Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

Feedback Statement CP116
Intermediary Inducements

Enhanced Consumer Protection Measures

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Foreword

Intermediaries play an important role in the provision of financial services and products to consumers in the Irish market. Through the course of its work, the Central Bank has identified many potential benefits to consumers from the operation of Intermediaries in the Irish market, including access to advice, better competition in the market and a wider choice of products. However, in keeping with its mandate to protect the consumers of financial services, it is incumbent on the Central Bank to also consider and evaluate the risks posed to consumers through the existence of commission arrangements between intermediaries and product producers. The manner in which product producers pay the intermediaries who sell their products can influence the behaviour of those intermediaries and potentially drive poor behaviours such as product or product producer bias, overselling, and higher costs for consumers. Therefore, it is vital that commission arrangements are designed in such a way that they encourage responsible business conduct, fair treatment of consumers and avoid conflicts of interest. It is in this context, and in line with the Central Bank's strategic objective of Strengthening Consumer Protection, we are now making significant amendments to the Consumer Protection Code 2012 (the Code) to enhance the consumer framework in relation to the payment of commission to intermediaries.

We have researched and developed these amendments through a comprehensive process of analysis and engagement. In 2016, we published a Discussion Paper on these matters. This was followed by research on consumer understanding of commission payments, by an examination of commission structures in the market and by a consultation paper on Intermediary Inducements – Enhanced Consumer Protection Measures (CP116), published in November 2017. The outcome of this lengthy project has now culminated in amendments to the Code.

We do not propose to introduce a ban on commission payments. Once properly designed, commission arrangements can be beneficial for consumers by providing them with access to advice without having to pay a direct and/or upfront fee for this service. Such commission structures serve to ensure that all consumers can avail of advice on financial products and services, whilst eliminating the risk of an advice gap emerging in the event that a consumer is unable or unwilling to pay for advice. However, the new provisions in the Code will prohibit certain types of commission payments to remove clear conflicts of interest, and will result in additional transparency around commission arrangements, the aim of which is to reduce information asymmetries between consumers and intermediaries. Furthermore, an intermediary will no longer be allowed to call itself ‘independent’ unless it is truly independent.

In conclusion, these new provisions aim to promote the development of a consumer-focussed culture within financial services firms where commission payments are received. We consider that these amendments to the Code provide for a robust consumer protection framework around the payment of commissions, through addressing various conflicts of interest, by providing further clarity on the terminology used, and by introducing additional transparency obligations on commission arrangements available to intermediaries.

Section 1: Introduction

In November 2017, the Central Bank of Ireland (Central Bank) published Consultation Paper 116 - "Intermediary Inducements - Enhanced Consumer Protection Measures" (CP116) seeking views from interested stakeholders on the proposed measures summarised below:

1. Acceptable inducements

It was proposed to specify the criteria that must be met in order for inducements to be considered acceptable. Such criteria would bring consistency in the rules that apply across all sectors when selling financial products.

2. Inducements that give rise to a conflict of interest, and would no longer be acceptable

It was proposed to provide that certain inducements are deemed to give rise to a conflict of interest and consequently, must be avoided.

- inducements linked to targets that do not consider the consumer's best interests (e.g., targets linked to volume, profit or business retention);
- inducements linked to the size of a mortgage loan;
- soft commission arrangements; and
- recommending a particular product to a consumer from a range of products where the intermediary would receive different levels of inducements for the products in that range, i.e., where the intermediary could be incentivised to recommend the product that pays the intermediary the best commission (or other inducement), rather than the one best suited to the consumer's needs.

3. Clarity about what constitutes "independence"

It was proposed that firms would no longer be permitted to describe themselves and their regulated activities as 'independent' where they accept and retain inducements.

4. Transparency of remuneration arrangements

Increased transparency measures relating to inducements were proposed.

5. Record-keeping requirements

It was proposed that firms must retain records to demonstrate:

- how conflicts of interest arising from inducements have been avoided for each transaction;
- how the requirement that a firm must not make any recommendation if there are different levels of inducement offered for the range of products involved has been met; and
- that the inducement arrangements summary document was brought to the attention of the consumer before concluding a contract for a financial product.

6. New definitions

New definitions for 'inducement' and 'minor non-monetary benefits' were proposed.

Proposed amendments to the Consumer Protection Code 2012 (the Code) and the introduction of new provisions were included in CP116, on which interested stakeholders were invited to provide comments.

The closing date for receipt of submissions was 22 March 2018. A small number of submissions were requested to be kept confidential. In addition to these, ten submissions were from industry, comprising insurance companies, financial advisers, investment managers and one moneylender; five from industry representative bodies, and one was from a State representative body.

Following detailed analysis of the comments received during the consultation process and further engagement with stakeholders, an Addendum to the Code has now been finalised. We would like to express our appreciation to all those who provided assistance and feedback during the consultation process.

Please note that this document is for information purposes only. It does not amend or alter the Code and does not form part of the Code. This document does not constitute legal advice and should not be used as a substitute for such advice. The Central Bank does not represent to any person that this document provides legal advice. It is the responsibility of all regulated entities to ensure their compliance with the Code. Nothing in this document should be taken to imply any assurance that the Central Bank will defer the use of its enforcement powers where a suspected breach of the Code comes to its attention.

This paper sets out a summary of the feedback received to CP116 and the decisions made on the proposals, following the analysis of the submissions received to CP116. We believe that our approach meets the objective of achieving greater transparency and protection for consumers.

The Central Bank's position on each of the proposed measures as consulted on in CP116, is set out below in Section 2, parts (1) to (9) and, for ease of reference, each of these sections includes:

- the proposal as consulted on in CP116;
- a brief summary of the responses received on the measure in the consultation process; and
- the Central Bank's final position in relation to each measure.

Section 2: Feedback on measures proposed in CP116

1. Acceptable inducements

1.1 Measure consulted on in CP116

CP116 to amend the Code to specify that, in order for inducements to be acceptable, they must:

- be designed to enhance the quality of the relevant service to the consumer;
- not have the potential to impair the intermediary's obligation to act honestly, fairly and professionally in accordance with the best interests of the consumer; and
- not have the potential to impair the intermediary's obligation to satisfy the suitability requirements set out in Chapter 5 of the Code.

The Code imposes requirements in relation to commission arrangements on product producers distributing products through intermediaries and on regulated entities in their arrangements with their employees. In general, these requirements refer to acting in the best interests of the consumer and fulfilling suitability requirements. However, existing Code provisions do not contain specific requirements in relation to the receipt by firms themselves of commission payments from third parties.

1.2 Submissions

There was significant opposition to the proposed criterion of demonstrating how an inducement has been designed to enhance the quality of the service.

Those who were in favour supported the proposal for the following reasons:

- the proposed revisions to the Code will seek to establish a level playing field in terms of inducements across the various sectors;
- any initiatives designed to enhance the quality of the service provided by intermediaries to consumers are welcomed;
- intermediaries receiving ongoing commission or renewal should offer an enhanced quality of service; and
- insurance intermediaries when providing advice on investment products or single member pension requirements should have full functional equivalency with MiFID.

Those who were not in favour of the proposal indicated that:

- the application of the 'MiFID' standard to all insurance products lacks proportionality;
- the nature of MiFID products differs greatly from the nature and complexity of products that fall under the IDD and the Mortgage Credit Directive (MCD);

- insurance intermediaries that distribute insurance products which do not have an investment component should not be subject to the requirement that inducements must enhance the quality of the service;
- the proposed approach does not align with other European jurisdictions;
- there are sufficient protections for consumers through the existing provisions of the Code; and
- consideration should be given to how the intermediary will be remunerated for a 'standard service'.

1.3 Additional/alternative suggestions

Some respondents provided alternative proposals. These included:

- the introduction of an outright ban for all types of inducements;
- the main focus of the Central Bank should be on an appropriate IDD implementation, rather than consistency with other legislation;
- it would be more beneficial for consumers to be provided with information on the remuneration the intermediary receives; and
- the focus at individual transaction level should be on the quality of the documented advice provided.

1.4 Response

The Central Bank is of the view that the concept of enhanced quality is not suitable in many circumstances. There is a risk that including the measure would result in intermediaries artificially ascribing enhancements to meet this particular requirement, effectively creating a 'tick-box' exercise.

That aside, we do consider that the concept of enhanced quality should be applied to non-monetary benefits to ensure that such arrangements are designed for the benefit of the consumer. To achieve this, the Code has been amended to specify that, in order for inducements to be acceptable, they must:

(i) not impair compliance with the regulated entity's duty to act honestly, fairly and professionally in the best interests of the consumer;

(ii) not impair compliance with the regulated entity's obligation to satisfy the conflicts of interest requirements set out in Chapter 3 of this Code and the Insurance Distribution Regulations 2018;

(iii) not impair compliance with the regulated entity's obligation to satisfy the suitability requirements set out in Chapter 5 of this Code and the Insurance Distribution Regulations 2018; and

(iv) in the case of a non-monetary benefit, be designed to enhance the quality of the service to the consumer.

Point (iii) has been amended from the proposal in CP116 to include reference to the conflicts of interest requirements in the Code and the Insurance Distribution Regulations 2018 (IDR). Point (iv) has also been amended to include reference to the IDR. The Central Bank considers that the approach outlined above addresses the issues raised with regard to proportionality and the demonstration of enhanced quality.

2. Independence

2.1 Measures consulted on in CP116

CP116 proposed that firms would no longer be permitted to describe themselves and their activities as ‘independent’ where they accept and retain inducements. The proposed amended provision specified that a firm could only describe itself as ‘independent’ in its legal name, trading name or description of the firm, where all regulated activities are provided on the basis of a fair analysis of the market.

2.2 Submissions

Most respondents were opposed to restricting the use of the term ‘independent’ as outlined in this proposal. Those who were not in favour of the proposal indicated that:

- the proposal is entirely impractical;
- consumers are extremely reluctant to pay fees for the provision financial services, which would be commensurate with the level of experience which they are benefitting from and the level of work undertaken by intermediaries;
- could result in no intermediaries being classed as ‘independent’ unless they actually charge commission to the customer directly;
- it is difficult to see how it is in the customer's interest to force consumers to pay fees directly; and
- the existing definition of independence facilitates both those who wish to pay by fee only and those who wish their intermediary to be remunerated by their provider.
- a radical shift away from the current model (removing commissions) would run the risk of radically reducing the business income stream and as a result, reduce the employment opportunities within the industry; and
- there is a danger that the limitation on receipt of any inducement will limit access to “independent” intermediaries only to those who can afford fees which could result in an ‘advice gap’.

Those who were in favour of the proposal stated that there should be harmonisation between MiFID and IDD on the use of the term ‘independent’, so as not to create competitive distortions or reduce competition in the market.

2.3 Response

It is noted that while the current provision in the Code allows the consumer to choose to pay by fee or to allow the intermediary to be remunerated by the product producer, this did not address the wider issue of interpretation of independence. The term ‘independent’ suggests that an adviser is not subject to influence from the product producer, which is difficult to reconcile with the receipt of commission payments from the product producer. Without restricting the term as proposed, consumers cannot be sure that an adviser is truly independent. In addition, we do not agree that this restriction forces consumers to pay fees directly. The provision does not preclude intermediaries from accepting commissions – however, should they wish to do so, they cannot describe themselves as independent. The inclusion of the term 'independent' in the legal name or trading name of an intermediary implies that all services are offered on an 'independent' basis. Consequently, it is our view that the conditions set out for the use of the term 'independent' in these circumstances are reasonable.

The Central Bank has implemented the new provision, which has been strengthened in order to mitigate the risk of alternative terms such as 'impartial' being used in place of 'independent'.

3. Inducements linked to targets that do not consider a consumer's best interests

3.1 Measures consulted on in CP116

CP116 proposed to make it clear that any inducement paid by a third party that is contingent on reaching or achieving targets that do not consider the consumer's best interests, including profit targets, volume-based targets, or targets linked to business retention, is deemed a conflict of interest and must be avoided.

The Code contains existing requirements on conflicts of interest, including a general principle that a regulated entity must seek to avoid conflicts of interest. However, commission payments provided to intermediaries by product producers (such as payments for achieving a sales target on a specific product, or paying more commission for the sale of one product over another competitor/equivalent product) seek to incentivise the behaviour of the intermediaries to whom they are provided. The proposed measure sought to address the potential conflicts of interest, which can arise as a result of such commission arrangements.

3.2 Submissions

It was widely accepted that inducements contingent on achieving volume targets should be avoided. Respondents indicated that this is no longer a feature in the market. However, there are perceived practical difficulties implementing the proposal in its current form due to the various types of agency agreements that exist in the market, e.g., delegated, binding and underwriting authorities; Managing General Agents (MGAs), etc.

Those who were in favour supported the proposal for the following reasons:

- commission targets linked to volume are now recognised as no longer acceptable within the market; and
- any inducements contingent on the intermediary achieving targets set by providers, including profit targets, volume targets, and targets linked to business retention, are generally unlikely to be aligned with the consumer's best interests, as the inducement is invariably designed to influence the intermediary to direct business to that provider and to act in the intermediary's own short-term financial interests.

Those who were not in favour of the proposal indicated that:

- the built-in nature of commission means there is no distinction between remuneration for sales and remuneration for work transfer;
- payment of profit-related commission to an insurance intermediary that has a binding authority agreement from an insurer does not create a conflict of interest;
- many insurance intermediaries that have binding authority agreements transact business under the agreement on a wholesale basis and do not have direct contact with consumers;
- the IDD does not prohibit any particular form of remuneration;
- many intermediaries receive remuneration for performing activities on behalf of the insurance company and this work transfer is often included in the remuneration available to an MGA;
- current provisions of the Code place obligations on firms in respect of remuneration arrangements and conflicts of interest; and
- interference could close the market to new entrants and MGAs.

3.3 Response

While the above concerns were raised in the submissions, we consider that these largely focussed on the unintended consequence of capturing arrangements deemed by respondents to be beneficial to consumers, e.g., MGAs.

With regard to the point made that the IDD does not prohibit any form of remuneration, it is should be noted that the approach outlined above is in line with the requirement in the IDD, under which an insurance distributor is not permitted to:-

"make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to itself or its employees to recommend a particular insurance product to a customer when the insurance distributor could offer a different insurance product which would better meet the customer's needs".

In addition, Regulation 8(5) of European Union (Consumer Mortgage Credit Agreements) Regulations 2016 (CMCAR), which transposes the MCD into Irish law, requires that, where a mortgage credit intermediary provides advisory services, the remuneration structure of the staff involved does not prejudice their ability to act in the consumer's best interest and in particular is not contingent on sales targets.

The Code has been amended to provide that certain types of commission are no longer permissible. This includes the specific examples as set out in CP116 such as commissions based on targets relating to volume and bonus payments linked to business retention. It was not intended to interfere with the operation of the MGA distribution channel in this proposal. Instead, the aim is to address the potential commission and product producer bias that can arise because of particular commission arrangements. Consequently, the reference to 'profit' has been removed from the provision. However, it should be noted that MGAs must avoid conflicts of interest relating to targets that do not consider a consumer's best interests.

4. Inducements linked to the size of a mortgage loan

4.1 Measure consulted on in CP116

CP116 proposed to amend the Code to specify that inducements linked to the size of a mortgage loan are deemed a conflict of interest and must be avoided.

The aim of this proposal was to mitigate any conflict of interest that could present an intermediary with an incentive to encourage a consumer to borrow more, as the intermediary would earn higher commission by doing so. As outlined in CP116, while the consumer may initially be happy with the higher level of mortgage loan, it may not be in the consumer's best interests in the longer term to enter into such a commitment. The outcome may be detrimental for the consumer as it has the potential to lead to over-indebtedness.

4.2 Submissions

Most respondents did not agree with the inclusion of any new rules in this area for a number of reasons, including the following:

- the rate of commission for mortgage products is set at 1%, which removes any lender bias;
- mortgage intermediaries do not influence lender policy or mortgage approval decisions;
- there are macro-prudential rules in place to protect consumers;
- the intermediary has no capacity to influence any of the above as it is factual and pre-determined;
- intermediaries may choose to focus on less complex cases if a flat fee structure is introduced;
- risk that intermediaries will exit the market potentially leading to an advice gap or to consumers being limited to lenders' advice; and
- no evidence of complaints or consumer detriment in this area.

In summary, respondents are satisfied with the current remuneration model in respect of mortgage lending and the existing protections available under the Code.

4.3 Response

In response to the point raised on the standardisation of commission rates, it should be noted that the current level could change in the future as the market fluctuates.

The existence of the Central Bank's macro prudential mortgage measures assist in mitigating the risk of over-indebtedness. The measures are designed to ensure that banks and other lenders lend money prudently and to limit the extent to which house buyers can borrow more than they can afford. By doing so, the measures increase the resilience of both borrowers and the banking system so that they can better withstand any future economic shocks. The latest annual review of residential mortgage lending requirements indicates that these aims are being met. However, these measures do not address the potential risk of a consumer borrowing more than they need on foot of a recommendation provided by an intermediary.

With regard to the point made that intermediaries do not have influence over lender policy or mortgage approval decisions, we consider that this does not mitigate the risk identified.

Notwithstanding the above, the Central Bank proposes to postpone taking action on this particular measure until further research is undertaken in this area. It is expected that this research will be undertaken within the next 12 months with a view to it being considered as part of the next full Code review, which is expected to commence in 2019.

5. Soft commission

5.1 Measures consulted on in CP116

Soft commission is deemed a conflict of interest and must be avoided. It was proposed to delete the existing provision and definition for soft commission in the Code and to introduce a new definition for 'minor non-monetary benefit'.

Provision 3.36 of the Code stipulated that soft commission agreements must be disclosed to consumers and that any business transacted under such an agreement must not conflict with the best interests of consumers. The definition in the Code stated that a soft commission agreement means any agreement under which a regulated entity receives goods and services, in return for directing business in the way of another person. CP116 proposed to remove the references to soft commission in the Code as such arrangements are now deemed a conflict of interest.

5.2 Submissions

Those who were in favour supported the proposal for the following reasons:

- the soft commission provision should be dropped in favour of the inducement/minor non-monetary benefit definitions as these are inherently more useful, and
- no objection to the deletion of the term 'soft commission' as the term is not very easily understood by consumers;

Those who were not in favour of the proposal indicated that:

- soft commission arrangements lead to better outcomes for consumers;
- financial support provided by lenders to intermediaries for compliance education and training that leads to better outcomes for consumers is important and is not likely to raise conflicts;
- if an intermediary uses a product producer's software in a tied agent model, we do not see how a conflict arises;
- the current provision, in tandem with the current conflicts of interest requirements of the Code, addresses any risks to the consumer;
- access to software and platforms are an essential feature of providing access to markets and funds, giving customers wider choice and better products to suit their needs, and
- the regime should be consistent with that proposed in the IDD.

5.3 Response

Having considered the responses received, we are of the view that there is no compelling argument for retaining soft commission references in the Code, as a conflict of interest exists where benefits are provided in return for placing business with or directing business to a particular product producer. The action proposed in CP116 is also necessary in the context of the potential conflict of interest which can arise through the existence of benefits such as entertainment and hospitality. Benefits of this nature can reasonably be perceived to influence the behaviour of an intermediary towards the product producer, e.g., placing more business with a product producer that provides such benefits as opposed to with another product producer that does not. In this instance, one could argue that the best interests of the consumer may be considered secondary to the business relationship between the intermediary and the product producer.

Consequently, Provision 3.36 and the soft commission definition have been removed from the Code. The Central Bank has introduced a new definition for 'minor non-monetary benefit'. This definition does not preclude intermediaries from accessing IT platforms or software or any of the other benefits highlighted in the responses above.

6. Recommendations where conflict of interest exists

6.1 Measures consulted on in CP116

CP116 proposed to amend the conflicts of interest provision in the Code to stipulate that an intermediary may not recommend a product to a consumer as being the most suitable product from a range where there are different levels of inducement offered for the range of products involved.

Here, the different levels of inducement mean that the intermediary is incentivised to recommend the product that pays the intermediary the best commission (or other inducement), rather than the one best suited to the customer's needs.

6.2 Submissions

There was significant opposition to the proposal that an intermediary may not recommend a product to a consumer as being the most suitable product from a range where there are different levels of inducement offered for the range of products involved. The main issues cited were as follows:

- product suitability would be compromised if decisions are made based solely on the amount of commission paid;
- there are differences in the commission rates paid by different companies for the same product making implementation difficult;
- there are some internal systems in place for the avoidance of commission bias, i.e., some front facing staff are not aware of the commission levels offered on the products;
- classification of payments to intermediaries, i.e., the built-in nature of commission makes it difficult to separate true commission and work transfer in some cases, and
- operational difficulties for product producers and intermediaries to ensure that the commission paid does not exceed that of the lowest available.

6.3 Response

The overall objective of this proposal was to eliminate the conflict of interest that an intermediary is presented with by the prospect of receiving different levels of inducement when recommending a product to a consumer. The different levels of inducement mean that the intermediary may be incentivised to recommend the product that pays the intermediary the best commission (or other inducement), rather than the one best suited to the consumer's needs. Having reviewed the responses received, it is clear that the intention of the proposal was widely misunderstood in the submissions. Many respondents highlighted that the proposal would interfere with the concept of suitability if intermediaries could not recommend a product that attracts different levels of inducement. The intention of the proposal was for intermediaries to find a way of equalising the levels of inducement available in order to remove inducement bias.

This provision will not be implemented at this time. The enhanced disclosure requirements set out in Section 8 will add protection for the consumer in the context of varying commission rates. The Central Bank plans to re-evaluate this measure as part of the planned full review of the Code, to determine whether further action is warranted in this particular area.

7. Transparency of commission arrangements

7.1 Measure consulted on in CP116

CP116 proposed to amend the Code to specify that intermediaries must publish on their websites and display in their public offices a comprehensive summary of the details of the inducement arrangements they have with any product producers with which they have an appointment or from which they receive inducements for arranging products. At a minimum, this summary should include:

- the basis on which an inducement is payable;
- an indication of the amount or percentage of inducement paid;
- any additional benefits to be paid or provided to the intermediary, and
- details of any fees, administrative costs or non-monetary benefits, which could be paid to the intermediary.

7.2 Submissions

Respondents generally viewed the proposed measures on the transparency of inducements as problematic. Various issues were raised including commercial sensitivity, practical difficulties in disclosing details of all arrangements and information overload for consumers. Respondents stated that the requirement to display the information publicly could potentially lead to product producers 'huddling around market norms'. Some respondents advised that there is already a regime of disclosure, which works well.

7.3 Response

In response to the point raised on the existing regime of disclosure, we consider that this does not address the issue of the lack of transparency of commission arrangements in general. Many consumers are not aware of the types of commission being paid, e.g., sales commission, trail commission, upfront commission and so on. Consequently, we are of the view that the proposal to introduce further transparency obligations on commission arrangements has merit. We consider that the introduction of additional transparency measures will mitigate this conflict by making commission arrangements fully transparent to consumers.

The Central Bank has amended the Code to include the new provision, strengthened in order to provide for greater transparency in previously opaque areas, e.g., trail commission and clawback provisions. An intermediary must publish the details of all the commission arrangements it has agreed with product producers for all products in a manner that is accessible to consumers. This information must be made available in the public office or on the intermediary's website. Where an intermediary operates a website, the summary must be published on the website. The information must include the basis on which any commission is paid, an explanation of the commission arrangement including details on the type of commission being paid, any agreed fees or administration costs and any additional benefits that may be provided to the intermediary as part of the arrangement. As well as general availability through a website or in the public office, the intermediary must bring this information to the attention of the consumer prior to the conclusion of a contract. Records demonstrating compliance with this particular requirement must be retained.

The aim of the provision is to encourage product producers and intermediaries to develop inducement arrangements that are aligned with the consumer's best interests and to help mitigate the risk of commission bias occurring in practice.

8. New definitions

8.1 Measure consulted on in CP116

CP116 proposed to amend the Code to include proposed new definitions for 'inducement' and 'minor non-monetary benefits' as follows:

"inducement" means a fee, commission or non-monetary benefit, whether target-based or otherwise, paid or provided to a regulated entity by a third party or a person acting on behalf of a third party, other than the consumer or a person acting on behalf of the consumer, excluding minor non-monetary benefits.

"minor non-monetary benefit" means such benefit that is capable of enhancing the quality of the service provided to a consumer and is of a scale and nature such that it could not be judged to impair compliance with the regulated entity's duty to act in the best interest of the consumer.

8.2 Submissions

Most respondents were opposed to the term 'inducement' due to negative connotations associated with the word itself. Respondents indicated a preference for 'commission' or 'remuneration' stating that these terms are more easily understood by consumers and more accurately reflect the role of the intermediary.

The proposed definition for minor non-monetary benefit was broadly supported with some respondents providing additional examples of benefits that they consider to be minor non-monetary benefits. Several respondents highlighted that the definition should not curtail normal business and social interactions (reasonable business entertainment). The concept of demonstrating enhanced quality was challenged.

The issue of harmonising the requirements for distributed products under the Insurance Distribution Directive (IDD), with those distributed under the Markets in Financial Instruments Directive (MiFID) was raised with polarised views.

CP116 also sought views from respondents on whether a monetary limit should be set, as a guide, on a minor non-monetary benefit. Those in favour put forward the following options:

- a monetary limit should be considered and documented on a case-by-case basis taking the size and nature of the business relationship into account;
- providers should be allowed to decide on a de minimis amount and firms should be allowed to develop their own policy appropriate to their business;
- €200 per attendee to a seminar or educational event; and
- a monetary limit could be appropriate for food, drink, hospitality or goods provided.

Those who were not in favour noted that imposing a monetary limit to minor non-monetary benefits could prove difficult due to the nature of differing inducements and intermediary agreements. One respondent stated that;-
"A monetary limit would have to be referenced per person, per firm, per event, per product, per year and so on, and the limit would need to be regularly reviewed and updated".

8.3 Response
The Code currently describes remuneration in the form of fee, commission, other reward or remuneration in respect of the provision of regulated activities. In order to ensure consistency within the Code, it is proposed to use the phrase 'fee, commission, other reward or remuneration' rather than the term 'inducement'.

The Central Bank has introduced a new definition for minor non-monetary benefit to the Code. However, no monetary limit has been imposed. Furthermore, the concept of enhanced quality has been retained in the definition in respect of non-monetary benefits.

9. Record-keeping requirements

9.1 Measure consulted on in CP116

New record-keeping requirements proposed that firms would be required to retain records to demonstrate:

- how conflicts of interest arising from commission have been avoided for each transaction;
- how the requirement that a firm must not make any recommendation if there are different levels of commission offered for the range of products involved has been met; and
- that the commission arrangements summary document was brought to the attention of the consumer before concluding a contract for a financial product.

9.2 Submissions

The requirement to retain records for each transaction was almost universally opposed with many responses stating that the measure is disproportionate, excessive or unworkable in practice. Furthermore, respondents were generally satisfied with the current provisions of the Code in this regard.

9.3 Response

The requirement to maintain up-to-date records demonstrating how conflicts of interest arising from third party inducements have been avoided for 'each transaction' is deleted on the basis that an intermediary is already obliged to adhere to the conflict of interest requirements in Chapter 3 of the Code. The requirement to maintain records to demonstrate that the information on commission arrangements has been brought to the attention of a consumer before concluding a contract for a financial product or service has been incorporated into the provision outlined in Section 7 above.

10. Lead-in time

The Central Bank has produced a further Addendum to the Consumer Protection Code 2012 to give effect to the amendments outlined in this Feedback Statement. These amendments apply from **31 March 2020**. This facilitates a six-month lead-in time to allow firms' to implement any relevant changes.