



Insurance Ireland responds to the CBI CP158

Review of the Consumer Protection Code

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1 Review of the Consumer Protection Code

With a formal written response running to almost 40 pages, following numerous member events and bilateral meetings with the Central Bank of Ireland, Insurance Ireland has submitted comments on behalf of the Irish Insurance sector to the CBI on the consultation relating to the Consumer Protection Code (CPC). With 427 proposed text changes to the existing CPC, 232 replacements, 115 insertions and 90 deletions, there was plenty of material for the II team to review and consider with our members. Some of our points are set out below, but many more specific issues have been raised in our formal submission, which we look forward to discussing in detail with the CBI over the coming weeks prior to any feedback being issued.

Overall, the submission is in two main parts:

- Response to questions in the consultation paper
- Appendix setting out comments and issues with specific draft regulations and the potential impact on consumers of insurance products.

Overall, we agree that the review of the CPC is a timely exercise. The 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. However, technology has evolved and as a result, so have consumer expectations when interacting with insurance providers. Regulation must keep pace with this evolution. We are also appreciative of the overarching goals of the Code review - which are to provide more clarity, predictability and consistency on the consumer protection obligations of financial services providers.

As the Central Bank will no doubt appreciate following the consultation process, the wholesale review and update of the fundamental rules by which financial services firms are bound by when dealing with Irish consumers is an extremely time-consuming and resource-intensive exercise, from a detailed review of the individual specific regulatory requirements by both the CBI and the industry, to implementing the required resulting changes and ensuring that firms adapt and enhance the systems, policies and procedures to meet the regulatory obligations in this space.

The consultation sets out a number of significant proposed changes across a number of areas of the Code around timelines, requirements for written confirmation (both from a provider and from a consumer) and introduction of a number of new information disclosures that must be issued to the consumer as part of the customer journey in advance of, or after, the acceptance of a policy as well as other compliance requirements with the Code. This results in a material impact on the consumer journey and increased

compliance costs in adhering to regulatory obligations, which are ultimately borne by the consumer. Some proposed subtle wording changes have been identified, which were not highlighted in the CBI's over-arching consultation or the helpful Mapping Tool and will have significant impacts on insurance firms. It is vital that the consumer should benefit from these, and that any potential consumer detriment is minimised in the practical implementation of the proposals.

1.1 Implementation Period

A three-month consultation period, followed by a 12-month implementation period may seem pragmatic on paper, however, this is not the case considering that this is all happening within the same time period as a number of other important regulatory changes both domestically and from the EU. Even where implementation of requirements of CP158 is taken in isolation, it is a very short timeline in which to document appropriate business requirements, redesign the customer workflow, and implement changes to customer documents to ensure additional information requirements are implemented in a way that informs the customer effectively and not just meets minimum standards to provide the information, schedule and test system changes, update policy and procedures, changes to control including quality assurance frameworks and complete thorough staff training required to successfully implement the rules. Rushing through changes of such a magnitude as those included in CP158 risks the delivery of the very outcomes the changes are trying to achieve, and serious consideration needs to be given to a pragmatic implementation timeline.

The implementation issues are exacerbated by the fact that firms must wait until the final regulations are issued by the CBI. Investment in the resource-heavy changes cannot be done until there is clarity about what is to be implemented and that will not happen until the Feedback Statement and final regulations are issued, as this will provide firms with as much certainty on their requirements as possible. It is worth noting that, as part of IAF/SEAR implementation, some significant changes were made in the period between the CBI issuing the draft and final regulations, which had quite a material impact on some firms' implementation programmes (such as the requirement to certify each CF role holder individually). In addition, where there are changes to existing requirements, firms may need to wait to implement until the effective date of the new regulations to avoid falling foul of existing requirements under the Code.

With this in mind, we strongly suggested that the implementation period be extended and would begin at least three months from the publication date of the Feedback Statement. This would support firms in analysing the technicalities and impacts of the new rules as well as aligning the required CPC changes with the required changes from the other regulatory changes which are required at the same time.

Insurance Ireland also suggested that, as was the approach taken with IAF/SEAR and considering the breadth of the proposed changes, a phased approach to implementation should be adopted whereby the Business Regulations come into force in the first instance followed by the General Regulations and any identified amendments between the Code and the proposed Statutory Instrument. It is also vital that existing CBI Guidance, both linked to and outside of, the CPC continues to apply until any changes/withdrawals are formally consulted upon.

We note, in accordance with section 50 of the Central Bank (Supervision and Enforcement) Act 2013, that before finalising these regulations the Central Bank must 'have regard to the need to ensure that the requirements imposed by the regulations concerned are effective and proportionate having regard to the nature, scale and complexity of the activities of regulated financial service providers or the class or classes of regulated financial service provider to whom the regulations apply'. In this context, we have urged the Central Bank to carefully consider all the feedback it will receive from stakeholders and make the necessary changes to align with the requirements. This obligation extends to including each of the wording changes, however subtle on the face of it, which are proposed to be applied between the existing Code and the draft Statutory Instruments.

We are particularly appreciative of the proposed sector-specific breakdown of the Code, as well as the planned Guidance to accompany and facilitate the use of the Code by the relevant parties. The consolidation of a range of existing Central Bank rules and codes in the revised Code will enhance and add coherence to the regulatory framework. This will support not only incumbents but also new entrants to the market and will help them to understand CBI conduct rules for business. We believe that transparency of expectations is key to the delivery of good consumer outcomes and a truly consumer-centric culture within firms.

However, a number of the regulations seek to be cross-sectoral and do not take account of the specificities and differences between products/sectors. This is particularly evident in the regulations in place for Private Health Insurance, which Insurance Ireland set out in our response to the Discussion Paper. The Health Insurance Act(s) outline the principles underpinning private health insurance, with the Health Insurance Authority (HIA) as statutory regulator. When regulation for health insurance is adapted from, or developed from sectors or products other than health insurance, it may not fully account for the intricacies and scope of health insurance products. This can lead to unintended consequences for consumers and our health insurance members.

1.2 Informing effectively

The Covid-19 pandemic and increased investment in technology has seen accelerated development of digitalisation of insurance products and services, as well as a crystallisation of risks such as the ‘expectation gap’ – the gap between the product that insurers have sold and the product the consumer has 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.

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. Accordingly, it is difficult to understand how compliance with the new principle of informing consumers effectively may be achieved in the context of the numerous disclosure obligations arising from both domestic and EU Regulations. The use of traditional communications such as paper via the postal system is no longer considered to be a ‘sustainable’ delivery method. The use of more modern technology methods is considered a more climate-change friendly and sustainable method of informing effectively which should align with the Central Bank’s goals around sustainability.

Consumers now also expect a certain fluidity in how they access information. Rather than receiving key information at a set time over a defined period (e.g., annually), which is set by Regulation etc, consumers expect to be able to access the information digitally at a time of their own choosing and expect to be able to access up-to-date information when they do or indeed access historic information easily also.

While we broadly agree with the Informing Effectively initiative outlined in the revised CPC, the Central Bank may need to better articulate how it expects regulated firms to comply with such a provision in practical terms to ensure that firms are clear on their legal obligations. The National Roadmap for Financial Literacy will be a vital asset in understanding the barriers facing consumers in understanding their financial product or service and bring ways in which firms and the insurance sector can address some of these barriers.

We do not believe that the proposed introduction of a number of significant additional disclosures will support consumers in their engagement with their insurance product. It is widely recognised by regulators and industry that increasing the disclosures to consumers will not result in more informed consumers. In fact, it has been well noted that increasing the disclosures to consumers simply disengages them further or hinders their ability to take informed decisions. There must be a balance between what key information the consumer needs to know and the information that must be provided to comply with

contractual and regulatory requirements. It would be helpful if the Central Bank could emphasise what key documentation should be explained and presented to consumers per sector to ensure practical understanding of the products and services and for firms to meet the requirement of securing consumers' interests by informing effectively.

Mandating increasing numbers of disclosures and repeating already disclosed information will simply lead to consumers ignoring communications as they are getting repetitive information. If there is little benefit to the consumer, we have questioned the necessity of these proposals.

1.3 Consumers in Vulnerable Circumstances

Insurers have a duty of care to their consumers and as such, are already providing additional supports where this is needed and/or requested. As such, we welcome the clarity that is brought by the Guidance and we and our members fully support the initiative. That being said, the much broader definition of vulnerable circumstances and insufficient alignment with the Assisted Decision-Making (Capacity) Act (ADMA), in terms of definitions and categories of vulnerability, do cause some concern.

Our members favour specialised training rather than having to build specific system changes to record vulnerability, especially where these circumstances are transient. By the nature of the interaction (a health claim for example, or a death claim) the vulnerability is inherent, and therefore all consumers in these circumstances would be treated sensitively. It should also be noted that the General Data Protection Regulation (GDPR) provisions already apply in full here, and we do not see a need for an additional CBI requirement for explicit consent to be recorded when there are already well-established rules under GDPR on when customer consent is required.

There are additional difficulties for those consumers who interact via a broker. This brings difficulties in dealing with sensitive issues and perhaps a broad-brush approach in terms of regulatory rules is not the most appropriate way to do this. Requiring explicit consent may lead to a consumer feeling stigmatised or singled out and, as noted, we are of the view that whether explicit consent is required, or not, is already addressed under GDPR. While we note that engagement between the DPC and the CBI on this issue is ongoing, it would have been preferable for the DPC to have formally advised on the proposals in advance of the public consultation.

Each vulnerable circumstance differs, and this means that training, policies and procedures, along with the ability to flex these, is the most appropriate way of ensuring a positive consumer outcome here, not forcing consumers to accept whether or not they are 'vulnerable'/in vulnerable circumstances or being categorised in that manner. We understand the CBI's desire that consumers would not have to explain the circumstance every time they interact with financial service providers, however, requiring a system

check/classification also triggers other legal requirements, and this may not always be in the best interests of the consumer to have to deal with at that time.

We suggest that the CBI increases thematic feedback from supervisory activity on vulnerable circumstances, setting out anonymous examples of good and poor practice it has seen across the financial services industry. Insurance Ireland, as the insurance trade body, will also step up to host workshops for members in terms of sharing good practice and practical issues that arise in this area and we would look to share this with the CBI through our regular engagements. This approach allows for the flexibility that is needed to support consumers in vulnerable circumstances.

1.4 Digitalisation

Overall, we believe that many of the proposed interventions under the digitalisation section of the Code will result in consumer distrust of financial services, rather than the stated intention of building trust in financial products and services. This is primarily due to the increased level of warning statements, pause statements (as well as the mandated wording of these), and reminders of cooling-off periods among others. In addition, the proposed requirements take no account of the potential for product complexity and will apply equally to all product types (whether distributed on an execution-only or fully advised basis) which seems disproportionate and will further contribute to information overload and potentially alarm for consumers.

The interventions intended to enable and support consumer decision-making must not have the unintended consequence of hindering them. After a consumer has stepped through a lengthy online needs analysis and fact-find, the warning statement risks creating or reinforcing doubt in the consumer's mind that they have made a mistake, or they went through the journey incorrectly. Analysis from our members indicates one of the biggest causes for returning consumer engagement through multiple phone calls is consumers doubting whether they have done things correctly. Where doubt is created via the digital journey it may result in driving consumers to use a communication channel not in line with their initial preferences e.g. the phone.

We understand from discussions with the CBI that as part of the previous discussion paper, responses from some stakeholders suggested that the digital journeys were too fast and delivered a product to a consumer in too short a timescale, as there was no reliance on paper/post/face-to-face meetings to provide a slower paced journey. However, this feedback must be balanced with consumer demand – digital platforms have developed due to demand from a more technologically adept consumer who expects a level of service in line with the speed that can reasonably be expected from using a digital platform. Indeed, the speed to which consumers can complete online journeys is often identified in positive feedback provided to members through platforms such as Trustpilot

etc. It would not be a good outcome to end up pushing consumers to take an unregulated product for ease/speed of service, particularly on the investment side, as a result of the proposed requirements in this area.

These interventions also create a disparity between consumers serviced via a digital platform and those serviced via post/face-to-face interactions. There are many more disclosures to a digital consumer than to those who interact in other ways – this could be seen to defeat the purpose of the choice to go digital – which enables a consumer to purchase a product at the pace they are comfortable with. The Code requirements should also encourage and support consumers to transition to digital, where this is their preference. In addition, it should support firms to move to carbon-neutral services by reducing postage, hard copy paper and unnecessary email communications which also create a digital carbon footprint in line with the Central Bank's own sustainability objectives.

It is also not clear how EU legislative initiatives related to digitalisation, such as FiDA, the Distance Marketing Directive, and the European Single Access Point (ESAP), have been considered in the proposals. It is essential that this Code is future-proofed and aligned as much as possible with new rules we know are coming from EU level.

1.5 Proposals for Explicit Opt-in for insurance products

We support the CBI's proposal for Motor, Home and Health and commend the Bank on taking a pragmatic approach to a complicated issue and taking the time to consider this rather than rush out with rules as part of the Differential Pricing rule changes. However, we strongly believe it is not in the interest of consumers to introduce an approach to apply an explicit opt-in requirement for Dental and Travel insurance. This will place consumers at risk of significant negative outcomes. A change in approach will create inconsistency across insurance products and will require a shift in consumer behaviour and understanding.

The benefits associated with an automatic opt-in approach for travel and dental insurance outweigh the risks, for example, the potential benefits of an explicit opt-in approach are not outweighed by the risks of life-changing medical costs or lack of cover due to pre-existing conditions (travel) or reduced cover due to need to reserve waiting periods (dental). As is currently the case, where a product is no longer relevant to a consumer they simply cancel the policy. Consumers can choose not to automatically renew, renewal notices are issued and consumer rights to switch and withdraw ("cooling off") are highlighted to consumers both at policy inception and at renewal. We have provided the CBI with a number of scenarios designed to illustrate current practice and how this opt-in would likely have a detrimental impact on consumers.

It is worth noting that consumers with pet and gadget insurance also benefit from automatic renewals. Pet insurance operates in a similar way as health insurance. A lapse in cover may impact a consumer getting full cover elsewhere (or with their current insurer) if they had claims on their policy as these would be regarded as pre-existing conditions and excluded from cover in future policies.

Similarly, gadget insurance such as mobile phone cover is usually only available at the time of purchasing a new mobile phone. If the policyholder lapses their cover 1 year in, they may find it difficult to source alternative cover as many programs only offer this cover with a newly purchased device to protection.

1.6 Proposals relating to additional pre-renewal notifications

We strongly disagree with the proposal for an additional pre-renewal notification for non-life insurance products and we question the rationale for this proposal. Information overload up front does not always equate to consumer transparency and may impact the ability of firms to serve consumers efficiently.

In terms of switching contracts, car insurance is one of the highest switched products across insurance and utilities, followed by home insurance, according to a CCPC report from November 2023. The report noted high levels of engagement in the home and car insurance markets, 'with 8 out of 10 home and car insurance consumers engaging with their insurance provider when renewing' and noted that 1 in 4 consumers switch their policies at renewal. According to the Report, home and motor insurance had two of the highest levels of satisfaction with the switching process scores, at 63% and 44% respectively. Where health insurance had lower switch volumes, the report concluded this was due to 'an unintended consequence of regulation to improve access', demonstrating the importance of streamlined, meaningful disclosures at the right time.

Given the high levels of switching in insurance markets, we question the benefit to consumers of mandating a pre-renewal notification, particularly noting the cost to firms in delivering this.

The practical impact of this proposal is to drive consumers to call centres to ask what their premium is, so that they can compare. Insurers will simply not have that information at that time. This will have a negative impact on insurers' ability to service consumers for absolutely no benefit to the consumer, at a time when evidence shows that switching is high.

In addition, considering the average quote validity period currently in the general insurance market ranges on average up to 30 days, should the customer engage with a provider to obtain an alternative quote, such a quote would have expired by the time of renewal and require the customer to re-engage with other RFSP again to quote for the risk and obtain

new price applicable as at the date of renewal in order to compare with existing insurers terms.

1.7 Proposals relating to Life and Pensions

In August 2023, the CBI Consumer Protection Team issued a 'Dear CEO letter' regarding a Thematic Review on the Ongoing Suitability of Long-Term Life Assurance Products. This set out a number of expectations on life firms in terms of periodic assessments and ongoing suitability. There are a number of conflicts between the letter and the proposals in the CP158 and the associated draft Regulations. The Regulation needs to be clarified as to what exactly the CBI expectations from life firms are, preferably prior to any supervisory action in this area.

There is also a fear that the stark wording of the warning statement will result in consumer distrust of investment products. At a time when there is a joined-up effort across the EU through the EU Retail Investment Strategy and the Capital Markets Union to stimulate engagement in capital markets, it seems anomalous to engage in 'scaremongering'. The Retail Investment Strategy aims at a coherent approach to empower consumers to take financial decisions and benefit from the internal market and to address the challenge of low capital market participation in the EU. The level of retail investor participation in EU capital markets remains very low compared to other economies, despite high individual savings rates in Europe. This means that consumers may currently not fully benefit from the investment opportunities offered by capital markets. While holding savings in cash/savings accounts could be perceived as lower risk, this does not mean 'no risk', particularly in terms of inflationary impacts.

1.8 Cross-Border Insurance

It is our understanding that the Standards for Business are intended to apply to all Regulated Financial Services Firms, including those which do not operate in Ireland or interact with Irish consumers. Therefore, the inclusion of a conduct-based Standard for Business seems to have caused some confusion among our members. The Statutory Instrument (SI) itself does not include any reference to Irish consumers, such as that set out in Regulation 14 of Conduct of Business SI, which makes it clear that these General Requirements do not apply to firms who offer products out of Ireland. Applying conduct rules to non-Irish consumer business would result in undermining the single market for financial services and in effect, constitute double regulation. It would also place additional requirements on Irish firms operating outside the State which local firms would not be required to adhere to and result in additional complexity and cost for Irish firms. The Central Bank should be explicitly clear in the Feedback Statement as to its expectations here for cross-border firms.

We have also included comments on the specific wording of the draft regulations in our full response.

We look forward to continuing our positive engagement with the CBI during the review process and supporting the Bank in understanding the concerns of the Irish Insurance sector.

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