the mere provision of information of a general nature on insurance products, provided that the purpose of that activity is not to help the customer conclude or fulfil an insurance or reinsurance contract." We would request CBI clarification of why it is proposed to extend the definition in this way and what specific concerns this change is intended to address.

To date, the Minimum Competency Code has drawn a clear line between the provision of advice and information. Arguably this means that the provision of any information in relation to an insurance policy e.g. what is the current value of my plan, what is the charge if I withdraw from this fund, would fall within the scope of the code. This is completely beyond the spirit of the original code and would add significant cost to the industry for no apparent additional customer benefit.

If the MCC definition of advice is to include provision of information, a proportionate approach should be applied whereby greater levels of knowledge and competence are required for staff giving advice compared to staff simply giving information to customers, see ESMA's "Guidelines for the assessment of knowledge and competence" - ESMA/2015/1886 EN.

Annual Review

The existing Fitness and Probity requirements already involve on-going reviews of an individual's experience and competence and therefore we are of the view that the proposed Annual Review would amount to duplication.

Section 3.2 of the Central Bank's Fitness and Probity Standard states the following:

"Without limiting the generality of paragraph 3.1, the person must be able to demonstrate that he or she:

(a) has professional or other qualifications and capability appropriate to the relevant function;

(b) has obtained the competence and skills appropriate to the relevant function, whether through training or experience gained in an employment context."

These standards allow for a more focused approach to assessing an individual's experience and competence relative to the role that they are performing. The current obligation on

firms is to monitor new entrants and the CPD obligations of relevant staff members. The former relates to a limited number of staff and the latter can be objectively measured. The proposed additional requirements in CP106 are considerably more onerous and we would query whether they would result in additional consumer benefit.

In addition, the educational bodies set CPD requirements with the express intention of ensuring that qualifications remain relevant and up to date. On this basis, it should be considered sufficient for firms to ensure that CPD requirements are met as is the case at present.

Other issues

Given the recent CBI paper on 'Cross Industry Guidance in respect of Information Technology and Cybersecurity Risks' issued in September 2016, under the MCC knowledge category "Legislation, regulation and compliance", consideration might be given to the inclusion of the risks associated with IT and cybersecurity and how this applies to regulated firms.

Firms will require sufficient time to implement any changes that are introduced to the Minimum Competency Code and an appropriate transitional period should be agreed between the Central Bank and the industry.

The competencies required are being updated to reflect EU requirements. Please confirm that this has no impact on existing qualifications.

A number of the proposals are driven by ESMA guidelines falling within scope of MiFID II which would not apply to insurance. The proposal to split the current MCC Code into two parts is not ideal. From a practical point of view, it is preferable if all requirements relating to a specific topic are contained in the one document.