

The background features a stylized world map in shades of blue and white, overlaid with a network of blue lines and circular nodes. In the foreground, a city skyline is reflected in water, with a man in a suit standing with his back to the camera, looking out over the city. A large, teal-colored circular graphic is positioned around the man.

INSURANCE
IRELAND

Insurance Ireland comments on the CBI Discussion Paper on Review of the Consumer Protection Code

31 March 2023

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Introduction

Ireland is a thriving global hub for insurance, reinsurance & captives and Insurtech. Ireland's insurance market is the fifth largest in the EU and our Reinsurance market is the second largest. Our members represent around 95% of the companies operating in the Irish market, making Insurance Ireland a strong leadership voice for the sector.

Insurance Ireland members are progressive, innovative and inclusive, providing competitive and sustainable products and services to customers and businesses across the Life and Pensions, General, Health, Reinsurance and Captive sectors in Ireland and across the globe.

In Ireland, our members pay more than €13bn in claims annually and safeguard the financial future of customers through €112.3bn of life and pensions savings. Our members contribute €1.6bn annually to the Irish Exchequer and the sector employs c28,000 people in high skilled careers.

The role of Insurance Ireland is to advocate on behalf of our members with policymakers and regulators in Ireland, Europe and Internationally; to promote the value that our members create for individuals, the economy and society; and to help customers understand insurance products and services so that they can make informed choices.

Insurance Ireland advocates for 135 member firms serving 25m customers in Ireland and globally across 110 countries (incl. 24 EU Member States), delivering peace of mind to individuals, households and businesses, and providing a firm foundation to the economic life of the country.



Overall Observations

Insurance Ireland welcomes the opportunity to share feedback on the CBI discussion point in the Consumer Protection Code Review Discussion Paper.

The Consumer Protection Code has, since its introduction in 2006, been the key point of reference for industry and consumers in setting the expectations and rules around fair treatment of consumers of financial services. After a series of addendums (at least 19) it is timely that the Code should be reviewed following the economic recovery from the financial crisis as well as the unprecedented Covid-19 pandemic.

The Covid-19 pandemic and increased investment in technology has seen accelerated development of digitalisation of insurance products and services as well as the gap between the product that insurers have sold and the product the consumer had anticipated that they purchased. This highlights the importance of relevant, meaningful, concise and timely information and we believe that this is key to ensuring effective consumer understanding and informed decision making. On this basis, we recommend that in reviewing the Consumer Protection Code 2012, meaningfulness of information provided to consumers is of paramount consideration, and this aligns with the Central Bank's Consumer Protection Outlook Report 2023, which highlighted ineffective disclosures to consumers as a key driver of consumer risk. If the disclosures firms make are easier to understand, it mitigates many of the risks around digitalisation, financial literacy, and the risk of the expectation gap and consumers best interests that are highlighted in the paper, as well as fostering a consumer-focused culture.

From a regulatory perspective, we believe that transparency of expectations is key to the delivery of good consumer outcomes and a truly consumer-centric culture. Heavily regulated firms such as insurance undertakings always carry compliance risk and the clearer the message from the Regulator and the more examples of good practice that are shared with industry, the more comfort the firm and its Board has in its compliance. This results in a move away from 'tick box compliance' approach to a culture of knowing that as long as the consumer is first, compliance will follow. It also allows the Regulator to learn from the firms it regulates and firms to learn best practice in consumer outcomes from each other by seeing approaches that satisfy CBI concerns.

Increasing amounts of EU and domestic regulation are causing additional disclosure requirements which can result in information overload for consumers and have a detrimental consumer impact, taking into account the sheer volume of documentation that consumers now need to review as part of commencement/new business, renewal (if applicable) and ongoing communications. There is also a persistent challenge in relation to overlap of regulations at both domestic and EU Level, which can result in duplication of requirements or even contradictory standards. For example, the upcoming revisions to the Distance Marketing Directive will again pose this risk when local requirements within CPC are taken into account.

We appreciate that as a Regulator, it is not the role of the CBI to promote the financial services sector, but the regulatory approach must not inadvertently inhibit competition. Consistent divergence from European regulation and supervision, a lack of transparency of the authorisations process and supervisory outcomes and a lack of engagement with the sector can all result in a negative perception of Ireland as a place to do insurance business. We are pleased that since the launch of the 2021 strategy focussing on “open and engaged” relationship with the financial services sector, we have certainly experienced more enhanced engagement with the CBI and we are very appreciative of the ability to discuss consumer policy matters with relevant technical and senior leaders at the CBI and we look forward to continuing this relationship as this discussion progresses over 2023.

Format and usability of the Code

It is our view that the Consumer Protection Code in its current stand-alone PDF form followed by subsequent addenda does not facilitate clarity or certainty from both a provider or a consumer point of view. Furthermore, the publication of an unofficial consolidated Code by the Central Bank in 2015 was undermined by the number of subsequent changes. This approach to regulation can also present a significant barrier for new entrants to the market, as it is very difficult to assess which documents must be provided to the consumer when a new entrant is assessing requirements and obligations that regulated entities are subject to. There is an opportunity to streamline requirements and ensure future iterations of the Code could be more principles based and technology neutral to permit more flexibility in how insurers communicate with customers, based on their preferences.

We suggest that consumers and firms will benefit from improved understanding provided by accompanying sector specific guidance within the revised Code i.e., investment, life protection, health, pensions and non-life. At times, regulation applied to insurance products has stemmed or evolved from issues identified in other insurance sectors and is sometimes developed with products other than insurance in mind. A consequence of this is that it sometimes fails to recognise and effectively regulate the complexities of an insurance product which can cause unintended consequences for both the consumer and the market as a whole.

This is particularly evident in the regulations in place for Private Health Insurance as well as the Life Insurance (Protection) market. The Health Insurance Act(s) outline the principles underpinning private health insurance, with the Health Insurance Authority (HIA) as statutory regulator. Open enrolment, lifetime cover, minimum benefits and community rating are fundamental to its operation. Under open enrolment, private health insurers must accept all applicants for insurance cover, regardless of their risk status, age, etc subject to prescribed waiting periods. Lifetime cover guarantees all consumers the right to renew their policies except in very limited circumstances, irrespective of factors such as age, risk status or claims history. Private Health Insurance in Ireland is therefore a community-rated product and it fundamentally differs from all other non-life and life products, which are risk rated products. In the Irish health insurance market, the risk factors that can be taken into consideration by other insurance sectors are not applicable to health insurance. Strict pricing rules, including maximum discount application, creates a different risk and price dynamic in the health insurance market compared to the Non-life market. Recognition needs to be given to the nature of the health insurance sector and we would suggest that the CPC have a carve out in relation to the provision of information/documentation to the customer.

Recent regulatory discussions on the topic of auto-renewals (as part of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Insurance Requirements) Regulations 2022) further highlighted the differences between the general insurance and health insurance markets. For health insurance customers, there is considerable customer detriment in the event auto-renewals are no longer permissible, as it will result in customers becoming inadvertently uninsured for reasons such as extreme ill-health. A lapse in health insurance could leave a customer with no cover while being faced with the prospect of serving or re-serving a 'waiting period' of up to five years. They could also be liable for an additional lifetime community

rating (LCR) loading charge, which can be quite significant and detrimental to the customer. The current auto-renewal practice is an important consumer protection mechanism for all who are covered under the policy. Crucially, the potential for customer detriment is not limited to the policyholder where there are multiple people on a policy that has lapsed.

In order to provide instances of other areas where we would question the relevance of the current code applicability to Private Health Insurance, for example:

- Chapter 7 Rebates and Claims Processing: which is written with general insurance in mind, and refers to settlement offers, claims investigations and acceptance/rejection of settlement offers. The health insurance provider processes claims in a different manner with claims rates pre agreed with hospitals contractually.
- Chapter 10 Errors and Complaints Resolution: the 40 days complaints resolution sometimes presents difficulties for Health Insurer who have to deal primarily with third parties to get information/resolution.

There should be appropriate categorisation of the different insurance sectors in the revised Code thereby ensuring each sector is supervised in a manner that best reflects the consumer risks of each sector. It would be extremely beneficial to have specific guidance for the health insurance market where processes differ substantially from the Non-Life sector, in which it is currently aligned with in the Code.

We would welcome the Central Bank's views on how they can ensure that the next iteration of the Code is a "living document" which contains up to date, sector specific information in real time and we are happy to work with the Bank in terms of discussing our members' experiences in other jurisdictions if that would be helpful.



Specific Observations

Q.1 What are your views on availability and choice of financial services and products for consumers?

As noted in the discussion paper, insurers provided 8.7million insurance policies for Irish consumers in 2021. Across all the different insurance sectors there is a range of products and choice available for consumers.

The CBI acknowledge there is a balance to be struck between seeking to reduce risks to consumers through the imposition of regulatory requirements and ensuring it does not impose costs on consumers and negatively impact on their freedom to choose the most appropriate provider for them. We agree with this and appreciate that regulation seeks to protect consumers by identifying risks and preserving financial stability through prudential supervision, while ensuring through consumer protection measures that markets function well for consumers. Transparent regulatory requirements can improve operations for existing market players and potential new entrants.

Q.2 How important are new providers and new delivery channels to serving consumers' financial needs?

In our view new providers and new delivery channels are extremely important. New entrants and products stimulate the industry and promote innovation amongst incumbents as they strive to maintain or increase market share.

Similar to physical products, financial products have a life cycle and need to be able to evolve and adapt to meet the changing demands and needs of consumers. It is important that insurers and intermediaries continue to be able to design products and services that respond to consumer needs.

Q.3 In implementing its consumer protection mandate, how should the Central Bank reflect the importance of competition in its regulatory approach?

There is no doubt that competition improves the functioning of any market and benefits consumers. Greater competition leads to increased innovation of products and services, which is in the public interest. The primary function of the Central Bank is focused on prudential and conduct supervision of financial services firms. These regulatory priorities aim to ensure that the interests of consumers are protected. While such regulation does not have an explicit competition mandate, it is recognised that ensuring a level playing field for all is vital to foster competition and in some jurisdictions, the financial services regulator has a mandate to promote competition alongside objectives such as consumer protection. The balancing of multiple mandates is common to financial regulators in other jurisdictions.

The Central Bank is empowered under Section 117 of the Central Bank Act 1989 to have regard to (a) the interests of customers and the general public, and (b) the promotion of fair competition in financial markets in the State when drawing up codes of practice. Section 117 provides the Central Bank with its power for the Consumer Protection Code. This legislative provision provides a basis on which further consideration of competition policy can be integrated into the Central Bank's approach to regulation and more specifically upon which the Consumer Protection Code can be amended to set out the Central Bank's approach to promoting fair competition in financial services.

In order to have a transparent approach for firms considering Ireland as a place to do insurance business, it would be useful if the CBI could publish statistics on the number of applications, the length of time taken, the number of times the CBI had to revert to ask further queries. It would also be helpful to have a service level standard for insurance authorisations, similar to that noted under Regulation 91(2) of Statutory Instrument No. 158/2014 - European Union (Capital Requirements) Regulations 2014, which states that the CBI shall take a decision to grant or refuse a banking licence within 12 months of the receipt of the application.

The Commerce, Consumer and Competition Division of the Department of Enterprise, Trade and Employment state that their "regulatory regime is intended to ensure that business is conducted with probity and integrity but without undue administrative burdens and that the rights of investors, consumers and creditors are protected, transparent and enforced."¹ This is an approach that should also be explicitly referenced in the CBI approach to regulation and supervision. It is our view that, as a Regulator, it is not the CBI's primary function to promote competition in the insurance market, but it is vital that the regulation and supervision of firms does not inadvertently act as an impediment to competition.

Regulators such as the Financial Conduct Authority and Prudential Regulatory Authority have a dual mandate and perform such functions in the United Kingdom, the Polish Financial Supervision Authority also has a mandate to promote the development of the financial market and its competitiveness in Poland. Regulatory divergence from the EU approach to regulation and supervision of insurance can also cause an unlevel playing field across the Union and should be mitigated as much as possible.

Q.4 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?

Firms already have well-established Conduct Risk Frameworks (CRF), ensuring that positive outcomes and customer centricity are at the forefront of strategy within the context of the Consumer Protection Risk Assessment (CPRA) framework. However, if the Central Bank is minded to develop guidance it should be on a non-statutory basis in the form of observations on "good" and "bad" practices the Central Bank has identified through its engagement with firms as part of its supervisory role. This is something Insurance Ireland has continually called for and the recent feedback received in the area of underinsurance and pre-emptive recovery plans in the prudential area is a good example of this.

1. <https://enterprise.gov.ie/en/who-we-are/department-structure/commerce-consumer-and-competition-division/>

We appreciate the view from the CBI that shareholders' interests can sometimes conflict with a firm's responsibility to ensure a fair outcome for consumers. However, the Discussion Paper makes no reference to the fact that Directors have a fiduciary duty to the company in which they operate which is legislated for under the Companies Act 2014. We agree that this can be a balance to achieve outcomes that are fair to both consumers and shareholders, however that is the objective of a CRF/CPRA and it is our strong view that instead of introducing a further layer of regulation, the existing framework should form a material part of the 'best interests' oversight.

It should be noted that from an insurance perspective, the term "Claimant" can mean very different things depending on whether it relates to Health, Life or General insurance, and does not always relate to a customer e.g., a third party claimant, engaged in an adversarial legal process and represented by a lawyer, is a very different case to a person claiming for damage to their car, or for health expenses. The third-party claimant is not a customer of the insurer and there should be some degree of differentiation between claimants that are consumers or customers of insurance undertakings and those claiming or suing as adversarial third parties.. This would be in line with the definition of a consumer used by the FSPO and the Consumer Insurance Contracts Act.

Q.5 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 examples of regulatory concerns given in the Discussion Paper focus on firms not following the standards set of them by the CBI. This indicates that firms are not clear what evidence demonstrates adherence to the requirements and we would expect that a tailored supervisory approach to specific firms would be in order. The ultimate obligation to act in the best interests of the customer will always lie with the insurance undertaking. There can be no exhaustive list of scenarios that the CBI can provide answers to but guidance that can be made available to the financial services industry on a non-statutory basis could only strengthen firms ability to continue to make the right decisions for customers.

There can be a lack of transparency in CBI regulatory requirements, in that it is not clear at times what firms must do to evidence best interests (acknowledging that this can differ from firm to firm). It is always, therefore, helpful to have clear and proportionate guidance from the Bank on its expectations. We have long called for examples of good and poor practice to be published and we certainly seen improvements in this approach since the new strategy was implemented in 2021, with more details given in thematic review feedback and the Insurance Quarterly newsletter.

We are surprised that the paper makes no reference to the CBI guidance on the Consumer Protection Risk Assessment model,² instead focusing on an OECD approach – which itself is actually quite reflective of the CBI guidance. It would be good to have a better understanding of why the Regulator believes that the previous approach is not delivering on its objectives to ensure that the best interests of consumers are being demonstrated within financial services firms.

2. *A Guide to Consumer Protection Risk Assessment (centralbank.ie)*

Theme 1 – Innovation and Disruption

Q.6 Do you agree with our proposed approach to enhancing our Innovation Hub?

Insurance Ireland welcome proposals to enhance the Innovation Hub. While the establishment of the Hub was a welcome step change in facilitating engagement for market incumbents and for prospective technology/InsurTech firms, it is important to progress the Hub's capabilities and expand its impact and functionality. Consideration should be given to the types and benefits of regulatory sandboxes adopted in other countries.³ According to data from the World Bank there are 73 regulatory sandboxes across 57 jurisdictions. This is an area that our members are keen to provide more insights on. Increased pre-application engagement with insurance undertakings and technology firms contemplating formal authorisation that are new to the regulatory approval process is necessary as all parties would benefit from having an active focal point for productive exchanges between industry and the regulator. Furthermore, as sandboxes are likely to form part of the regulatory environment of the future, the earlier insurers and others can interact with them the better, there are no less than 38 references to sandboxes in the Artificial Intelligence (AI) Act⁴ which will become law in Ireland in 2025.

We note the Central Bank plans to consult on proposed enhancements this year and we look forward to engaging through that Consultation process and via the Central Bank's Financial Industry Forum Innovation Sub-Group.

Q.7 What more should be done to support innovation while ensuring consumers' best interests are protected?

Consumers' best interests are primarily served through effectively functioning insurance markets where there are suitable levels of availability and choice, with ease of access to products through well-run consumer centric insurance undertakings. In this context, an important element of the revised CPC is striking the right balance between ensuring regulatory requirements do not restrict a consumers freedom to choose the most appropriate provider or product for them or impose unnecessary regulatory costs, while mitigating against consumer detriment.

The way in which insurance products are developed and how they are delivered to consumers is undergoing transformational change which has accelerated since the Covid-19 pandemic. The concepts, developments and efficiencies that new entrants and incumbents can bring with the development of innovative product and service offering, are key drivers of swift access to insurance products and produce cost efficiencies, all of which is in the consumers' best interests.

The CCPC in their submission to the Department of Finance Review of Retail Banking recommended that a Regulatory Sandbox be established by the Central Bank to complement the Innovation Hub and to nurture a well supervised approach to promoting innovation in financial services. This is something Insurance Ireland would echo. As noted in the previous point, Regulatory Sandboxes can provide a greater degree of assistance to firms seeking to develop innovative products and services.

3. Key Data from Regulatory Sandboxes across the Globe (worldbank.org)

4. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0206>

The European Supervisory Authorities (ESA) report in 2019⁵ carried out a comparative analysis of the existing innovation facilitators in the EU and identified best practices at that time. That report identified a set of principles that can be regarded as best practice, which are the basis for the establishment of a Sandbox:

- Promotes consistency in the design and operation of innovation facilitators;
- Promotes transparency of regulatory and supervisory policy outcomes resulting from interactions between competent authorities and firms in the context of innovation facilitators;
- Facilitates cooperation with appropriate authorities (including consumer protection and data protection authorities).

The benefit of developing a Sandbox is that it will enhance innovators understanding of regulatory expectations, in particular the applicability of the existing consumer protection framework to innovative products and services. It will also increase the knowledge of the Central Bank about insurance products and supply chain innovations, the risks posed, and the opportunities provided in a consumer protection context to inform the Bank's Supervisory Technology (SupTech) approach to regulation and supervision and foster an innovative culture. This is essential given the nature and speed of legislative change versus technological change.

The use of Artificial Intelligence (AI) and Big Data requires certain alignment between regulators (such as between the Bank and the Data Protection Commission). We are already seeing differing requirements from each - different messaging which does not necessarily complement each other, particularly in the area of AML/CTF. More streamlined regulation is required to support AI and the use of Big Data in Insurance to benefit consumers. The use of AI could be seen as a risk for customers while at the same time introducing improvements and service efficiencies. The updated CPC needs to address this and other technology risks to ensure fair treatment of customers and a level playing field in the market.

Q.8 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?

The Competition and Consumer Protection Commission (CPCC) has previously advocated that the Central Bank develop a process for introducing new entrant/new product friendly initiatives in light of the development of innovation facilitators in other jurisdictions. Consistent and aligned requirements together with a consistent application and implementation of same will assist in forming a common and fair approach and a level playing field for incumbents and potential new entrants.

5. <https://www.esma.europa.eu/document/joint-esa-report-regulatory-sandboxes-and-innovation-hubs>

Theme 2 – Digitalisation

Q.9 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?

In our view digitalisation and the resultant efficiencies in distribution costs, could lead to further entry into insurance markets by new entrants providing products or services. The EIOPA Consumer Trends report 2022⁶ key findings included the continued digitalisation of the insurance sector could lead to expanded access to insurance products for consumers.

Our members are acutely aware that consumers who have less familiarity with technology should not be at a disadvantage. We believe that consumers are protected in a more digitally enabled financial services environment due to the wide range of regulations already in place. However, some aspects of the Code need to be updated to reflect the digital operating environment.

Digitalisation can facilitate access to insurance products where traditionally services would be conducted on a face to face basis with the advisor outlining options available and then presenting the customer with variety of documentation. Digitalisation makes it easier for people with communicative disabilities including hearing and sight impairments to gain access. Digital advancements may allow insurers to provide multi-channel access, as opposed to replacing traditional channels completely or being the sole communication channel.

We note that the approach from EIOPA is to regulate for a ‘digital first’ approach, ensuring that consumers can opt out of this where desired. However, given the specificities of the Irish market and the risk of digital exclusion, we believe that a technology neutral approach is what is needed to ensure that no consumers feel disadvantaged. That being said, some elements of the rules need to be updated to allow for a digital approach there appropriate – for example, the definition of “Durable medium” needs to be reviewed in the context of advances such as the use of QR codes as these are now common. The definition needs to be updated to reflect the fact that many forms of media are capable of meeting the criteria of being a ‘durable medium’.

The Discussion Paper highlights the benefits of digitalisation with 24 hour access; broadening the range of providers thereby increasing competition; providing faster, cheaper processing of payment transactions; and providing new tools to help consumers understand and manage their finances as the main customer benefits to increased digitalisation, which we would agree with, other risks include cyber security and fraud. Increased volumes of personal data and financial data that are being submitted online increases the risk of theft of the data, especially for more vulnerable or technically vulnerable consumers.

Once again, we would call on the CBI to give some examples of good and poor practice of consumer centric developments in Digital.

6. *Consumer Trends Report 2022 (europa.eu)*

Q.10 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 customers?

Any regulated product sale must still be completed under suitability rules and prudent product oversight and governance regulatory requirements. It should be recognised that it could be very beneficial for a customer to have personalised and targeted ads available to them as they will have sight of a far more curated set of products and services which are suitable to their demands and needs. Customers must consent to the use of their data in this manner. Subject to consumer preference it can also be a good way of getting and improving engagement with inert consumers.

Theme 3 – Unregulated Activities**Q.11 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?**

This is a simple and straightforward statement, which is unambiguous and informative for consumers. This supports consumer understanding in dealing with their financial planning and the statement should remain simple.

Where a regulated firm provides both regulated and unregulated services however, the service may be regulated by another authority. For example, many health insurers will provide health and wellness apps and services, outside the regulatory perimeter of the Central Bank.

Other services or apps could be simple budgeting tools, with no regulatory requirements as there is no specific financial product or advice, and should remain out of scope for the CPC. This is to allow firms to support consumers in a simple way without incurring increased regulatory burden. Obviously, where such services ‘link in’ with regulated financial products, this triggers the firms obligations under the CPC and regulatory requirements apply.

Section 3 (Theme 3) of the Discussion paper clearly articulates the CBI’s rationale of providing protections to customers who deal with “Unregulated Financial Firms” and the requirement that such activities should never be presented in a way that would indicate to Consumers that the Central Bank has oversight or jurisdiction in respect of those products.

We absolutely agree that in the context of the complexity of Financial Instruments currently in operation in the marketplace (eg, Crypto Currency Asset Trading), that this differentiation should be clearly communicated to consumers and that they understand the difference in Regulatory oversight and protections between Regulated and Unregulated Activities.

However, it is clear from the intention of the wording in this discussion paper, that the CBI is specifically concerned with the risks associated with unregulated financial products, i.e., “While the Central Bank is responsible for the regulation of many financial services providers, it does not regulate every financial service provider or every product.”

As above, we support full transparency with regards to unregulated financial products but we have in the last number of years seen an unintentional and cumbersome consequence of this guidance in having to split out non-regulated non-financial services that firms provide that do not fall under regulated financial products.

Therefore, we are asking that non-financial services (e.g., health and wellness type services) that are offered to customers of regulated entities are removed from the scope of the onerous requirements of having to split regulated and non-regulated activities on websites and other communications to customers, when in practicality the existence of the wellness activities would not ever reasonably result in consumer detriment (financial or otherwise) and does in fact aim to promote good health and consumer wellbeing.

We feel this would be a more balanced approach and would clarify the issue, which would negate the unintentional and unnecessary complexity that the current CBI guidance on unregulated financial products poses.

3

Q.12 How can the difference between regulated and unregulated activities be made clearer for consumers?

It is our view that the requirements for firms to provide clarity on regulated versus non-regulated activity are already sufficient. If there are concerns in this area, it does not require new obligations but perhaps a revised supervisory approach to check compliance with existing requirements, to identify those firms that are not complying rather than imposing additional standards/burden on those that are.

As we have noted already in other sections of our response, disclosures to consumers are already very lengthy and can discourage engagement in the products and actually reduce understanding. A balance needs to be struck between the length of the statement and a consumer understanding that the firm is regulated/unregulated.

Q.13 Should there be additional obligations on regulated firms when they undertake unregulated activities?

We do not agree that there should be additional obligations on firms over and above what already exists in regulation. It is a decision for firms whether to apply the same standards across all products, whether unregulated or regulated. We understand that good culture should not be determined by the regulatory perimeter, however there are many reasons for differing treatment that are not driven solely by regulatory requirements.

Additionally it should be a public policy decision on whether or not to make an unregulated activity part of the Central Bank's supervisory oversight. Such policy decisions are made either by the Oireachtas in terms of domestic legislation or by EU directives or regulations based on the potential for a sector or activity to present risks to the wider financial services system or cause consumer detriment. Such activities are outside the Central Banks remit and may encroach on other regulators regulatory perimeter. As noted in the previous questions, Private Health Insurers have entities that provide health and wellness services to their customer and complement the regulated health insurance products. While these services are not regulated by the Central Bank they are heavily regulated from a clinical perspective for example.

Theme 4 – Pricing Matters

Q.14 What can firms do to improve transparency of pricing for consumers?

Again, disclosure is not the same thing as transparency and it is well understood by regulators globally that over-disclosure actually makes products and services more confusing for consumers.

The pricing within the private health insurance market is governed by legislation such as Community Rating/Open Enrolment etc. and is overseen by the HIA. There is a danger that large amounts of documentation provided to the customer may impair understanding and dilute transparency rather than support it.

Q.15 In relation to pricing, are there examples of firms using unfair practices to take advantage of customer vulnerabilities?

This question is somewhat unfairly posed – assuming that there are examples of negative practices instead of also asking about examples where firms demonstrate good practices to support consumer understanding of their insurance contract. The recent feedback on Underinsurance for example, set out some positive examples where insurance firms took steps to ensure that various approaches such as the impact of underinsurance and the average clause was made clear to consumers. Examples of positive practice should be highlighted and commended.

It is important for insurers that they continue to deliver fair consumer outcomes through the innovative products and services they provide to consumers. In fact, the development of innovative products and services can actually support value in pricing for consumers, by allowing firms to leverage savings in new types of products and therefore a lower cost to the end consumer. However, with more and more resources being directed to regulatory compliance, this reduces the potential for firms to take the time to develop new ways of interacting with consumers.

One example of pricing for the benefit of consumers is in Differential Pricing. The CBI Financial Stability Note "Differential Pricing: The Economics and International Evidence"⁷ of November 2020 noted that differential pricing can deliver benefits for consumers. It is important that the proposed

7. Financial Stability Note - Differential Pricing: The Economics and International Evidence (centralbank.ie)

intervention does not remove the ability of insurers to compete effectively and that consumers can continue to obtain appropriate and competitive insurance products. It was to the benefit of consumers to retain new business savings for those who shopped around.

We also agree with the CBI Report on Differential Pricing conclusion that some aspects of differential pricing can benefit consumers and encourage competition while others can lead to unfair outcomes. Differential pricing can encourage competition and innovation and facilitate market access for some consumers. This, in our view, underlines the importance of engaging with insurance providers and intermediaries to get the best deal and shopping around regularly, as consumers would with utilities such as telecoms/broadband or gas and electricity services.

Theme 5 – Informing Effectively

Q.16 How can regulation improve effectiveness of information disclosure to consumers?

In answering this question we believe that there are two, not mutually exclusive, areas that need to be addressed: the overlapping of regulation and information overload. As part of the review of the Consumer Protection Code, it is an opportune time to remove requirements that have become obsolete over time and those that either through the advancement in regulation or due to changing consumer needs and demands are no longer appropriate.

More clarity is required around the Central Bank and consumer expectation of what is ‘key information’. Firms should be encouraged to take a proactive approach to simplifying products and making material easier to read. This should be principles based rather than prescriptive.

This question was addressed by EIOPA in 2016 when they consulted as part of the “Preparatory Guidelines on product oversight and governance arrangements by insurance undertakings and insurance distributors”⁸ and revisited in 2017 with the “Final Report on Consultation Paper no. 16/007 on draft Implementing Technical Standards concerning a standardised presentation format for the Insurance Product Information Document of the Insurance Distribution Directive”⁹. These Consultations were extensive and arising from the findings, EIOPA attempted to set out at an EU-wide level an appropriate response to providing customers with relevant information on general insurance products in order to allow them to easily compare between different product offers and to make an informed decision about whether or not to purchase the product. In view of the ongoing review of the Insurance Distribution Directive and the open EIOPA consultations on the IDD, we would strongly encourage the CBI to monitor the outcome of that EU-wide review to ensure that there is no regulatory divergence in this important area.

8. Preparatory Guidelines on product oversight and governance arrangements by insurance undertakings and insurance distributors (europa.eu)

9. Final report on draft ITS on supervisory disclosure for competent authorities of investment firms.pdf (europa.eu)

Overlapping of regulation

All of our members are subject to a number of differing regulations and requirements relating to the provision of services to customers, such as: charges, disclosures, remuneration, durable medium, marketing, cooling off periods, unfair contract terms, complaints and claims handling, etc. These services are covered by a plethora of regulations, some sector specific such as PRIIPS and the Health Insurance Acts but others such as Insurance Distribution Directive, Consumer Insurance Contracts Act, Direct marketing regulations, and the FSPO Act, which all have universal applicability. The overlapping and layering of regulation is an impediment to the effectiveness of information disclosure to consumers.

Information should be clear and concise and not require the customer to search through numerous documents to determine all the information they require in order for them to be 'informed effectively'.

Driven by legal and regulatory requirements there are a number of documents that have to be provided to consumers at new business/inception of an insurance policy and renewal of the policy, it is questionable that all this information helps consumers understand their policy. A more streamlined documentation pack, including all key and important information, may help to strengthen a customer's product and policy comprehension. The provision of information and disclosure requirements should be proportionate to how complex the product is and should also serve to complement the consumer's level of literacy both digitally and financially.

By the same token, industry would be better served if all the regulations and requirements they are bound by could be found in the one place.

Information overload

We acknowledge that the issue of information overload is a major risk for consumers. This is an issue faced currently and will be exacerbated due to the many disclosure requirements coming into effect or currently under review. Currently, in accordance with Central Bank and European regulatory requirements, consumers of insurance products in Ireland receive a multitude of information from providers throughout the lifecycle of the product. We believe that relevant, meaningful, concise and timely information is key to ensuring effective consumer understanding and informed decision making. On this basis, we recommend that in reviewing the CPC, meaningfulness of information provided to consumers is the paramount consideration.

Feedback from our members from a sector wide analysis in 2020 indicated that at pre-sale stage, consumers received an average of over 10 pages of information, at point of sale a consumer receives in some instances a further 48 pages of information, at renewal stage a consumer will receive over 30 pages and at claims stage they will receive another 8 pages of information. This was, of course, prior to the introduction of the Consumer Insurance Contracts Act (where sections 10-14 and 16 overlap with CPC), The Insurance Regulations 2022 and IORPsII. This high volume of disclosure information for consumers can be overwhelming and increases the likelihood that consumers will not pay sufficient attention to the more important pieces of information such as coverage, benefits and exclusions at pre-sale and point of sale stages.

In addition to the excessive volume of information provided to the consumer, we believe that regulatory overlap acts to compound the negative impact on informing consumers effectively. We are aware of specific regulatory requirements across life, non-life and health, where multiple sources of regulation either contradicts or overlaps with sections of the Consumer Protection Code governing the following areas: fact-finding, suitability, charges, disclosure regarding conflicts of interest and remuneration, cooling off periods, marketing, complaints, claims handling and terms of business, advertising etc.

Consumers need to be in a position to make an informed decision and in order to do so they need clear, concise and effective disclosure. Consideration should be given to the integration of technology/digitalisation which could inform consumers of relevant information by way of gamification, videos, visuals etc. The disclosure needs to be as scalable as the suitability obligations determine i.e. scaled according to complexity.

Through a principles-based approach, we believe that the CPC could be updated to improve the effectiveness of information to be disclosed to consumers. In terms of provision of information, it is essential that a 'layering' approach is taken whereby the most pertinent information should be provided upfront with clear signposting, otherwise there is a risk of information overload which could result in obscuring key information. This approach could then be tailored based on the product. The CPRA and Product Oversight and Governance have a role to play here in supporting the effectiveness or otherwise of communications.

The Discussion Paper calls out the need for an executive summary from insurers to their customers. However, insurers are already producing an IPID (General Insurance) - a summary of the benefits included, exclusions, restrictions, areas of cover, how the policy is paid and the consumers rights and obligations. On the PRIIPs side, an KID must be provided. The Consumer Insurance Contract Act also imposes obligations on insurers in terms of the information that they must supply to customers. The Non-Life Insurance (Provision of Information) (Renewal of Policy Insurance) and amended Regulations, and the Life Disclosure Regulations (Provision of Information) 2001 and Pensions Act 1990 all impose obligations and we know from the FSPO complaints digest that there can be a communication (or expectation) gap. Insurers continue to work to develop clearer and more explicit communications while also bearing in mind the legal nature of insurance contracts and the regulatory framework that insurers must operate within.

The requirement for firms to conduct testing on their consumer product information remains impractical. Insurance is an adaptive market, where the scope of policies is always changing and new products come to market all the time. We see the CBI as best placed to complete such testing when drafting/considering new/expanding regulation as this drives insurance firms obligations and actions. We have previously referenced the consideration of a Regulatory Sandbox to test innovative products and services in a controlled environment-such as tool could also be used to test consumers understanding of various formats and levels of information disclosure.

Q.17 How can firms better support consumers' understanding - can technology play a role?

Life and pension products are by their very nature complex, running for years, even decades, literally a lifetime so it is imperative that customers understand the product they are purchasing. This level of understanding requires a high level of customer interaction, thus life and pension products are sold almost exclusively via an intermediary and the life companies have no customer interaction beyond the compliance disclosures. In addition, 50% of motor insurance products are sold via intermediaries, once again there is little customer interaction as the broker controls this.

It is our view that technology enables a more efficient service and results in faster claim settlement. It also allows customers to do business as and when it suits them. However, it is important to acknowledge that technology can create a barrier to customers' understanding as customer interaction is reduced.

Video and interactive online content has improved greatly in recent years and we feel that this technology could be harnessed to the benefit of customers. Firms could use video to explain product offerings, provide disclosure information, etc. to customers in an approachable, digestible manner.

Q.18 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.

N/A. This question is not of relevance to the insurance industry so we do not feel best placed to comment.

Theme 6 - Vulnerability**Q.19 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?**

We agree that vulnerability can be a transient state. However, insurers struggle as the recording of vulnerability is not always possible due to GDPR constraints. Without the ability to record a vulnerability it is difficult to deal with it, and at each interaction the consumer will need to flag their vulnerability again, which is not ideal at all.

Firms have invested heavily in training personnel in the appropriate identification and treatment of vulnerable people, where there is not a capacity issue there is no means of ensuring that the extra assistance is available due to the fact that there is no marker that such extra assistance is needed.

The discussion paper does not refer to the Assisted Decision Making Act 2015 even though there is a direct link between the two. The Decision Support Service has been working on a Code of conduct for financial professionals and it is important that this Code is incorporated into, or as a minimum referenced by, any CBI requirement rather than imposing additional requirements on firms.

There is also the added complication of the customers who would fail within the classification of “vulnerable customer” but who do not consider themselves to be vulnerable. Firms wish to treat all their customers well, irrespective of whether they are vulnerable or not, however some may be better at it than others, depending on the area of the market they operate in and their customer segment, and it would be helpful if, as mentioned earlier in our response some real life examples of good practice could be included in the new Code.

Q.20 What other specific measures might be adopted to protect consumers in vulnerable circumstances while respecting their privacy and autonomy?

Any changes need to be clear and consistent, the definition of consumer, durable medium, vulnerable customers, the alignment of regulations and the documentation requirements to customers which result in information overload.

The other element was being able to offer digital as a default with mitigants in place for Vulnerable Customers and people who wish to opt out.

We would call for clarity and consistency between any updated Consumer Protection Code and the Office of the Data Protection Commissioner and for the strengthening of the Memorandum of Understanding.

We believe that a flexible approach such as that adopted by the FCA on vulnerability is a positive example of how to ensure that firms know the steps they need to take to achieve good outcomes for vulnerable customers. Firms should take action to:

- understand the needs of their target market/customer base
- make sure staff have the right skills and capability to recognise and respond to the needs of vulnerable customers
- respond to customer needs throughout product design, flexible customer service provision and communications
- monitor and assess whether they are meeting and responding to the needs of customers with characteristics of vulnerability, and make improvements where this is not happening.

Theme 7 – Financial Literacy

Q.21 What can the responsible authorities do to improve financial education?

Taking into consideration the important role which financial literacy plays in achieving individual's financial wellbeing, Insurance Ireland welcomes the inclusion of Financial Literacy as a theme in the current Discussion Paper and the review process of the Consumer Protection Code.

As noted in EIOPA's Consumer Trends Report 2022,¹⁰ a high level of financial literacy, together with a robust consumer protection framework are factors which can significantly contribute to achieving financial health of consumers.

In line with the Recommendation of the OECD Council on Financial Literacy,¹¹ we believe that in order for the competent authorities to improve financial education, a holistic and coordinated approach to financial education and literacy is needed. This approach needs to be based on a national strategy and a detailed roadmap for its implementation which are developed in cooperation with all interested and relevant parties.

As Ireland is an Adherent to the above Recommendation of the OECD Council, we would be interested to understand what the Government's plans are in terms of implementing this Recommendation and developing a national strategy for financial literacy which complements and is coherent with strategies and regulations aimed at financial inclusion and financial consumer protection.

We also note, as per our earlier comments, that the more streamlined and meaningful the information given to consumers, the easier it is for them to understand and engage on their financial planning. Therefore, there will be an element of increasing financial literacy by default if the information is easier to understand.

Q.22 How can consumers be empowered to better protect their own interests when dealing with financial matters?

It is widely accepted that the ability of consumers to collect, compare and use relevant information is very important for the functioning of market economies. Well-informed and empowered consumers demonstrate their needs and preferences by making choices.¹² This is also relevant for the retail financial markets. By exercising their choice, empowered consumers stimulate innovation and competition among financial product and services providers, as well as achieve higher levels and standards of consumer care and better prices. Empowered and well-informed consumers also have a better control over their financial future.

10. <https://www.eiopa.europa.eu/sites/default/files/publications/eiopa-consumer-trends-report-2022.pdf>, p.27

11. OECD/LEGAL/0461 Recommendation of the Council on Financial Literacy, Adopted on 29/10/20

12. ECRI: Consumer Financial Capability: Empowering European Consumers, 2006, p.1

Based on the above, we believe that consumers can be empowered to better protect their interests when dealing with financial matters by improving consumer financial education and consumer information.

Accordingly, in order to empower consumers, they need to have access to clear, meaningful and relevant information about the products/services of their choice, as well as a clear understanding of their rights and how to exercise them when issues arise.

Following on from the OECD Recommendation noted in our response to Question 21, it will be recommendable for the Government to consider the development of a national strategy for financial education and literacy which is based on a comprehensive and evidence-based analysis of the specific needs and gaps in this area thus contributing to the identification of the strategic priorities for improving financial education and literacy in the state.

There are limits to what the insurance industry can do to improve the financial education of customers but the industry is a strong advocate for financial literacy and education and sees value in the education of consumers on the benefits of financial and protection products.

Theme 8 – Climate Matters

Q.23 How should the financial system best fulfil its role in supporting the transition to a climate neutral economy?

Insurance Ireland is of the opinion that the approach that needs to be taken to ensure that the financial system best fulfil its role in supporting the transition to a climate neutral economy should be sector-specific as the impacts of weather events and the transition to carbon neutrality would be very different for the different financial industry sectors. At the same time, as rightly noted in the CBI 2019 Economic Letter,¹³ there will be a need for a comprehensive analysis to consider the interdependencies across sectors and materialization of indirect exposures through those inter-linkages. For many years, insurers have been at the forefront of sustainable investment, taking concrete actions such as participating in different voluntary industry initiatives and implementing sustainability-related disclosures, standards and strategies into their portfolios. More importantly, insurance firms are supportive of the European Commission's Sustainable Finance (SF) agenda and are already in scope of rapidly evolving regulations both at EU and national level which aim at stimulating provision of and investments in green and sustainable products and services, thus supporting the Irish Government and CBI's efforts to achieve transition to a climate neutral economy.

As noted in the CBI Consultation Paper 151 (CP151),¹⁴ by using their expertise in risk management, (re)insurers have the opportunity to be at the forefront and support broader society in the transition to a climate neutral economy. However, it should be noted that it is not the responsibility of the (re)insurance industry alone to lead change in responding to climate change. This leadership is required at a national and EU level to derive the change(s) needed. The (re)insurance sector will not prevent social and environmental risks and costs. This will be as a result of society's failure to act as a whole.

13. CBI Economic Letter: Climate Change and the Irish Financial System, Vol.2019, No.1, p.3

14. CBI Consultation paper 151, see: <https://www.centralbank.ie/docs/default-source/publications/consultation-papers/cp151/cp151-climate-change-guidance-for-re-insurers.pdf>

Q.24 How will climate change impact on availability, choice and pricing for financial products and services?

This question is one for public policymakers and needs to be looked at holistically rather than through the Code.

As noted in the EIOPA's 2021 Report,¹⁵ climate change will affect the insurance underwriting and pricing activities in multiple ways. Any potential premium increases (or similar actions such as higher deductibles or wider exclusions) could result in unaffordability or unavailability of insurance, leaving an increasing share of the risk uninsured thus creating insurance protection gaps for consumers.

In order to avoid such unintended consequences, there needs to be a shift in focus from reacting to climate-change-related weather events, to a more proactive approach that prioritises prevention, risk reduction and resilience building. This, in turn, will help to maintain the insurability of these events from an insurer perspective and affordability and choice of cover from a consumer perspective as weather events become more frequent and severe as a result of climate change.

Where the unavailability of Insurance products or services becomes a more pressing issue as a result of climate change, it is incumbent on Government, Regulators and Industry to engage and explore high level solutions on what is equitable or viable, such as Public-Private Partnerships, Risk Pooling etc.

Q.25 Does the impact of climate change require additional specific consumer protections

It is incumbent on the CBI to ensure that any regulation that is imposed on the industry aligns with the regulations adopted by the European Union. Currently, the lack of clarity and inconsistency in the EU Sustainable Finance regulatory framework is creating diverging interpretations and confusion for financial markets participants, consumers and investors.

Some key elements of the EU Sustainable Finance framework are not yet finalised and there are challenges with the sequencing of the sustainable finance regulations that create difficulties in collecting the data insurers and other financial sectors need. Robust ESG data is still very scarce because of a lack of reporting by companies and a lack of transparency by ESG data providers and ESG ratings providers on methodologies and assumptions. This lack of data (or reliable third-party data) is a potential source of greenwashing risk.

There are a number of differing regulatory approaches to the topic of sustainability and climate change as much has yet to be finalised both here and in Europe and these regulatory approaches may include additional reporting. A notable example is the current public consultation on Corporate Sustainability Reporting which the Department of Enterprise, Trade and Employment is working on.

15. EIOPA Report on non-life underwriting and pricing in light of climate change, EIOPA-BoS-21/259, 1 July 2021, pp.16-17

It is vital that firms are not overburdened with regulatory obligations, that a layering approach is not taken, that requirements are pragmatic and most importantly that any additional requirements on industry are aligned across all government departments and regulatory agencies

We believe that for the Sustainable Finance framework to deliver on its high ambitions while addressing greenwashing risks and protecting consumers, no new/additional regulation is needed. Well established and existing effective rules protect customers from unclear or misleading claims including on sustainability-related characteristics. Instead, further clarification, coherence and guidance by the regulators is needed to deliver on the high sustainable objectives.

In terms of whether climate change requires additional specific consumer protections, as noted in CP151 both the regulator and regulated firms are at different stages of understanding/managing climate change risks and the process is expected to be iterative and evolving thus our view is that currently it would not be feasible to identify whether there is a need for additional specific consumer protections in this area.

In addition, we would like to stress the need for public education on how sustainability factors can be reflected in financial market products: the new regulatory concepts, terminology and disclosure of information require concise yet effective guidance for consumers to mitigate the risk of misunderstanding and lack of trust in the financial markets. Further work is also needed for the provision of sustainability related product information to customers in an easily accessible and understandable format.

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