Brokers Ireland's submission on the Discussion Paper on the Consumer Protection Code

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Brokers Ireland is Ireland's representative body for insurance and financial brokers, with a combined strength of over 1,225 firms. We believe we represent a substantial number of insurance and financial brokers currently trading in Ireland. As the premier voice for insurance brokers and financial brokers, we advise members, liaise with regulators, government and other insurance industry stakeholders on key insurance issues, in order to raise and maintain industry standards.

Brokers Ireland's mission is to promote, support and protect our members, both collectively and individually, in the areas of education, compliance, lobbying and business development. We underpin this support by providing a forum for dialogue and debate, both within Brokers Ireland and with industry stakeholders.

Outlined below are Brokers Ireland's responses to the questions posed in the discussion paper:

Availability and Choice- Effective Market Functioning

What are your views on availability and choice of financial services and products for consumers?
Availability and choice of products vary depending on the product, there are high levels of availability and choice of retail financial products and services through the Financial Customer's life cycle, however, there is a capacity issue in relation to certain financial products from a commercial perspective such as certain lines of commercial insurances and loans to businesses.

In respect of general Insurance, there is also limited availability & choice particularly to transact business online. There is a limited choice of providers which means particularly for business consumers there is a lack of choice, more competition is required.

The closure of two banking providers and their branches has presented a real challenge for consumers particularly those who are seeking to make large single payments over and above their online payment limits. This means for investors the consumer may need to make multiple individual fund transfers which in turn means that multiple investment documents are issued which only confuses the consumer. Remaining banks, looking to scale back branch operations need to consider this also and ensure the retention of cashier services for all such services.

How important are new providers and new delivery channels to serving consumers' financial needs?

New providers drive competition and innovation in the market. We have seen this in the last number of years where non-bank lenders entering the market offered better long-term fixed mortgage rates than the incumbent lenders. This drove competition and developed new products that were not already in Ireland. Another example is the launch of Revolut in the Irish market that has created technology innovation within the retail payments sector.

New capacity providers are important to serving the needs of consumers in particular SME entities that need insurance at an affordable price. Existing delivery channels already meet the needs of consumers and facilitate the giving of advice. One point of concern may be the lack of new market entrants in the insurance broking space when combined with the widespread consolidation already seen. Eventually this may have an impact on competition and choice for consumers.
Brexit has left gaps in the market. Brokers with specific business that now are not authorised to service i.e., UK clients with holiday homes in Republic of Ireland.

In implementing its consumer protection mandate, how should the Central Bank reflect the importance of competition in its regulatory approach?

A study carried out Competition and Markets Authority in the UK in 2020 on 'Regulation and Competition' made the following recommendations: 1. Develop regulation that supports innovation and disruption, 2. update guidance for assessing the impact on regulation and 3. enhance the oversight of regulatory impact assessments. It would be beneficial if a similar study was carried out in Ireland.

Whilst acknowledging the Central Bank's role as gatekeeper, it is crucial that the process of authorisation does not deter new market entrants by its complexity and time-consuming nature.

Acting in clients "Best Interests"

Do you agree that the Central Bank should develop guidance on what it means for a firm to act in the best interests of its customers?

Brokers Ireland have concerns about use of the term "Best Interests", as we do not believe it aligns with the spirit of the Assisted Decision-Making Capacity Act and the proposed term can imply a parochial concept of knowing better than the consumer/making decisions on their behalf.

The Central Bank should outline simply what it means by "Best Interest" or use an alternative term for the industry in alignment with Section 5.5 of the Central Bank Reform Act as amended by the IAF act, i.e., the focus should be on the outcomes for customers and in deciding what best interests means for customers, a key determinant is the legitimate expectations of the customers.

A balance must be struck between issuing guidance for the industry to implement on a proportionate basis and issuing prescriptive rules which will only add to the already large volume of regulation. It should also be noted that there are already regulations that protect the customer's best interests such as the Insurance Distribution Regulations, output from CP 116 and the Individual Accountability Framework.

Does the suggested outline of "customer best interest" guidance capture the essence of the obligation to act in customers' best interests? What other guidance would you suggest?

The Central Bank should outline simply what it means by "Best Interest" or alternative term for the industry before further guidance is developed. Any guidance must align with the Assisted Decision-Making Capacity Act.

Innovation & Disruption

Do you agree with our proposed approach to enhancing our Innovation Hub?

Having such a forum to be future facing regarding technological innovations seems appropriate as it is a major development for the sector and will remain so.

What more should be done to support innovation while ensuring consumers' best interests are protected?

Consistent monitoring of firms (providers) establishing or moving toward a digital solution to ensure it has enhanced the experience for consumers and is not to the detriment. Example, AIB trying to remove cash in branches or L&P providers moving to digital platforms in the absence of adequate staffing. This is having a profound disruption on consumers. Providers and firms should offer a choice to consumers when interacting/providing a service. "Vulnerable Consumers" should be considered and facilitated in advance of any technological change or change in service provision by providers.

How can regulators ensure that neither firms currently in the market, nor new entrants, have unfair advantages which could be a barrier to fair competition?

A streamlined authorisation process should be in place to ensure that new entrants are able to get authorised quickly provided they meet the standards required.

Digitisation

Do you agree with our analysis of the benefits, challenges and risks around digitalisation in the area of financial services? What are the key issues for you?

Yes we agree, digitisation is beneficial as it provides choice for the consumer, it makes it easier for regulated entities to broaden their customer base using digitalisation, which presents a significant opportunity to tailor products directly to consumers, allowing real personalisation to meet the consumer's demands and needs.

Technology is a very useful tool, however there are additional risks when carrying out financial transactions digitally. A key risk is that it is easier to foresee consumers being enabled to transact insurance and financial services business online without seeking advice, which is not a good thing. Whilst it is useful that digitalisation removes some of the burden from the consumer and may save the consumer time, it is important that consumers understand and appreciate the benefits of advice when they are buying a product, when they are making a claim and so on. The fact that some technology (blockchain) is aimed at disintermediation is a key risk.
Brokers are vital in giving consumers access to financial products and services where there only other means of accessing these products/services is by digital means. Issues can occur where providers deal with advisers/consumers through digital forms, where application are made online but no accompanying system for the receipt of investment funds, payments into an investment policy. The Central Bank needs to consider this in terms of existing firms and new entrants to deliver on customers' expectations and broader market goals such as CMU.

While technology can support the provision of financial products and services it should not replace the ability to attain these products and services through alternative channels. People may not read the Terms and conditions when online but are more likely to read the documents when receive them physically. Therefore, it is very important that exclusions and any crucial information should be brought to the customer's attention.

Technology could also exclude parts of the population from accessing financial products and services. The Ignition House Report – Evaluation of the Retail Distribution Review and the Financial Advice Market Review found that:

- Men are more likely to use automated services compared to women.

- Automated services are most popular among those aged 25 – 34 and 35 – 44.
- Adults with a household income of £100, 000 - £250, 000 were more likely to use automated services.

The report also found that a personal recommendation is a key trigger for automated advice users who are investing for the first time.

Issues can also occur where for example advisor level systems do not integrate with provider/lender systems. This leads to duplication of data and in many cases an inadequate service or consumer outcome. Better integration of systems is required as too many are 'standalone'. The industry needs to align its interests at provider level.

A key challenge lies in ensuring that regulation is promulgated that will result in regulated entities achieving the best outcome for consumers. This may be regulation that encourages regulated entities to take what is best from the physical and digital worlds, optimising their processes, and aiming for the best outcome for consumers. The best outcome may be that digitalisation makes distribution cheaper-for example in digitalisation of manual and repetitive tasks – such that the product may be cheaper, the claims process more efficient and cheaper and so on – (there are benefits at all stages of the insurance life cycle)– but there should always be an option and indeed consumers should be encouraged to seek advice from a qualified human person. Purely robo advice cannot replace the nuanced advice received from a human.

A further key challenge around digitalisation is ownership, use, manipulation and storage of data, which has been identified by the CBI.

How do you think the personalisation and individual targeting of ads can be made compatible with the requirement for firms to act in the best interests of consumers?

Transparency is key; adverts must be clearly identified and recognisable as such. It should be recognised too that many consumers much prefer targeted adverts rather than adverts that are generalised in nature. Targeted adverts are useful, but it must be ensured that they are for products that suit the selected customer's needs.

As regards online advertisements, it should be made clear to consumers that their webpage usage is being tracked and data is being gathered that will result in targeted adverts – some consumers will currently lack knowledge and insight into the fact that their data is being gathered and how it will be used. Transparency should provide consumers with some insight into why specific adverts are being targeted at them – some description of the targeting mechanism so that there is true transparency for the consumer. Ultimately, control over advertising must rest with the consumer. Consumers should be facilitated to block particular adverts, or all adverts, and to indicate preferences in granular detail.

Unregulated Activities

The Code requires regulated firms to provide a statement indicating that they are 'regulated by the Central Bank'. Do you think this is useful for consumers?

Given the amount of literature a consumer receives, it is only useful when it is highlighted directly to the consumer, the implication of this statement needs to be clearly explained to consumers in respect of loss of consumer protections such as access to available compensation schemes, and the option to refer a complaint against a firm to the Financial Services and Pensions Ombudsman.

How can the difference between regulated and unregulated activities be made clearer for consumers?

Regulation needs to develop to encompass product developments and bring them within the regulatory spectrum. In the absence of this, to avoid any confusion for consumer, we believe that manufacturers of unregulated products who are regulated entities should be required to develop and market those unregulated products through a separate unregulated company.

Should there be additional obligations on regulated firms when they undertake unregulated activities?

Where regulated firms are manufacturing unregulated products, the Central Bank should monitor the marketing documents for these products as reference is often made that the firm is regulated by the Central Bank and the clarification that the product is unregulated is only at the end of the brochure. This is confusing for consumers who often wrongly assume that once the provider is regulated the product falls under the regulatory framework as well.

Pricing Matters

What can firms do to improve transparency of pricing for consumers?

Consumers of general insurance are already the recipients of a wealth of documentation and information relating to the product and its price. We would urge caution before any decision is made which requires that more information, which has not been requested by consumers, be provided. Overall, we take the view that there is already a lot of transparency on pricing for consumers, whether from insurance firms or intermediaries – the cost of the product and the services provided is already transparent. If anything, the CBI ought to be looking at how to consolidate and refine the documentation and information provided to consumers to ensure that it is more comprehensible and that the important information is highlighted.
It is important that any disclosures do not add another layer of paperwork for clients and are meaningful and clear. Consumer often complain about document overload, disclosures provided should be concise and improve clarity. As an example, flaws in PRIIPs/KID have been already being identified, in particular that (i) following a period of strong market returns, the expected future return on a product can be misleadingly good and (ii) it's virtually impossible for a broker or their client to make proper costs comparisons across companies using PRIIPS Reduction In Yield data. It is worth noting that in the UK, Chancellor Jeremy Hunt announced plans in December 2022 to scrap PRIIPs regulations as the current KID disclosure rules were highly 'prescriptive' and meant investment firms end up producing their own fund factsheets as well as KIDs and that such a range of standardised and non-standardised documents can be confusing for investors and an unnecessary burden for firms.

The Remuneration Disclosure requirements for the intermediary market issued by the Central Bank has brought greater transparency to Broker remuneration, however it is hard for consumers to compare these to direct channels where remuneration is not as clearly defined. Charges need to clear on both the intermediary and manufacturer sides.

In relation to pricing, are there examples of firms using unfair practices to take advantage of customer vulnerabilities?

Anecdotally, we understand that a lot of insurers refuse to insure older vehicles with the reason provided due to issues with vehicle roadworthiness. In reality, these older vehicles will be NCT'd and therefore as roadworthy as any other vehicle. Insurers exclude quoting for these vehicles as they have stats that suggest older cars equal more claims. By doing this, they are penalising people that might not earn as much as someone that can afford a newer car.

It is common market practice for insurance underwriters to deduct charges owed from rebates, from their direct channel customers. Therefore, we believe it is unfair and discriminatory to intermediaries, to insist that prior written agreement be obtained in order to deduct monies owed from rebates. Additionally, the CBI should be cognisant that the channel of communication between an intermediary and its customers is often via phone calls which are recorded for record keeping purposes and therefore it may be more appropriate to change the requirement for "written agreement" to "agreement which can be recorded via a durable medium".

Informing effectively

How can regulation improve effectiveness of information disclosure to consumers?

Since the introduction of the Consumer Insurance Contracts Act 2019 (CICA), Section 8 'Pre-contractual duties of consumer and insurer' the principle of utmost good faith has been replaced and per section 8(2) "the pre-contractual duty of disclosure of a consumer is confined to providing responses to questions asked by the insurer, and the consumer shall not be under any duty to volunteer any information over and above that required by such questions". Therefore, we believe it is no longer appropriate to explain to the consumer the consequences of failure to make full disclosure of all relevant facts, as the onus is now on insurers and intermediaries to ask the consumer all relevant questions pertaining to the risk being insured.

Instead, it would be more appropriate to inform consumers that they have "a duty to answer all questions posed honestly and with reasonable care", in line with CICA, Section 8 (7)(a).

Many consumers are being overburdened with the large volume of regulatory information disclosures. We believe the CBI should give careful consideration to the increasing volume of regulatory information disclosures which are required to be communicated to consumers and consider where it may be appropriate to reduce/simplify these disclosures. As outlined above, the CPC provision 4.35 is an example of an information disclosure requirement that we believe is no longer applicable.

How can firms better support consumers' understanding - can technology play a role?

Technology can play a part, but caution is needed. For example, firms could provide a digital file of all required documentation and signature/click to say the customer has read it. The issue of overload still exists, and tech simply affords a fast method of delivering information. Unless it enhances understanding and informs consumers then it has no real benefit. The volume of documentation remains a key issue which has an overall impact on consumer confidence and take up of key products.

Does the way in which firms approach disclosure in respect of mortgage products need enhancing? If so, how? - taking account of the wide variety of features of mortgage products and borrowers' different circumstances and needs.

Current disclosures are adequate.

Vulnerability

Given that vulnerability should be considered more as a spectrum of risk than a binary distinction, how should firms' duty to act in their customers' best interests reflect this?

Any updates/inclusions in relation to the term vulnerability need to align with the Assisted Decision-Making (Capacity) Act 2015.

What other specific measures might be adopted to protect consumers in vulnerable circumstances while respecting their privacy and autonomy?

Requirements need to align with the ADMCA and the related code for financial advisors.

Financial Literacy

What can the responsible authorities do to improve financial education?
Financial literacy ought to be introduced as a subject early in education as an essential life-skill. Interaction is crucial between the Department of Education and the Central Bank to ensure that financial literacy is on the curriculum from 1st year secondary school, this will increase young people's awareness of and understanding of financial needs and lifecycles.
Encourage employers to provide financial education courses in the workplace. The Central Bank should promote the industry, for example, the benefit of seeking advice.

How can consumers be empowered to better protect their own interests when dealing with financial matters?

Knowledge is key – informed and educated consumers will be much better placed to protect their own interests. Those who use a Financial Broker or Insurance Broker will also be much better informed and achieve better outcomes – it is key that the desirability of taking advice be promoted.

Simplification of the volume of key documentation is required. Consumers are frustrated with the breadth of information being provided which can lead to key decisions being 'put off'. In January 2022, The European Commission and the OECD International Network on Financial Education released the joint EU/OECD-INFE financial competence framework for adults. This framework is a starting point for member states and national competent authorities to educate adults in relation to finances. Knowledge can strongly influence behaviour and to ensure that consumers are making the right choice they need to be informed about basic financial concepts from an early age. Having a financial module during secondary level education may increase financial literacy. The European Commission and the OECD International Network on Financial Education are working on delivering a financial competence framework for youths in 2023 which could be used to build subject matter. The Financial Service industry has a vast amount of experience in education, programmes such as the Insurance Institute and LIA's apprenticeship programme and the Brokers Ireland Future Financial Experts for TY students could be supported by the industry to encourage financial education.

Climate Matters

How should the financial system best fulfil its role in supporting the transition to a climate neutral economy?

The financial system is vital in the transitioning to a climate neutral economy – Intermediaries are crucial in bringing the customer along on the journey. A good example is the green mortgage rate for properties of a certain BER score. More should be done in this area to reward consumers for example, discounted car insurance premium for electric, hybrid vehicles.

How will climate change impact on availability, choice and pricing for financial products and services?

Extreme weather events will result in more claims, more expense to the insurance industry and will result in higher premiums and restricted choice and cover for the consumer.

The impact on insurance is likely to affect houses that have a lower BER rating - people shouldn't be penalised as a result.

Does the impact of climate change require additional specific consumer protections?
Consumers in high-risk areas affected by extreme weather events should not be penalised because of where they live. Home insurance-blanket banning of flood cover (should be area specific) - currently there is only one provider of flood cover and it is at a very expensive premium. Providers should more accurately assess and review each local area rather than a blanket ban.

Consumers need to be confident that the literature they receive from product manufacturers is accurate and that greenwashing is avoided. As intermediaries, Brokers need to be able to rely on statements contained in the product literature.

Other Feedback

The review document highlights a number of challenges facing the sector but which fall outside the influence of the intermediary share of the market. There is a consistent theme of duplication, overload and confusion and any new code needs to address this.

Equal thought needs to be given to reducing the volume, duplication and overload of documents between each product category. Consumers require clarification before they can have confidence.

The revised regulations should clearly differentiate (by chapter) the responsibilities of providers/product producers and then separate to this, intermediary firms.

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