



**Brokers Ireland Submission on the Central Bank's
Consultation Paper on the Review of the Minimum
Competency Code 2011 – CP 106**



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This submission outlines the views of Brokers Ireland in relation to the Central Bank's consultation on the review of the Minimum Competency Code 2011 (CP 106)

Brokers Ireland is a co-operative structure between the Irish Brokers Association (IBA) and the Professional Insurance Brokers Association (PIBA) who together represent over 90% of full time professional intermediaries in the Irish market.

Question 1:

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

Considering the diverse range of products and services offered by intermediaries and the scope of authorisations and registrations involved we do not believe a 'one size fits all' approach to minimum levels of experience in respect of *any retail product* is either proportionate or appropriate. We have set out our views based on the scope of authorisations & registrations.

MIFID Firms

Given the timescale of this review, we feel that the 3rd of January 2018 deadline for MIFID firms to obtain a recognised qualification is unattainable and should be reviewed.

Investment Intermediaries (IIA)

We note that firms authorised under the Investment Intermediaries Act (IIA), can avail of an Article 3 exemption under MIFID II to advise on limited investment products. Article 25(1) of MiFID II states that Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice or providing information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm possess the necessary knowledge and competence to fulfil their obligations under Article 24 and Article 25.

Article 25.1 is however not amongst the articles listed in the MiFID II "opt-out" article, article 3. Our understanding is that article 3 foresees the possibility for Member States to apply a national "opt-out" regime for certain firms on the condition that they apply a listed set of MiFID II articles in an analogous way to these firms. Therefore, this means that if a Member State decides to create a national opt-out regime and intermediaries fall under this regime, MiFID II does not foresee that the MiFID II knowledge and competence requirements apply to them in an analogous way. The regular national regime should therefore apply.

We believe that the same applies to the "Guidelines specifying criteria for the assessment of knowledge and competence of investment firms' personnel" that ESMA developed last year, based on the mandate given in article 25.9 of MiFID II.

We therefore strongly believe that the MIFID II knowledge and competency requirements should not apply to IIA firms providing these limited services.

Brokers Ireland note that the proposed experience requirement is only legally required under MIFID II for MIFID authorised firms.

Existing regulated firms

Recognition needs to be given to firms who are currently trading where individuals hold either a recognised qualification or are availing of the grandfathering arrangement for certain products. It is

noted that grandfathers would have to obtain a recognised qualification if advising a new product range.

For existing firms and sole traders, we believe that the requirement to obtain qualifications for handling the additional product range, provides the necessary protection to the consumer and contributes to ongoing market stability. The consultation paper recognises that the six month experience requirement will cause operational difficulties for some firms, in particular sole traders. Outlined below are the practical implications of this proposal:

- If a firm or sole trader decides to expand their product offering, this new experience requirement would represent a barrier to business expansion.
- We believe that the proposed 6 months experience requirement for the sale of non MIFID products is not proportionate or necessary as:
 - The individuals concerned will already have developed relevant skills, knowledge and experience in relation to appropriateness, suitability, knowing the consumer etc.
 - The firm or sole trader will already have experience in building and managing client relationships, whilst in compliance with all elements of the Consumer Protection Code (CPC).
 - Technical product knowledge such as terms, conditions, tax implications for a new category would be gained through the acquisition of the qualification*.
 - Firms will receive product provider training and support, and is also backed up with ongoing CPD requirements.
 - It is consistent with the current ability to handle the sale of “Associated Insurances” as defined in part 6 and 7 of Appendix 1.

*It is our understanding, that the period of supervision whilst working towards a recognised qualification will be acceptable to meet any proposed experience requirement in the revised MCC.

It is important that the industry maintains a balance allowing for knowledge and experience requirements whilst giving regulated entities the scope to expand their product offering, addressing the developing needs of their consumers without having to change or compromise the existing client/advisor relationship.

Question 2:

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

Please see response to Question 1 above, recognition should be given that the experience requirement is only legally required for MIFID II and we consider the 6 month period to be sufficient for MIFID products. As stated previously, this proposed experience requirement is not proportionate or appropriate for products falling outside MIFID II.

Question 3:

Do you agree with the proposal on how the experience requirement should be evidenced, i.e., that a regulated firm should sign a ‘certificate of experience’ and retain supporting documentation to support the certificate? Please outline your views.

Brokers Ireland do not agree with this proposal.

- Annually, firms require all individuals holding a controlled function to complete a declaration of fitness and probity, confirming integrity, financial soundness and competence. This declaration is retained on file by the regulated entity.
- Section 2.4 of the MCC issued in 2011 makes provision for the issue of a Certificate of Competency. This facility is also provided for in this document in the event that it is required by a consumer. It should be noted, since 2011, feedback from members would indicate few if any requests have been received to complete this certificate of competency.
- We believe that a requirement for a certificate of experience for every member of staff would not provide any extra element of consumer protection nor contribute to market stability.
- We have no objection to a certificate of competency as provided for in the existing and new MCC being made available to a consumer on request.

In addition, Brokers Ireland has serious concerns that the introduction of such a certificate, as it could compromise the free movement of individuals within the labour market. Brokers Ireland is aware that in the past problems were experienced with the issuing of Grandfathering certificates by previous employers. Brokers Ireland would also query the legal and data protection issues which could arise in relation to the purpose and use of such certificates, and the impact of their content and completion. This is based on the significant restrictions that is imposed on the content of employer references.

Question 4:

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

Brokers Ireland believe that the manufacturing firm/product provider should be able to demonstrate and evidence that individuals involved in the creating/designing of a product have the necessary competence to develop such products taking into account:

- Target market
- Legal requirements
- Actuarial projections
- Technical insurance/assurance/reinsurance considerations

Brokers Ireland believe that to specify the qualifications required has the potential to compromise the full range of competencies required to develop appropriate products and cater for the risks attaching to the product. Brokers Ireland believe that product manufacturers should be able to provide evidence of the competencies involved in all aspects of product manufacture and rationale for inclusions/exclusion of certain skill sets.

Question 5:

What alternative ways could persons demonstrate meeting the competencies and standards set out in the Mortgage Credit Regulations and the requirements of the ESA Guidelines and MiFID II Delegated Directive?

Other options in respect of the confirmation of experience?

We refer to response in Question 4. It would be more appropriate for firms to demonstrate that the individuals involved hold the qualifications that are relevant to the product being

designed/manufactured. We believe it is not possible to legislate for the broad range of products on offer across the market.

Question 6:

Do you agree that the MCC should apply to credit unions in respect of any retail financial product offered by credit unions that falls within the scope of MCC?

Please set out the reasons for your views.

Yes, we believe that competency standards should apply across the market in order to:

- Ensure consistent protections for all consumers across all sectors
- Provide a level playing field for all firms and
- Enable the free movement of qualified individuals within the financial services industry.

Question 7:

If you agree, what do you consider to be an appropriate timeline for its application? Please set out the reasons for your views.

A two year time frame from the publication of the finalized revised MCC would seem reasonable.

Question 8:

What other means do you consider to be appropriate for members of the board of a mortgage credit intermediary to meet the competencies specified in Schedule 1 of the Mortgage Credit Regulations and evidence that those competencies are met?

Brokers Ireland suggest that a course could be developed, similar to the trustee training course for pension trustees, which address the competencies outlined in Schedule 1 of the MCR. Members of the board who do not hold the qualification required (as they are not advising) would be required to attend this approved course every 3 years and their attendance should be documented by the firm.

Question 9:

What qualifications do you consider to be suitable in order to carry out reinsurance distribution activities?

As the distribution of reinsurance is a specialized niche function applicable to a diverse spectrum of risk, we believe that the firms engaged in this activity should be able to demonstrate the skills knowledge and expertise of the individuals undertaking this function is relevant and appropriate for the nature of the business involved.

Additional Comments

Definition of Advice

We note that the definition of advice has been changed to the following: “advice means the provision of a personal recommendation *or information* to a person, whether at the person’s request or at the initiative of the firm, in the course of performing a relevant function”.

We have concerns relating to the insertion of the wording ‘information’ into this definition and feel it is too broad of a term despite the caveats provided in the definition. We believe that the definition of advice should be aligned to the definition of advice in the IDD as outlined below:

'advice' means the provision of a personal recommendation to a customer, either upon their request or at the initiative of the insurance distributor, in respect of one or more insurance contracts;

And also note that the definition of investment advice as contained in MIFID II does not make reference to information.

Creation of a level playing field for all advisors

Brokers Ireland believe that all individuals who:

- a) provide advice to consumers on retail financial products;
- b) arrange or offer to arrange retail financial products for consumers, including any amendments to insurance cover and the restructuring or rescheduling of loans, or
- c) exercise of a specified function.

should be subject to requirements of the Minimum Competency Code and therefore should apply to individuals who provide these services under the approved professional body regime.

Number of year's retention of CPD

Brokers Ireland believe that the statute of limitations should be applied in relation to the retention of CPD records. It is excessive to expect individuals to continue to store evidence of CPD completed since 2008 and would query when a cutoff point would be applied if not at this review.