# Consultation Paper CP116

## Intermediary Inducements

### Enhanced Consumer Protection Measures

Association of Expert Mortgage Advisors

## Introduction

This document has been compiled by the Association of Expert Mortgage Advisors in response to the Consultation Paper on Intermediary Inducements - Enhanced Consumer Protection Measures (CP116).

The Association of Expert Mortgage Advisors represents a group of Financial Advisors who specialise in the area of mortgages advisory services. Our experienced and qualified members have practical and direct experience in assisting borrowers on a daily basis in obtaining the mortgage most suitable to their individual needs and requirements. Our members promote professional standards and are well regarded by both their clients and the lenders they transact business with. We strive to develop long-term relationships with our customers who, in turn, can rely on our independent advice in all aspects of their mortgage requirements, based on our substantial experience, expertise and knowledge. According to independent sources, we currently account for approximately 50% of all residential mortgage loans arranged by suitably qualified mortgage intermediaries.

The intermediary plays an essential role in the distribution of financial services products to consumers. We outlined this role in our response to the Discussion Paper on the Payment of Commission to Intermediaries in October 2016. In this submission our primary focus relates to mortgage intermediaries.

## Question 1

**Do you see any reasons why the Code should not be amended as outlined?**

Whilst we welcome and acknowledge any new legislative and regulatory requirements designed to protect the best interest of the consumer, it would appear to us that MIFID standard regulation, which essentially regulates complex investment products, is being applied to the overall market including mortgages and we would have concerns at the potential unintended consequences of this.

In our opinion current regulation specifies the requirements to ensure that the intermediary's obligations to act honestly, fairly and professionally and in accordance with the best interests of the consumer and to satisfy the suitability requirements set out in Chapter 5 of the Code are met. The IDD standard to be introduced is the most appropriate for the payment of commission by a lender to mortgage intermediaries. This clearly demonstrates how intermediaries are remunerated and this needs to be clear and easy to understand.

## Question 2

**Do you see any reason why, for example, insurance intermediaries should not be subject to the requirement that inducements must enhance the quality of service rather than the requirement that an inducement is not detrimental to the quality of the service as required under the IDD? If so, please set out those reasons.**

In our opinion current regulation specifies the requirements to ensure that the intermediary's obligations to act honestly, fairly and professionally and in accordance with the best interests of the consumer and to satisfy the suitability requirements set out in Chapter 5 of the Code are met. The IDD standard to be introduced is the most appropriate for the payment of commission by insurance companies to insurance intermediaries.

We believe insurance intermediaries receiving ongoing commission or renewal should offer an enhanced quality of service and this is reflected in the provision of ongoing reviews and advice to consumers.

Consumers availing of intermediary services receive an enhanced service over the term of their policy based on price and market choice.

Question 3

**Do you agree with the conditions in Schedule 5 of the MIFID Regulations 2017 that describe how an inducement enhances the quality of the service? Please explain your answer.**

As outlined above, it is our opinion that IDD standards are the most appropriate standards for non MIFID products as opposed to MIFID standards.

Question 4

**What other examples do you consider would enhance the quality of the service? Please set out those examples in detail.**

Any consumer availing of intermediary based advice should receive the following quality of service:

- Needs analysis
- Market research/price
- Explanation of products/product comparison
- Suitability assessment/risk analysis/recommendation
- Application preparation/submission
- Proactive application management from inception through to completion
- Availability for ongoing queries and annual reviews

Question 5

**Do you foresee any practical difficulties arising from the implementation of this proposal? Please set out those difficulties in detail.**

In principle we believe that the implementation of this proposal could lead to a significant increase in the business costs of the intermediary, a number of whom may not be able to bear such a cost.

Question 6

**Do you have any views on what, if any, unintended consequences may arise in implementing this proposal? Please explain your answer.**

- May result in some intermediaries exiting the market due to an unsustainable increase in cost and management time;
- The above would result in a greater proportion of customers seeking direct advice and thus potentially creating a costly advice gap from a consumer's perspective; and
- Intermediaries may reduce the number of products on which they provide advice on.

Question 7

**Do you have any views on the proposal that inducements contingent on achieving targets that do not consider the consumer's best interests, including profit targets, volume targets, and targets linked to business retention, are deemed to be conflicts of interest and must be avoided. Please explain your answer.**

We agree that inducements contingent on achieving targets that do not consider the consumer's best interests, including profit targets and volume targets, are deemed to be conflicts of interest and must be avoided.

Such payment structures do not exist in the mortgage market and it is our understanding that they do not exist in relation to any other product. Appropriate payments relating to business retention whereby the consumer is receiving ongoing advice regarding their changing financial circumstances are to be encouraged.

Question 8

**Do you have any views on what, if any, unintended consequences may arise in implementing this proposal? Please explain your answer.**

The removal of any commission payment linked to business retention may reduce the provision of ongoing consumer advice leading potentially to an advice gap as previously outlined.

Question 9

**Do you foresee any practical difficulties arising from the implementation of this proposal? Please set out those difficulties in detail.**

No, other than outlined above.

Question 10

**Inducements linked to the size of a mortgage loan will be deemed to give rise to a conflict of interest and therefore, must be avoided. Do you have any views on the above proposal?**
**Please explain your answer.**

Currently, intermediaries are paid a commission by the lender, based on a percentage of the mortgage amount. Our understanding is that in all of the jurisdictions where mortgage commission is paid, payment is made by way of a percentage of the mortgage amount. The following aspects of how intermediaries are paid mortgage commission work well to deliver responsible business conduct, fair treatment of customers and avoidance of conflict of interests when consumers are sold financial products:

1. The flat level of commission which currently exists across all lenders ensures that no lender bias exists;
2. The existence of a commission based remuneration model as opposed to fee based ensures an all-inclusive market based advisory service;
3. It lowers the distribution cost for distributors; and
4. It facilitates new market entrants which in turn encourages competition and better choice for consumers.

In addition to the above it is important to note the following:

1. Mortgage intermediaries do not influence lender policy or mortgage approval decisions. The same central credit functions assess mortgage applications from all distribution channels;
2. The amount a consumer can borrow is based on their specific financial circumstances including income, equity contribution, lender specific criteria, property purchase price, proven repayment capacity and the Central Bank's Macro Prudential Rules. The intermediary has no capacity to influence any of the above as it is factual and pre-determined;
3. The compliance obligations of the mortgage intermediary clearly require the intermediary to advise the consumer on the most suitable mortgage product available based on their personal and financial circumstances and requirements;

4. Mortgage intermediaries are obliged to outline the level of remuneration received from product providers in advance of any advice being provided. Currently, there is a transparent and 'plain English' structure in place; and
5. Current mortgage pricing rewards consumers for borrowing a lower mortgage amount therefore encouraging the consumer to do so.

We are unaware of the existence of any research or register of complaints that document the inference that mortgage intermediaries actively encourage consumers to borrow in excess of the amounts required to complete their mortgage transaction. Prior to any completion, consumers are advised of the long term cost of credit and the various loan to value interest rates available to them. As outlined above, a consumer's capacity to borrow is determined by their personal financial circumstances, lender credit policy (incorporating Macro Prudential Rules) and the property market. This is further influenced by the availability of lower priced mortgage products for lower amounts borrowed.

Based on the level of work carried out by the intermediaries on behalf of the consumer and ultimately the conversion rate from application to completion, we believe the current level and method of remuneration is both fair and transparent.

## Question 11

**Do you have any views on what, if any, unintended consequences may arise in implementing this proposal? Please explain your answer.**

There are a number of unintended consequences which could arise should the above proposal be implemented.

1. Any new payment structure which may negatively impact on the intermediaries' level of remuneration may result in an increase in the level of fees being charged to consumers. In our experience 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. As a consequence, consumers may not explore all available market options and instead choose their existing bank as their mortgage lender. Invariably this would create an advice gap in the market and result in a consumer potentially availing of a more expensive/unsuitable product for their needs and requirements.
2. Any movement away from the current uniform commission payment structure may result in alternative and non-uniform payment structure, potentially leading to lender bias or where a fixed price applies leaving mortgage intermediaries to focus on less complex mortgage applications, which require less time on their part.
3. A change to the current commission payment mechanism may become cumbersome and confusing for consumers to understand.

Notwithstanding the above, it is difficult to fully comment on the potential unintended consequences of this proposal without having sight of alternative proposals. However, any such proposals would need to reflect and maintain current market activity and practice.

Question 12

**Do you foresee any practical difficulties arising from the implementation of this proposal? Please set out those difficulties in detail.**

Any change to the current commission payment structure may result in a more cumbersome and confusing payment mechanism for consumers to understand resulting in unsatisfactory and costly consumer choices. Any process which negatively impacts on the viability of intermediaries may result in a reduction in the number of intermediaries active in the market thus resulting in a reduction in consumer choice.

Question 13

**Do you have any views on the above proposed deletion of provision 3.36 of the Code relating to soft commission agreements? Please explain your answer.**

Intermediaries are required to act in the best interests of consumers and to act in a transparent and professional manner. We fail to understand how any support provided by a product provider under a soft commission arrangement which facilitates consumer benefits such as training, business development, promotion of the services of an intermediary or system improvements would compromise this requirement. Such support is not target/volume driven and are generally available to a wide number of intermediaries.

Question 14

**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 inducements offered for a range of products involved. Do you have any views on the above proposal? Please explain your answer.**

In principle, we agree 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 inducements offered for a range of products involved.

Notwithstanding the above, the most suitable product in terms of needs/requirements and price may attract a different level of remuneration.

With regard to mortgage and protection products, the level of remuneration available to intermediaries does not necessarily negatively impact on the price of a product to a consumer and in many cases the suitability of a product to a consumer. The suitability of the product is central to any recommendation and there is full disclosure of remuneration received by intermediaries to the clients in an open and transparent manner.

Question 15

**Do you have any views on what, if any, unintended consequences may arise in implementing this proposal, including any impact on consumer choice? Please explain your answer.**

We are concerned that the implementation of the proposal as outlined could result in an alteration in remuneration available leading to a reduction in the number of intermediaries thus creating an advice gap and a lack of transparency for consumers.

Question 16

**Do you foresee any practical difficulties arising from the implementation of this proposal? Please set out those difficulties in detail.**

The consequence of fewer intermediaries will result in an advice gap and in turn higher prices as there will be less competition and the consumer will end up dealing directly with product providers.

In our opinion, applying MIFID rules to areas of the IDD is not consumer friendly and in turn will lead to increased workload/cost/information overload for consumers and less transparency as confusion exist.

Intermediaries currently disclose a large volume of information to consumers and work to champion the consumer by giving a bespoke tailored service than if the consumer was to interact direct with product providers.

Question 17

**Do you have any views on the proposal that a written conflicts of interest policy should also specify procedures to be followed, and measures to be adopted, by the regulated entity, in order to avoid conflicts of interest relating to inducements? Please explain your answer.**

Currently intermediaries are required under Provision 3.28 of the Consumer Protection Code to have a Conflict of Interests Policy in place specifying procedures to be followed and measures to be adopted so as to manage such conflicts.

Question 18

**Do you have any views on the proposal that records must be retained to demonstrate how conflicts of interest arising from inducements have been avoided for each transaction?**

Further clarification is required in relation to the proposed requirements in relation to records.

Question 19

**Do you foresee any practical difficulties arising from the implementation of this proposal? Please set out those difficulties in detail.**

As stated above, further clarification is required in relation to the proposed requirements in relation to records before this can be responded to.

Question 20

**Do you have any views on what, if any, unintended consequences may arise in implementing this proposal? Please explain your answer.**

As stated above, further clarification is required in relation to the proposed requirements in relation to records before this can be responded to.

Question 21

**Do you have any views on the proposal that an intermediary may only describe itself or its regulated activities as independent, where it does not accept and retain a third party inducement for the provision of advice, other than a minor non-monetary benefit which is capable of enhancing the service to the consumer. Please explain your answer.**

In the current home-loan mortgage market all lenders remunerate intermediaries equally. On this basis, we see no reason where an intermediary holding appointments with all such lenders should not refer to themselves as independent. The proposal whereby mortgage intermediaries could only refer to themselves as independent in such circumstances where they only receive a fee from consumers is entirely impractical. In our experience 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.

Question 22

**Do you foresee any practical difficulties arising from the implementation of this proposal? Please set out those difficulties in detail.**

As outlined above, in relation to the mortgage market we see no reason where an intermediary holding appointments with all such lenders should not refer to themselves as independent. The proposal whereby mortgage intermediaries could only refer to themselves as independent in such circumstances where they only receive a fee from consumers is entirely impractical. In our experience 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.

Question 23

**Do you have any views on what, if any, unintended consequences may arise in implementing this proposal? Please explain your answer.**

Yes, the consumer may question the range and quality of mortgage advice an intermediary is offering if they cannot use the term independent. In our experience 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. Therefore any such a move would result in no "independent" advice existing in the mortgage market.

Question 24

**Do you have any views on the proposal to introduce an obligation for intermediaries to publish comprehensive details of inducement arrangements with product producers with which they have an appointment? Please explain your answer.**

Currently mortgage intermediaries have an obligation to publish their remuneration levels in their Terms of Business document. Whilst we welcome transparency, the introduction of further requirements may only serve to confuse consumers and add to an already heavily cumbersome and paper driven consumer experience.

Question 25

**Do you think the Central Bank should prescribe the format and content of the inducement arrangements summary document? If so, please provide details of the content you think should be included.**

Currently this information is provided to consumers in the intermediary Terms of Business document and relevant product provider information documentation. Additional documentation may only serve to confuse and disinterest the consumer. One document in plain English outlining intermediary remuneration by product providers would be welcomed.

Question 26

**Do you have any views on the proposal that firms must retain records to demonstrate how the inducement arrangements summary document was brought to the attention of the consumer? Please explain your answer.**

We agree for transparency purposes that firms should retain records of how intermediaries are remunerated by product providers is communicated to consumers. We suggest this could be achieved by incorporation within the Statement of Suitability.

Question 27

**Do you have any views on the proposed definitions of *'inducements'*? Please explain your answer.**

In the Oxford English dictionary, inducement is defined as "a thing that persuades or leads someone to do something" or "a bribe".

This has immediate and obvious negative connotations which will leave consumers with an extremely negative and suspicious view of intermediaries and the financial services market.

We would have concerns with the proposed use of the word inducement and would suggest that the terms remuneration or commission as is commonly used and familiar to consumers be retained with respect to non MIFID products.

Question 28

**Do you have any views on the proposed definition of *'minor non-monetary benefit'*? Please explain your answer.**

We acknowledge the proposed definition as being broadly appropriate.

Question 29

**Do you agree with the above examples of minor non-monetary benefits? Please set out your reasons.**

The examples presented are reasonable however it is extremely difficult to provide an exhaustive list of such minor non-monetary benefits. We believe that the spirit of the proposed definition should be adopted at all times.

Question 30

**Are there any additional minor non-monetary benefits that you think should be included? Please explain your answer.**

As outlined above, it is extremely difficult to provide an exhaustive list of such minor non-monetary benefits however the spirit of the proposed definition should be adopted at all times.

Question 31

**Would you set a monetary limit, as a guide, on a minor non-monetary benefit? If so, what limit would you consider appropriate and why?**

As intermediaries we do not believe it is our place to set monetary limits on the above.

## Conclusion

In conclusion, it is clear that the intermediary plays an integral and essential role in the provision of financial services advice to consumers. In addition, mortgage intermediaries essentially act as price influencers/regulators for the mortgage market encouraging price competition amongst lenders, for example promoting and advocating mortgage reviews/switching.

In our opinion, the potential application of MIFID type regulation to non MIFID regulated products, in an environment where intermediaries are already highly regulated, may create unintended consequences and lacks proportionality. The capacity to reverse such consequences is questionable and in the intervening period it may result in negative consumer outcomes.

From a mortgage market perspective, the receipt of commission payments are clearly visible and transparent to the consumer and are at a uniform level, thus negating any product producer bias or conflict of interest. In addition, the price of a mortgage product is not negatively impacted by the payment of commission as price is the same whether the consumer receives a mortgage directly from a product provider or an intermediary. Many existing lenders and new entrants rely on intermediaries for distribution which is ultimately in the consumers' best interests.

Whilst transparency and good compliance requirements are central to such advice, any actions which create intended or unintended consequences leading to the reduction in the availability of such advice, will ultimately lead to an advice gap from a consumer perspective. Such an outcome is surely contradictory to consumer protection and acting in the consumers best interests.

The AEMA are committed to developing a proactive and partnership style of relationship with the Central Bank of Ireland similar to that enjoyed by our equivalent representative group with the FSA in the UK.

As a representative body of mortgage intermediaries and an industry stakeholder, we would welcome the opportunity to meet with and discuss these points with you.