

Brokers Ireland submission on Intermediary Inducements - Enhanced Consumer Protection Measures CP116

Brokers Ireland
87 Merrion Square, Dublin 2, D02 DR40.
t: 01 661 3067
e: info@brokersireland.ie
www.brokersireland.ie



BROKERS
I R E L A N D

Brokers Ireland welcome the opportunity to contribute to the consultation on Intermediary Inducements Enhanced Consumer Protection Measures CP116.

Introduction

The importance of Professional Advice in the CP116

The Central Bank acknowledges the risk of creating an advice gap by imposing either an outright ban on commissions, or a ban in certain cases. There is reference to evidence that should such a gap emerge it would not be in the best interests of consumers. Brokers Ireland believe that this is a fundamental issue and we have serious concerns that some of the proposals contained within the consultation will lead to an advice gap, and ultimately to consumer detriment. We refer you to our submission¹ on the Central Bank's *Discussion Paper on the Payment of Commission to Intermediaries*, where the benefits to consumers of the current system were outlined in detail.

The existence of the current commission model allows all consumers access to independent advice and financial products, creating competition, keeping the costs down, and making such services accessible; especially to those who are less well-off and who wish to make provision for the future. This helps maintain the availability of high quality advice across the market, avoiding the polarisation seen in other jurisdictions. Professional financial advice is a crucial ingredient for best consumer outcomes. This can be achieved in a system where the consumer can make a choice of remuneration based on commission or fees, or a combination of both. We strongly believe that the current regulatory framework is robust and offers both choice and protection to consumers.

It has also been shown that consumers who use intermediaries have more valuable pensions and investments and more financial protection than those who don't. Those who consult a financial advisor at least once a year have dramatically higher pension funds than others. They are also more financially confident.² It is in the interests both of the public and of consumers to ensure that adequate provision is encouraged and supported in the community to avoid reliance on the State in later years as highlighted throughout - *A Roadmap for Pensions Reform 2018 -2023*.³

Lack of Response from Consumers

The *Discussion Paper on the Payment of Commission to Intermediaries* was issued in July 2016 to stimulate discussion and to obtain feedback from interested parties on the risks and benefits to consumers of the practice of insurance companies, banks and other financial firms paying commissions to intermediaries that distribute their financial products. Whilst fifteen submissions were received, there were no responses from either the Consumers' Association or any individual consumers to highlight any concerns with the current system.

¹ <https://www.centralbank.ie/docs/default-source/publications/discussion-paper-5/brokers-ireland---discussion-paper-on-payment-of-commission-to-intermediaries.pdf?sfvrsn=2>

² The Value of Advice Report 2012, Unbiased and Standard Life.

³ A Roadmap for Pensions Reform 2018 – 2023 <http://www.welfare.ie/en/pressoffice/pdf/PensionsRoadmap.pdf>

Consumer Research Survey

In the press release to recognise the responses and to set out the Central Bank's next step it was stated that "*The Central Bank has also engaged further with a number of consumer bodies to seek their views on the issues raised*".⁴ Neither these bodies nor their findings have been identified or referenced in CP116.

The survey accompanying CP116 was a vox pop, face-to-face in-home survey of 506 consumers in April 2017, and a follow up in May 2017,⁵ rather than a scientific survey. There is no evidence that proper terms of reference were established, leading to a fairly constructed survey, taking into account what people mean by their responses or that they understand the questions asked. We are concerned that "two surveys" were initiated. Were the answers not right the first time?

As the Central Bank refused to provide details of the questions posed, it was not possible to carry out an analysis of the findings. In view of the very small population of respondents and the very narrow scope of the findings (predominantly motor and household insurance with minimal reference to savings, pensions, or investment products) we consider the findings to be neither representative nor persuasive. We therefore disregard the *Consumer Understanding of Commission Payments* survey.

Evidence Based

A measure of irresponsible business conduct or unfair treatment of consumers by intermediaries acting in self interest in the sale of financial products, and any other unfair or reckless behaviour, would be reflected in complaints to the Central Bank, complaints made and upheld by the Financial Services Ombudsman (FSO)/Pensions Ombudsman, or claims on professional indemnity insurance policies. Complaints arising from the insurance sector are negligible and show no consumer dissatisfaction. The FSO consistently report that the number of cases involving intermediaries is minimal. See [Appendix 1](#).

Harmonisation

The paper has been issued, in large part, on foot of the backdrop of EU legislative developments. The paper proposes to "mifidise" the distribution of insurance in Ireland. This approach is being undertaken by the Central Bank to "simplify or harmonise" the regulations in the IDD/MCD and those in MiFID II. This is unacceptable. The EU co-legislators, when looking at this in the round, harmonised where appropriate the requirements of MiFID/IDD/MCD. We reject the Central Bank's approach in this regard. Please refer to [Appendix 2](#) and [3](#) for greater clarity on the disparate Product, Regulation, Customer, Financial Investment and Risk Transfer involved. This 'level playing field' is being proposed notwithstanding the fact that the two are inherently different, which was recognised by the different approach taken by the EU legislators in IDD, which is the more up-to-date directive. When the IDD was first proposed it was proposed that it replicate the approach being adopted in MiFID II. This was rejected by the legislators but is now being proposed by the Central Bank by the back door.

Intermediation

This consultation paper is predicated on the assumption that intermediaries act exclusively for one party, which is not the case. Intermediaries (as implied by their title) intermediate to varying degrees between

⁴ 7 Feb 2017 Press Release: Responses to *Discussion Paper on the Payment of Commission to Intermediaries* <https://www.centralbank.ie/news/article/responses-to-discussion-paper-on-the-payment-of-commission-to-intermediaries>

⁵ Consumer Understanding of Commission Payments <https://www.centralbank.ie/docs/default-source/publications/consumer-protection-research/consumer-understanding-of-commission-payments---november-2017.pdf?sfvrsn=4>

consumers and product producers, and in so doing represent each party at separate stages in the process of intermediation. This is more pronounced when a protection contract is being arranged or discussed and is less relevant in the context of an investment contract. These facts were taken into account in the IDD and were not in MiFID II, which is hardly surprising given that it was designed for a different business sector.

The EU legislators, whilst rejecting the MiFID II approach, included an entire chapter in the IDD: Chapter VI, “Additional Requirements in Relation to Insurance-based Investment Products”. This chapter of the IDD is specifically designed by the EU legislators to be equivalent to the requirements imposed by MiFID II but in a manner that is appropriate to the insurance environment. The Consultation Paper, CP116, argues that “differences in the rules applicable across the framework, in themselves, create conflicts of interest where intermediaries are incentivised to sell products in one regulatory category rather than another because one is more lenient in what is permitted.” The inference is that the IDD approach is more lenient than the MiFID requirements. This is not accurate and omits to comment that under the IDD, unlike MiFID, there is also a “demands and needs” test. The IDD is not more lenient: it is more appropriate. Currently there are 2,614 intermediaries who fall under the IDD and 88 firms who fall under MiFID. It does not make sense to extend MiFID rules that were rejected as inappropriate by the EU legislators to 2,614 insurance intermediaries.

Many of the proposals contained in the consultation paper are based on MiFID II and the motive seems to be to “mifidise” the market. Brokers Ireland question whether the measures proposed deliver better service or protection for the consumers of non-MiFID financial products and services.

Brokers Ireland agree with the Director of Consumer Protection, Bernard Sheridan in his statement⁶ that firms must “ensure that their remuneration structures are designed to encourage responsible business conduct, fair treatment of consumers and to avoid conflicts of interest, and that the consumer protection framework protects the best interests of consumers in this regard”. However, when we consider the proposals contained in CP116, we must refer to recital 72 of DIRECTIVE (EU) 2016/97.⁷

“This Directive should not be too burdensome for small and medium-sized insurance and reinsurance distributors. One of the tools by which to achieve that objective is the proper application of the proportionality principle. That principle should apply both to the requirements imposed on the insurance and reinsurance distributors and to the exercise of supervisory powers.”

We believe the proposals contained in CP116 are neither proportionate nor appropriate for Consumer protection for all of the products included in the Insurance Distribution Directive apart from those included in Chapter VI. We acknowledge that such products, ‘Insurance Based Investment Products’, are covered by the Delegated Acts and therefore our response in general terms refers to all other insurance protection products in the scope of the DIRECTIVE (EU) 2016/97 (IDD).⁸

⁶ 7 Feb 2017 Press Release: Responses to *Discussion Paper on the Payment of Commission to Intermediaries*
<https://www.centralbank.ie/news/article/responses-to-discussion-paper-on-the-payment-of-commission-to-intermediaries>

⁷ DIRECTIVE (EU) 2016/97

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0097&from=en>

⁸ DIRECTIVE (EU) 2016/97

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0097&from=en>

Our response to the seven proposals will demonstrate why we believe that they are not in the best interests of consumers, will not provide any additional protection, and in some cases will undoubtedly result in detriment to consumers.

Whilst we comment specifically in the body of the response to the ‘Definitions Proposal’, we wish to stress in the strongest terms possible our outright abhorrence of the term ‘inducement’ as included in the title of this consultation and otherwise as an appropriate proposal for a term to describe payment or remuneration to Brokers for work carried out on behalf of consumers and insurers. We consider the term pejorative and offensive to our Broker community. Dictionary definitions of inducement include: bribe; incitement; lure; a thing that leads someone to do something. Use of this term in the Irish insurance market does nothing to promote confidence in financial products or services and has the potential to seriously impact the reputations of our members. We object.

Outlined below are responses to the individual proposals posed in the consultation paper

Central Bank Proposal – Questions 1 – 6

In order to ensure consistency across all sectors in how inducement arrangements operate, we are now proposing a number of amendments to the Code in order to bring the Code provisions more in line with the requirements in these EU legislative instruments, and seek to create a level playing field in terms of inducements across these various sectors. To achieve this, we propose amending 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.**

Question 1

Do you see any reasons why the Code should not be amended as set out above?

The members of Brokers Ireland reject this proposal in its entirety. We do not believe that there is any merit in ensuring that the rules of MiFID II should apply to the products or services provided either under the Insurance Distribution Directive or the Mortgage Credit Directive. It must be recognised that commission payments fundamentally differ between MiFID and IDD/CMCAR firms. Please refer to [Appendix 2](#), where the spectrum of products risk and regulation is set out. It is clear that there is no rationale for the premise of a level playing field. In view of the divergence between the risks, the nature of the products and the profile of the customers across this spectrum, the requirement for a level playing field is erroneous.

This position has been affirmed by the EU legislators, who rejected provision 9 of DIRECTIVE 2014/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL as unworkable and replaced it with recital 57 of the Insurance Distribution Directive. The FCA cautions regulators to avoid “ambiguous rules or tick-box regulation”.⁹ We believe that in applying a standard rejected by EU legislators, such ambiguity will arise, diminishing the responsibility of firms to manage the remuneration arrangements of the firm in a fair and transparent manner and most importantly in the best interests of the consumer.

⁹ Behaviour and Compliance in Organisations December 2016 p 3
<https://www.fca.org.uk/publication/occasional-papers/op16-24.pdf>

Brokers Ireland believe that there are sufficient protections for consumers in Ireland, through the existing provisions of the Consumer Protection Code and other codes and legislation. We believe that the structures already in place to protect consumers go further than European legislative requirements, and therefore we believe that more draconian provisions are not necessary.

Neither the responses to the 2016 *Discussion Paper on the Payment of Commission to Intermediaries* (2016)¹⁰ nor an examination of the cases that are adjudicated by the Financial Services Ombudsman¹¹ have identified issues with the payment of commissions to warrant these proposed changes. The suggested motive for this proposal is purely to harmonise European directives without acknowledging the differences in nature, structure and complexity of MiFID products compared to the Insurance Distribution Directive (IDD) and the Mortgage Credit Directive (MCD). The requirements of these directives were not harmonised during transposition into Irish legislation. The European Parliament did not believe it was appropriate to apply the requirements of MiFID on non-MiFID firms and therefore there was a deliberate divergence in the requirements under the IDD and MCD.

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 the service rather than the requirement that an inducement is not detrimental to the quality of the service as is required under the IDD? If so, please set out those reasons.

Insurance intermediaries as defined in S.I. No. 13/2005 - European Communities (Insurance Mediation) Regulations 2005¹² and mortgage intermediaries regulated under the CMCAR should not be subject to these enhanced quality of services standards. Brokers Ireland have grave concerns about the “mifidisation” of all sectors. The concept of enhanced quality of service is solely contained in MiFID II. It needs to be recognised by the Central Bank that the nature of MiFID products differ greatly from the nature and complexity of products that fall under the IDD and MCD. This fact was recognised by the different approach adopted by the legislators in the IDD, which was passed after MiFID II in full knowledge of its provisions, which were rejected as not being appropriate in an insurance environment. Indeed, the concept of enhanced quality of service was not one of the analogous requirements set down by Europe for firms to comply with when operating under MiFID Article 3.

MiFID firms are predominantly remunerated by client fee and any additional commissions and non-monetary benefits earned are payments/benefits in addition to the fee received. Therefore, it is appropriate to demonstrate what additional service the client is receiving for the extra payments/benefits that the firm/advisor is receiving. The receipt of this additional commission payment differs from commission payments for the vast majority of IDD/CMCAR firms, where it is the mainstream income of these firms and this is how the firm is remunerated for their work and services provided to product producers.

¹⁰ <https://www.centralbank.ie/publication/discussion-papers/discussion-paper-5-on-payment-of-commission-to-intermediaries>

¹¹ See [Appendix 1](#)

¹² ‘Insurance intermediary’ means a person who, for remuneration, undertakes or purports to undertake insurance mediation

Clients are advised through the intermediaries' terms of business what authorisation they hold and what services and products they provide. Clients are therefore fully informed as to whether they are dealing with a MiFID or an IDD/MCD firm.

The concept of enhanced quality of service should not be applied across all sectors and should not be applied to either insurance or mortgage intermediaries.

Question 3

Do you agree with the conditions in schedule 5 of the MiFID Regulations 2017, as set out above, that describe how an inducement enhances the quality of the service? Please explain your answer.

The comments on page 8 of the consultation paper are erroneous in stating that schedule 5 of MiFID Regulation 2017 and recital 57 of the IDD are similar.

As stated above, the IDD was passed after MiFID in full knowledge of its provisions, which were rejected as not being appropriate in an insurance environment.

Whilst these conditions may be appropriate for MiFID firms, the concept of enhanced quality of service is not appropriate for IDD/CMCAR firms. As stated in response to the previous question, commission is the main income stream for these products. It is not an additional payment.

Brokers already provide a very professional service delivered by competent, experienced and qualified advisors. They take into account both the demands and the needs of the client following an extensive fact find to ensure they know their client and understand their ability to pay and their attitude to risk, and research the market accordingly in order to recommend the most suitable product to the client. Each step is capable of oversight and monitoring to ensure that the requirements of the CPC are followed in every case.

Question 4

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

This concept should not be applied to IDD/MCD firms. A comprehensive range of professional services is already provided to the customer as required by the CPC that includes fact finding / KYC, product research, matching demands/needs of customers, and selecting products and services in line with risk appetite and budget. Ongoing review and renewal appropriate to the nature of the products is also supplied.

In addition to the requirements of the Consumer Protection Codes there are also proposals for greater levels of product information and new requirements for greater transparency in point of sale and renewal documentation. Such disclosures add to the range of services and information provided to consumers to enable them to make informed choices. The role of the intermediary in 'Fair Analysis' as described in Chapter 12 of the Consumer Protection Code is fundamental to the fiduciary relationship between the consumer and the intermediary and should not be minimised or airbrushed out of the picture when considering the potential for conflicts of interest. The management and mitigation of potential conflicts of interest is already the responsibility of intermediary firms that are monitored and audited in both the online system by the Central Bank of Ireland and in their compulsory annual audit by professional audit bodies.

Question 5

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

As outlined above, we reject this proposal in its entirety. It will force Brokers to ascribe artificial enhancements to their services, when in fact this is the service that they are currently providing.

We also believe that in applying MiFID rules, regulations and standards the Central Bank is overregulating the IDD and MCD sector. This raises serious concerns that are presently being considered by the UK's Financial Conduct Authority (FCA):¹³ "to be effective regulators need to ensure that firms comply with the rules they set. Therefore, rules need to be relevant and easy to understand."

Brokers Ireland consider that the measures contained in this proposal do not provide any additional benefit to a consumer. These provisions will not serve any useful purpose in consumer protection and are at odds with the two directives that are in the scope of the Consumer Protection Code. The conduct of business rule and regulations for MiFID II products and services are contained in the Delegated Acts, ESMA and MIFIR rules.

Question 6

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

If this proposal is adopted there are concerns that the very high level of service outlined throughout the paper will be dumbed down to a very basic level to enable 'enhanced services' to be identified.

There have been no risks identified following the Central Bank *Discussion Paper on the Payment of Commission to Intermediaries* to warrant these proposals. They are unnecessary and inappropriate to the IDD/MCD sector with no benefit to consumers. The wording proposed to deal with this proposal in Appendix One of the Consultation Paper will cause ambiguity and confusion in its lack of relevance and proportionality to the remuneration of insurance and mortgage intermediaries for the services provided. Proposals to create a level playing field where products, services, risk and consumer profile are so diverse is inappropriate and provides no additional consumer protection.

See [Appendix 2](#) for an illustration of the vast spectrum of range of products, scope of activities and variety of regulation involved.

Central Bank Proposal – Questions 7 – 13

We propose therefore to introduce a provision into the Code that an intermediary must avoid all conflicts of interest arising from third party inducements contingent on achieving targets that do not consider the consumer's best interests (e.g., targets linked to volume, profit or business retention).

¹³ Behaviour and Compliance in Organisations December 2016 p 3
<https://www.fca.org.uk/publication/occasional-papers/op16-24.pdf>

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.

The nature of intermediary remuneration varies substantially depending on the insurance sector involved. Whilst enhanced commissions payable solely for achieving volume-based targets have substantially been phased out there are other remuneration schemes related to profitable underwriting that enable a range of niche products to be brought to market for the benefit of consumers.

Retail and wholesale intermediaries work with insurers to develop sector specific products and to enable the manufacture of niche products to respond to the needs of consumers. The remuneration generated from profit sharing arrangements facilitate the Brokers in delivering such products in a cost effective and efficient manner for the benefit of consumers: keeping prices down, enhancing choice and delivering excellent service and advice to customers.

The Consumer Protection Code presently requires intermediaries to monitor and manage such remuneration in a fair and transparent manner. Such schemes and product developments are renewable from year to year, with flexibility for consumers to change provider at annual intervals. Similarly, intermediaries conscious of market competition monitor such products for the broadest possible insurance cover and value for money. Schemes that are linked to profitability are beneficial to all the stakeholders, especially the consumer.

Retention of business and persistency with one provider is usually considered on a case by case basis by an intermediary that is acting in the best interests of their client.

As many profit-related schemes respond to the needs of consumers and enable innovation in delivery of niche products to them, we do not believe that all such Brokers' remuneration should be considered collectively as suggested in this proposal.

Other issues concerning intermediary remuneration and work transfer are addressed in Brokers Ireland's response to questions 14 and 15.

Question 8

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

We believe that an unintended consequence of this proposal will be a severely restricted market for niche products that are not provided by mainstream insurers.

The role of the Broker in researching the market and finding the product either nationally or elsewhere has the potential to be seriously compromised by this proposal. Reduced cost and improved cover resulting from legitimate business development of intermediaries is in everyone's interest. Many such schemes operate on a business model that remunerates the intermediary on the basis of a profit sharing agreement.

There are elements included in this proposal that have no direct bearing on the consumer. There are profit share agreements in place where the performance of the book of business is the consideration for the profit share threshold. The arrangement between the product provider and the retail intermediary does not create a conflict of interest or adversely affect the consumer. The legitimate business interests of the consumer, intermediaries and insurers are likely to be severely impacted unless the benefits of such profit sharing agreements to consumers are separately assessed. The existence of these profit sharing agreements provides benefits to consumers through a variety of annually renewable insurance products with a greater choice of provider. In recent years many of the 'major' insurers have not been interested in providing cover for 'difficult' sectors (such as childcare, sports clubs, non-standard houses, certain motor risks – the list is extensive) and the gap has been filled by the facilities referred to above.

Question 9

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

It is in the public interest to operate schemes that promote prudent commercial activity both in general trade and in the insurance industry. Schemes that generate profit and run well operate to the advantage of all participants in the arrangement. The provision of such schemes is designed transparently to encourage prudent underwriting and support risk management in businesses. Implementing this proposal will diminish the role of risk management in the business and is likely to result in fewer bespoke arrangements that result from profitable schemes and niche products.

It is an indisputable fact that facilities provided by the Cover Holders, MGAs and Wholesale Brokers market have enabled consumers and SMEs to access products and prices that simply would not be available in the absence of such facilities.

Practical difficulties arise in adopting a one-size-fits-all approach to separate and quite different commercial arrangements such as targets linked to volume, profit sharing or business retention. The practicalities extend to inclusion of an in-depth analysis of each arrangement by product and sector to examine the risks and benefits to consumers.

Introducing restrictions or outright bans on some remuneration arrangements will result in some of these beneficial facilities being withdrawn from the market.

Central Bank Proposal – Questions 10 – 13

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.

Question 10

Do you have any views on the above proposal? Please explain your answer.

Brokers Ireland do not agree with this proposal. In Ireland, lending is subject to strict Central Bank criteria in relation to loan to value ratios and affordability. The Broker acts solely as a professional advisor to the consumer, providing expertise and guidance to ensure that the consumer understands the mortgage process and chooses a rate, whether fixed or variable, and a term suitable to their needs. Mortgage Brokers provide valuable information to help consumers make informed choices based on their own particular circumstances. The Broker plays a vital role in balancing the asymmetry of information to the consumer whilst promoting choice, rather than dealing with one lender. There is no evidence to indicate

that intermediaries are misadvising consumers in relation to taking on bigger loans to receive higher commissions as suggested in this proposal. In fact, there is actual evidence in a number of cases of intermediaries advising clients to borrow less to avail of better LTV rates from lenders. The lenders' products are designed to reward consumers for borrowing less, not more.

Further to the above the Central Bank's macro prudential rules ensure that consumers can only borrow within their limits, thus protecting consumers from overextending. The banks also have their own strict criteria and lending rules. Each bank will use its own strict calculations to ensure that the consumer (whether through a Broker or directly through the bank) cannot borrow more than they can afford to repay.

Brokers Ireland are of the opinion that every Broker has the right to be fairly remunerated for the services provided. The current market practice where commission rates are linked to the loan amount works well and reflects the additional work and complexities of larger cases.

Question 11

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

The current system of remuneration for mortgage intermediaries is fair and transparent and one that consumers fully acknowledge, understand and accept when working with an intermediary. Loan applications vary in levels of complexity and generally higher loan applications will be more complex; and thus, the commission paid to the intermediary is reflected by the additional requirements in larger cases.

At present all lenders pay a commission of up to 1% of the loan amount to the intermediary, which is disclosed and subject to negotiation with the client. This is the model consumers have used successfully for generations, and expect to continue to use in the future. It is the model that allows intermediaries to work without any bias distractions from lenders. Any alteration to the current system could see different lenders set different remuneration levels for intermediaries. Crucially this would create consumer doubt when an intermediary recommends a particular lender over another. The trust between the consumer and the intermediary, for the first time, could now be in question because of varying levels of lender remuneration.

This proposal would dis-incentivise choice and competition in the market and leave consumers more exposed to the marketing messages and power of major financial institutions. Intermediaries bridge the asymmetry of information between the lenders and the client.

Consumers will not benefit from this proposal. Interference in the commission system is likely to cause intermediaries to exit the market. The absence of professional advice and service in this market sector will drive inexperienced and vulnerable consumers directly to the banks or mortgage providers. Such entities will only advise on their own products and are not required to make the same disclosures to the consumer. Consumers are compromised by the asymmetry of the relationship in both experience and information and are not in a position to 'shop around' in this complex process. The nature of the current remuneration model enables Brokers to provide assistance to consumers, helping them to make informed choices based on product and provider research without the burden of up-front fees and charges.

Question 12

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

We would see that it is the consumer who will suffer the consequences of this proposal. Brokers Ireland believe that the current remuneration model, which is principally connected to the loan amount, is clear, transparent and is subject to discussion and negotiation between the parties, works effectively. Consumers will lose out with less competition in the mortgage market and higher charges.

The only beneficiary of this proposal is likely to be the lender, with severe implications for those seeking mortgage facilities. The potential for an advice gap, generated by either the requirement for fees up front or the elimination of the Mortgage Broker, is immense. A reduction in consumer ability to make informed choices is a major risk of this proposal that will inevitably lead to a power imbalance between lenders and consumers seeking mortgage finance.

Question 13

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

Brokers Ireland do not agree with the deletion of provision 3.36.

The current provision, in tandem with the current conflicts of interest requirements of the CPC, addresses any risks to the consumer. The consumer is made aware when a soft commission is received by the Broker. These soft commissions enhance the service of the Broker to the consumer, for example investment research, which will ultimately benefit 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. Other supports are provided to enhance information and bring products to market for the benefit of the consumer. The sale of life, pensions and investment products are for the common good and in the public interest. Any reduction in public information that seeks to support the education of consumers is likely to impact on the interest of consumers in providing for the future.

Soft commissions play an important role in developing better systems to deliver products and services in a cost-efficient way to the consumer. Withdrawal of this support is not in the interests of the independent 'Fintech' solutions providing consumer information for better choice.

Central Bank Proposal – Questions 14 – 16

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.

Question 14

Do you have any views on the above proposal? Please explain your answer.

A vast number of financial products and services are offered by a very broad range of Brokers that act as both intermediaries and fiduciaries serving the interests of a number of parties, often at the same time. Each firm has its own (sometimes multiple) authorisations that allow them to receive and transmit orders on a diverse range of regulated investment instruments and insurance products that attract different

types of remuneration. This proposal shows no appreciation of the workings of the market. Please see [Appendices 3 and 4](#) outlining the range of services and work transfer carried out by intermediaries.

We believe that any requirement that intermediaries avoid recommending a product in a product range solely because commission levels diverge between products will impact on the suitability of the product for the consumer. It will encourage coordination between product producers on pricing through the standardisation of commissions without any efficiencies to justify same. Such coordination on pricing would be contrary to section 4(1) of the Competition Act and, in a European context, article 101 of the TFEU. The levels of commission could be more persuasive than the merits of the product or the provider under consideration.

Competition is primarily price driven, particularly in the ‘consumer’ personal lines and SME sectors. Whilst price driven competition is not necessarily always good for consumers (as evidenced by the Setanta and Quinn debacles) it serves as a constraint on any inclination on the part of Brokers to recommend products on a commission basis. In fact, there is no evidence or suggestion that the market behaves in this manner. Product recommendations are primarily driven by price competition, which in turn is driven by constant exhortations from the Central Bank, media and consumer bodies to “shop around”. Other considerations are the financial security and claims handling reputation of the insurer, the extent of cover provided and the commitment of the insurer to the Irish market. Aside from any inclination to recommend products based on remuneration levels there is simply no scope for Financial Brokers to do so for the aforementioned reasons. There is no evidence of detriment in this area where contracts are annually renewable and competition is fierce.

Remuneration often referred to as commission is paid in many cases for work transfer arrangements such as delegated authority schemes and EDI arrangements (see [Appendix 4](#)). The amount of work carried out is reflected in the amount of remuneration paid by the insurer. There is real value to the consumer in much of this outsourced activity as it eliminates duplication, creates greater efficiencies and leads to better outcomes for consumers. For firms not engaged in outsourced or delegated schemes currently, there is strong competition between all providers leading to a very similar level of commission being paid to intermediaries by providers.

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.

Brokers would have to refuse to sell particular products to consumers and would not be able to operate under these constraints.

This proposal is completely unworkable for many classes of cover based on the variety of covers and providers and the many criteria taken into account when deciding the most suitable product for the consumer. Most firms omit commission information to ensure their advisors at the coalface do not take this issue into account when deciding the product most suitable for the consumer. As described earlier in this response, the wide range of services and products under consideration in this paper does not lend itself to a one-size-fits-all approach to this question. Many firms, to mitigate the risks of provider bias, manage commission issues at governance level in the organisation. Commission information is classified information in the firm.

Like other elements of this consultation, we are at a loss to understand what the Central Bank is trying to achieve with this proposal. As stated, the survey is deeply flawed at many levels and does not support the above proposal. The proposal is disproportionate and does not lead to any benefit or avoid any risk to the consumer that is not already considered in the existing provisions for consumer protection contained in the Consumer Protection Code. As referenced in the introduction, the provisions applied by the Central Bank in response to the Insurance Mediation Directive 2005 greatly gold plated the protections envisaged by this EU directive. As has been acknowledged repeatedly since the application of the IMR in 2007, robust conflicts of interest measures were introduced that exceeded the requirements at the time. Brokers Ireland believe that firms are accountable and responsible for their own strategy and they are answerable at a prudential level for the operation of remuneration in their own business.

“The challenge, therefore, is not to prevent conflicts of interest in financial services but to manage them in a workable financial system”.¹⁴ This proposal is unworkable and is not in the interests of the consumer of protection policies.

Question 16

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

This proposal would result in product suitability being severely compromised based on decisions made on the amount of commission paid. This issue would ultimately outweigh all the ‘professional criteria’ envisaged in the IMD and IDD definition of fair analysis. Issues such as cover, claims handling, insurer rating, services and efficiencies could not be taken into account when selecting products in line with the commission criteria outlined in this proposal.

This proposal would mean that consumers would not have access to advice or particular products.

Central Bank Proposal – Questions 17 – 20

Conflicts of interest policy and record-keeping requirement

We propose that the current conflicts of interest provisions will be strengthened so that firms will be required to have in place a written conflicts of interest policy that specifies the procedures to be followed, and the measures to be adopted, by the regulated entity in order to avoid such conflicts of interest.

New record-keeping requirements are also proposed. Firms will be required to 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.**

These new requirements will assist firms to demonstrate their compliance with the proposals set out in this paper.

¹⁴John R Boatright. *Financial Services. “Conflict of Interest in the Professions”* Ed. Davis M. & Stark A. Oxford University Press New York, 2001. p 217

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.

The current conflicts of interest requirements set down by the CPC are robust and sufficient. We consider this proposal as unworkable, especially for volume business. This requirement would most likely have to be handled in the same way as suitability statements are presently handled for high volume business – by generic statement. Such statements become meaningless and serve no positive purpose for the consumer and lead to regulation fatigue, where consumers are overwhelmed by the amount of paper they are required to read.

Consumers receive a Terms of Business, application form, completed factfind, statement of suitability, KID (if applicable), Life Disclosure Documents (if relevant), product information guides etc., so they are already overwhelmed by the amount of information they receive; and a statement about conflict of interest for every transaction is a disproportionate response to a point that is highlighted in the Terms of Business document and detailed in every statement from the provider. We do not believe such a statement will bring any benefit or avoid any risk to the consumer.

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?

Concerns about how the influence of commission payments drives bad behaviour should be addressed at a prudential level in firms. How decisions are made is the responsibility of the management and strategic decision makers. Accountability for strategy and the management of it in the firm is something that can be examined, monitored and reported upon through the annual online system. Record keeping for each transaction is not proportionate or reasonable for products and services covered by the IDD and MCD. The inclusion of MiFID requirements in the CPC are considered disproportionate in view of the low risk nature of insurance mediation.

Auditors also have a role in monitoring what is happening in firms and are in a position to report adverse findings if appropriate. A report for every transaction is unachievable due to the disproportionate amount, effort and expense of time required to deliver in every case.

Whilst this proposal may have relevance for MiFID products on a case by case basis, it is totally inappropriate for protection policies.

Question 19

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

As outlined above, record keeping for each transaction is not proportionate or reasonable for products and services covered by the IDD and MCD. It means additional cost and more paperwork, with no tangible benefit to the consumer. The current protections in the code are robust and sufficient and no evidence of consumer detriment or risk has been provided as the purpose for this change or to substantiate this proposal.

Question 20

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

We have outlined in the response to Question 17 many of the consequences we envisage from this proposal, intended or otherwise. In addition to those mentioned above we envisage yet another layer of costs that will ultimately be passed back to the consumer for no additional benefit. We believe that consumers understand how commission works, as Brokers do not make upfront charges for initial services and advice. Brokers would like to be able to continue to provide these services in the public interest.

Constant and disproportionate commentary, coupled with a fixation on the elimination rather than the prudent management of potential conflicts of interest arising from Broker remuneration can only lead to a lack of confidence in the qualified professional expertise of Brokers and in the financial system. This is detrimental to the financial system and impacts adversely on consumers and on the community at large.

Central Bank Proposal - Questions 21 - 23

Independence

The Central Bank therefore proposes that an intermediary may only describe itself as independent

In its legal or trading name, or other description where all its regulatory activities are provided on the basis of a fair analysis of the market, or in any description of its regulated activities where that regulated activity is provided on the basis of a fair analysis of the market, and where it does not accept and retain a third-party inducement, other than a minor non-monetary benefit which is capable of enhancing the service to a consumer. In these circumstances, where a charge for this service is incurred, an intermediary must be paid by means of a fee by the consumer.

This proposal would be in line with the requirements introduced by the MiFID Regulations 2017, which prohibit investment firms accepting and retaining inducements in the case of independent advice. As set out in Appendix 2, the IDD contains two Member State discretions in this area. The IDD is due to be transposed into Irish law by 23 February 2018 and the Department of Finance is currently considering its transposition.

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 a consumer? Please explain your answer.

Brokers Ireland acknowledge the requirements as set by the MiFID II directive. Where restrictions are imposed on the term 'independent' for MiFID products, including the products that fall under the IIA exemption, we do not believe that these restrictions should be applied to IDD/CMCAR intermediaries. The European Parliament made a deliberate decision when drafting the IDD not to impose a ban on commissions for independent advice; this decision was taken after the finalisation of the MiFID II directive.

The current provision 4.16 sets down the requirements for the use of the term ‘independent’. It may only be used by an intermediary in its legal name, trading name or any other description of the firm where:

- a) the principal regulated activities of the intermediary are provided on the basis of a fair analysis of the market; and
- b) the intermediary allows the consumer the option to pay in full for its services by means of a fee.

We believe that this provision should continue to apply for IDD/CMCAR intermediaries and no gold plating of legislation should take place.

Apart from Article 3 Services, the key distinction that impacts on consumers is the difference between an intermediary that is tied or limited and a Broker that is providing services on the basis of fair analysis. Although a very comprehensive description of fair analysis is included in the CPC this appears to have been totally ignored. Professional criteria does not take into account the level of commission being paid by the provider but rather focuses on the five elements described in the CPC in provision 5.19. The laws of agency and the concept of fiduciary responsibility of agents seem to have been totally ignored in the considerations relevant to this argument.

One of the key findings of the G20 was the lack of information that consumers displayed about their own finances and the financial system. Education of the general public about such matters is not evident. A survey dealing with the understanding of the services being provided and the fact that ‘Brokers’ cannot be expected to provide professional services for free might be more enlightening and relevant. There is no evidence to suggest or demonstrate that the role of the intermediary was properly explained to the members of the public. The only determining feature was how the intermediary was remunerated. This did not evoke a negative response. The most telling part of the survey was that the respondents were not prepared to pay for the service but still expected impartial information in order to make choices. If informed choice is the preferred option of the OECD and the Central Bank how is it possible to deliver if product and cover analysis and price comparison does not take place? Due to the power of the provider and the information asymmetry of the consumer this service is provided for the consumer only by an intermediary providing ‘fair analysis’. No one in the market can afford to provide this service for free. Over many years of market cut and thrust the role of the intermediary has evolved worldwide to address this need. Those in most need of the services of the intermediary are those who can least afford it. To adopt the proposals in this consultation will disenfranchise the weakest and most vulnerable consumers. 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. Independence goes far beyond commission. Of greater threat to the consumer is the direct sale from one provider where the consumer cannot make an informed choice.

Question 22

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

The concept of ‘fair analysis’ and the relevance of professionalism of the intermediary will be lost. The difference between a travelling salesman and the professional acting with integrity to standards of utmost good faith must be preserved. The role of the Central Bank is to underpin confidence in the financial markets. Measures such as the erosion of independence and individual statements of conflict of interest are far more likely to undermine confidence and stability in the financial system than promote

confidence in one of the key players in delivering choice value and suitable financial products that protect consumers.

Question 23

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

The consumer currently has the choice/option to either pay by fee (either in full or partly) or choose for the intermediary to be remunerated by commission. This choice will be taken away from the consumer. Removal of choice is not to the benefit of consumers.

Central Bank Proposal – Questions 24 – 26

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, the summary must include:

- **the basis on which an inducement is payable,**
- **an indication of the amount or percentage of the inducement paid,**
- **any additional benefits to be paid or provided to the intermediary which may not be directly related to individual sales, and**
- **details of any fees, administrative costs or non-monetary benefits, which could be paid or provided to the intermediary under any arrangement with the product producer.**

It is also proposed that, before concluding a contract for a financial product, an intermediary would be required to bring the inducement arrangements summary document to the attention of the consumer.

Finally, it is proposed that firms would be required to retain records to demonstrate how the inducement arrangements summary document was brought to the attention of the consumer before concluding a contract for a financial service.

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.

Lest the point be missed, we must again reiterate that a 'one-size-fits-all' approach to the complexities of the remuneration of intermediaries is inappropriate. The proposals referred to in this question do not take into account the vast number of financial products and services that are offered by a very broad range of Brokers that act as intermediaries, carrying out activities serving a number of parties, often at the same time, such as insurers, product providers, and policyholders. The activity of intermediation is defined in the IDD. It is an all-embracing function of Brokers, including acting on behalf of insurers and accepting many delegated functions for which they are remunerated and which attract different types of remuneration.

This proposal could not work in practice and shows no appreciation of the workings of the market; it would be impossible to keep it up to date. The scale of the information would be so confusing as to be inaccessible to consumers. In a firm that holds in excess of 70 agency appointments distributing up to

100 products, such a publication would be irrelevant and the amount of information overwhelming for consumers at the point of sale.

This, by definition, would only be applicable to Broker sales and not a requirement through other distribution channels. Consumers would not be in a position to compare or differentiate and would be compromised and confused by the inconsistencies in the resultant distortion in the market.

Brokers Ireland query what the basis is for such an onerous proposal. No consumer or consumer body made a submission to the Central Bank on the *Discussion Paper on the Payment of Commission to Intermediaries* highlighting any concerns about the current disclosure system. We believe the extent of this proposal is unnecessary in the context of existing provisions of the CPC 4.57 to 4.61 inclusive.

It is important however in responding to these questions to highlight how transparent the market is at present in relation to 'inducement' arrangements. Intermediaries are already subject to a comprehensive disclosure regime - life disclosure regulations and CPC disclosure on request are currently in place depending on the nature of the product. In this country, hard disclosure of commission and fees on a contract by contract basis in respect of life insurance products has been the norm for decades. In relation to non-life (general or protection) products consumers have been empowered for years to get any information they require in relation to the payment of commissions. In addition to the above, intermediaries are required at law to act honestly and fairly and to act in the clients' interests. They are required to do an appropriateness, suitability and demands and needs test and in all but household, motor and travel cases clearly demonstrate why the product is suitable and record this on every file to ensure that the consumer can make an informed decision.

The cumulative effect of these proposals in addition to the existing disclosure requirements for what are often simple products is disproportionate. It proposes to become a costly bureaucratic requirement that will lead to additional costs, which will be ultimately borne by the consumer.

Intermediaries operate in a highly competitive market where remuneration arrangements are frequently commercially sensitive. These proposals are potentially misleading in relation to protection products and could distort the market in a manner that would be damaging to consumer interest.

In practical terms it would mean that a Broker could not recommend (say) a household product providing the same or very similar cover at a cheaper premium because the remuneration was 10% instead of 15% paid by a competitor on a product at a dearer premium.

There is no benefit to the consumer in this proposal and ultimately the only benefit would be to competitors in order to compare commission levels between the providers. Also, as commission levels vary within product ranges coupled with the fact that intermediaries can have relationships with a large number of providers, it would be impossible to keep such comprehensive details up to date and accurate. Feedback from members would indicate that commission options can vary every six weeks.

We believe that this proposal is superfluous, anti-competitive and unworkable. As referenced in earlier responses, the questions and proposals of this consultation do not address the extremes covered in its scope. We cannot conceive of a structure or framework that could address such a requirement. This would run to many Excel sheets for ranges of products and multiple providers. We ask the question: what purpose would such a document serve? Is there a better way to hold firms accountable for the same

information in a more straightforward way? We consider this proposal to be disproportionate and unworkable.

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.

As per previous response, Brokers Ireland strongly oppose the introduction of any such requirement as being ill-conceived and inimical to consumer interests.

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.

As per previous response, Brokers Ireland strongly oppose the introduction of such a requirement. We believe an inclusion in the suitability statement drawing the policyholder's attention to the payment structure in place, whether by fee, commission, or a combination of both, would provide the information in a meaningful way as part of the important document at inception and at renewal. A straight forward disclosure made as part of the statement of suitability would provide the extra disclosure if required.

Central Bank Proposal – Questions 27 – 31

As set out in the introduction to this paper, and as detailed in the 2016 Discussion Paper on this topic, the term commission is used to describe how intermediaries are paid for arranging a sale through a product producer. Commission can take various forms, including trail commission and soft commissions. European legislation such as MiFID contemplates a broader concept and instead refers to the term 'inducement'. This wider definition encompasses fees, commission and non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party. While not defined in the Code, the Code currently contemplates remuneration in the form of fee, commission, other reward or remuneration in respect of the provision of regulated activities. Given the move at EU level to the use of the term 'inducement' and its wider meaning, it is proposed to introduce new definitions in the Code in order to capture the wider context within which inducements are understood. It is considered that these additional definitions may be necessary in order to prevent any misunderstanding or misinterpretation of what the proposed new rules are intending. It is also necessary in order to ensure that conflicts of interest created by commissions are not migrated to other non-commission arrangements.

The following definitions are proposed for inclusion in Chapter 12 of the Code:

"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. The MiFID Regulations 2017 provide that only minor non-monetary benefits should be allowed, provided that they are clearly disclosed to the client, that they are capable of enhancing the quality of the service provided and that they could not be judged to impair the ability of investment firms to act in the best interest of their clients. It is proposed to introduce a similar definition to the Code, as follows:

“minor non-monetary benefits” means such benefits that are capable of enhancing the quality of the service provided to a consumer and are of a scale and nature such that they could not be judged to impair compliance with the regulated entity’s duty to act in the best interest of the consumer.

The MiFID Regulations 2017 sets out some examples of benefits that would be considered acceptable minor non-monetary benefits. These include, for example, participation in conferences, seminars and other training events on the benefits and features of a specific financial instrument, or hospitality of a reasonable de minimis value, such as food and drink during a business meeting or conference, seminar or other training events.

Question 27

Do you have any views on the proposed definitions of ‘inducement’? Please explain your answer.

We acknowledge that the term ‘inducement’ is used at European level; however, in Ireland this term has very negative connotations and perceptions with Irish consumers and the broader community. For completeness, we repeat here the comment made in the introduction on page 5:

We wish to stress in the strongest terms possible our outright abhorrence of the term ‘inducement’ as included in the title of this consultation and otherwise as an appropriate proposal for a term to describe payment or remuneration to Brokers for work carried out on behalf of consumers and insurers. We consider the term pejorative and offensive to our Broker community. Dictionary definitions of inducement include: bribe; incitement; lure; a thing that leads someone to do something. Use of this term in the Irish insurance market does nothing to promote confidence in financial products or services and has the potential to seriously impact the reputations of our members.

Further, we believe that the term ‘inducement’ will lead the consumer to think that the intermediary has been engaged in sharp practice. This definition creates the perception of a payment that is over and above the fair commission or fee for recommending a product or providing professional advice or services. We are stunned to see that in redefining a word clearly set out in the Oxford Dictionary the Central Bank is unaware of the connotation of bribery that is included. One of the stated objectives of the Central Bank is to restore confidence in the financial system. We believe that the execution of this proposal, in spite of its ‘redefinition’ in the Consumer Protection Code, will deeply undermine the confidence of consumers and impugn the reputations of in excess of 2,500 intermediaries and, by extension, the body that regulates them.

As shown above and in [Appendix 4](#), ‘The Role of the Intermediary’, it is clear that the word ‘inducement’ is indeed a misnomer. Payment to Brokers by insurers is, in fact, a Broker’s turnover: it is not profit.

The Oxford Dictionary¹⁵ definition of inducement is:

a thing that persuades or leads someone to do something.
a bribe.

The term ‘inducement’ is not acceptable to our members and Brokers Ireland see no reason why this term should be introduced into Ireland. It is misleading to the consumer and does not reflect the role of the Broker in researching, advising and carrying out administration on behalf of both the client and the provider. It does not reflect the legitimate payment of the Broker for these services.

¹⁵ <https://en.oxforddictionaries.com/definition/inducement>

We believe that the term ‘intermediary remuneration’ is a more appropriate one. It is a term the public will understand, it covers all methods of payment, i.e. commission/fee, and it reflects the fact that the intermediary is paid for their services.

Question 28

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

Brokers Ireland are in agreement with the proposed definition of ‘minor non-monetary benefit’. However, the term currently in circulation for matters such as described is ‘gifts and hospitality’. This term again describes exactly what is involved across a broad spectrum of industries and associations. Using the commonly understood terminology makes the concept far more easily understood and in line with market practice locally, in the British Isles, and worldwide in any English-speaking country. There are many internationally accepted policies and procedures that address such issues in all firms.

Question 29

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

Yes, but we should not be restricted purely to the examples given in the MiFID Regulations 2017.

Question 30

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

Social events: these events are effective and efficient ways for providers to build relationships and network.

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?

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. Such policy would form part of their governance. Such firms would be accountable for their policies, and for the relevant monitoring and maintenance of registers, as is considered appropriate in any corporate organisation.

Conclusion

In the interests of Consumer Protection, the current CPC imposes very onerous obligations on the insurance market. Combined with the imposition of the Minimum Competency Code, Continuous Professional Development, a statutory obligation on intermediaries to hold professional indemnity insurance, and other requirements, the regulator has achieved a remarkable degree of effective consumer protection.

Regulators need to ensure that a high level of compliance is achieved. Rules need to be relevant and effective. The Central Bank, in ‘gold plating’ the requirements of the Insurance Mediation Directive, have already achieved the standards required by the IDD in Ireland. The CPC provisions in relation to conflicts of interest, transparency, independence, and the requirement to provide best advice and fair analysis as

shown in the responses above mitigate the potential for conflict of interest for consumers of the products and services distributed by retail intermediaries authorised under IMD, IIA and MCD.

We believe that there is a danger that in trying to eliminate rather than manage potential conflicts of interest, the regulator could instead unleash a number of unintended consequences that could prove detrimental to consumers and Brokers alike. Overall the proposals in this consultation are not capable of being implemented for protection policies within the scope of IDD. The proposals contained in this Consultation Paper and the Delegates Acts are appropriate solely for insurance-based investment products.

We believe that matters such as product and producer bias is a prudential rather than a conduct of business issue. Firms, through their annual online return, already provide information to the Central Bank outlining the source of their turnover. Management and directors of firms are accountable for the placement of business and answerable to the Central Bank for the strategic decisions of their firms. Both the payers and receivers of remuneration are responsible for the fair and transparent transaction of business in the best interests of the consumer. The proposals contained in CP116 add further layers of bureaucracy, do not provide any additional protection or benefits to consumers, and will distort the market to the detriment of consumers.

Appendix 1 - Financial Services Ombudsman 2017 Statistics

Total number of complaints received in 2017 circa 4,500
 Intermediary new complaints received in 2017 240

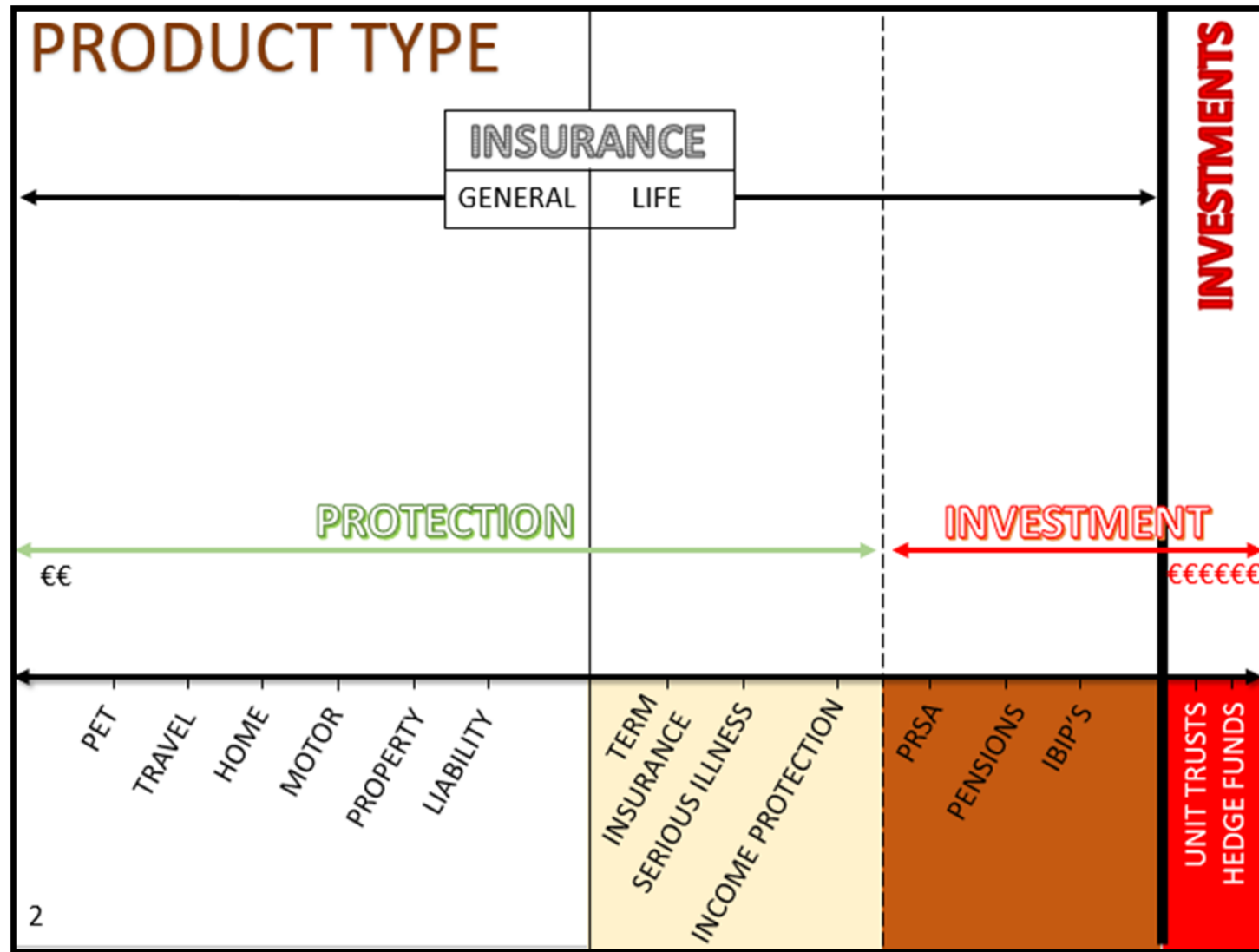
Row Labels	Count of Ref
1.Complaint ineligible	4
2.Early stage closure	32
3. DRS - Clarification	46
4. DRS - Settlement	71
8. Other	9
Still Open	78
Grand Total	240

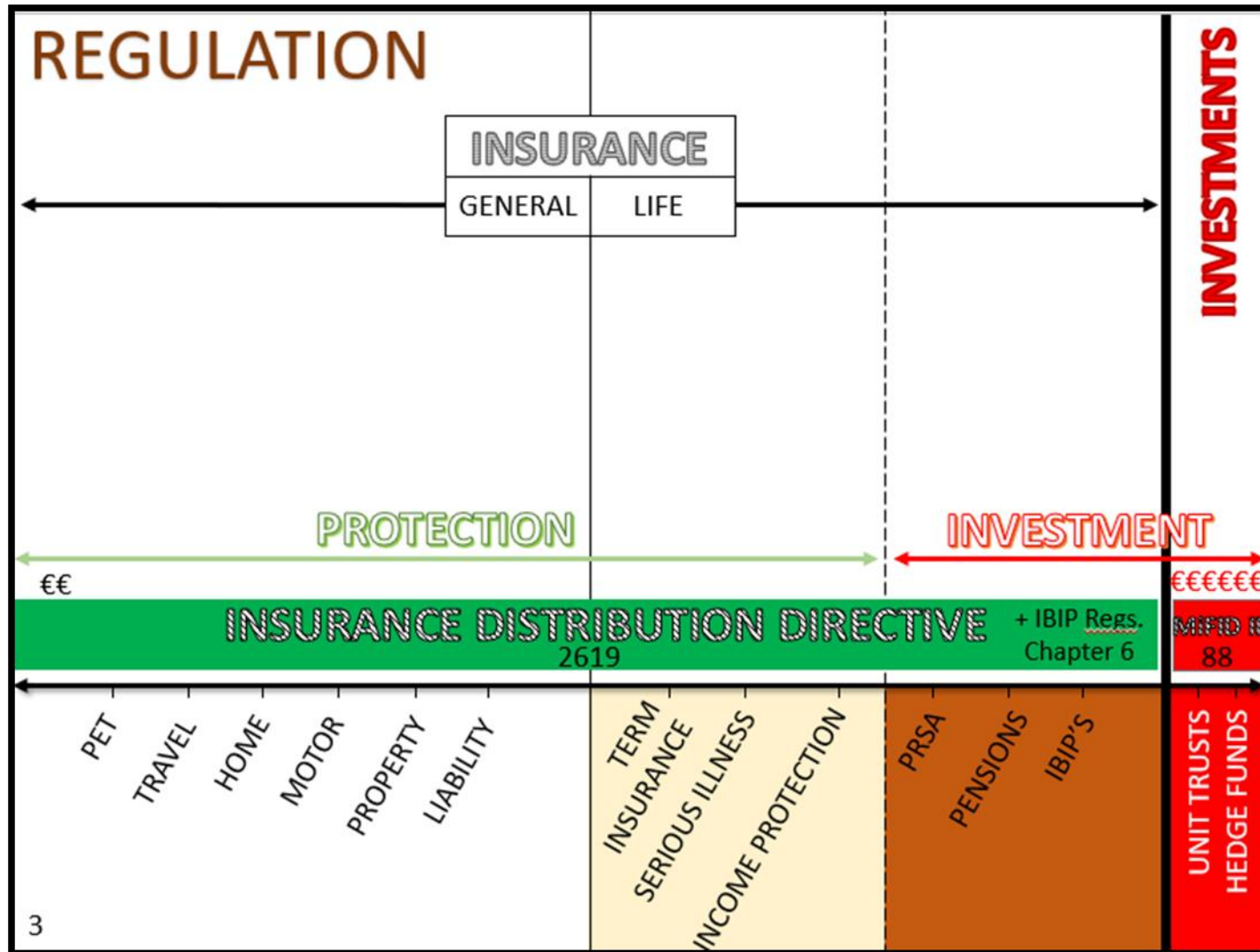
10 Intermediary disputes were adjudicated on in 2017

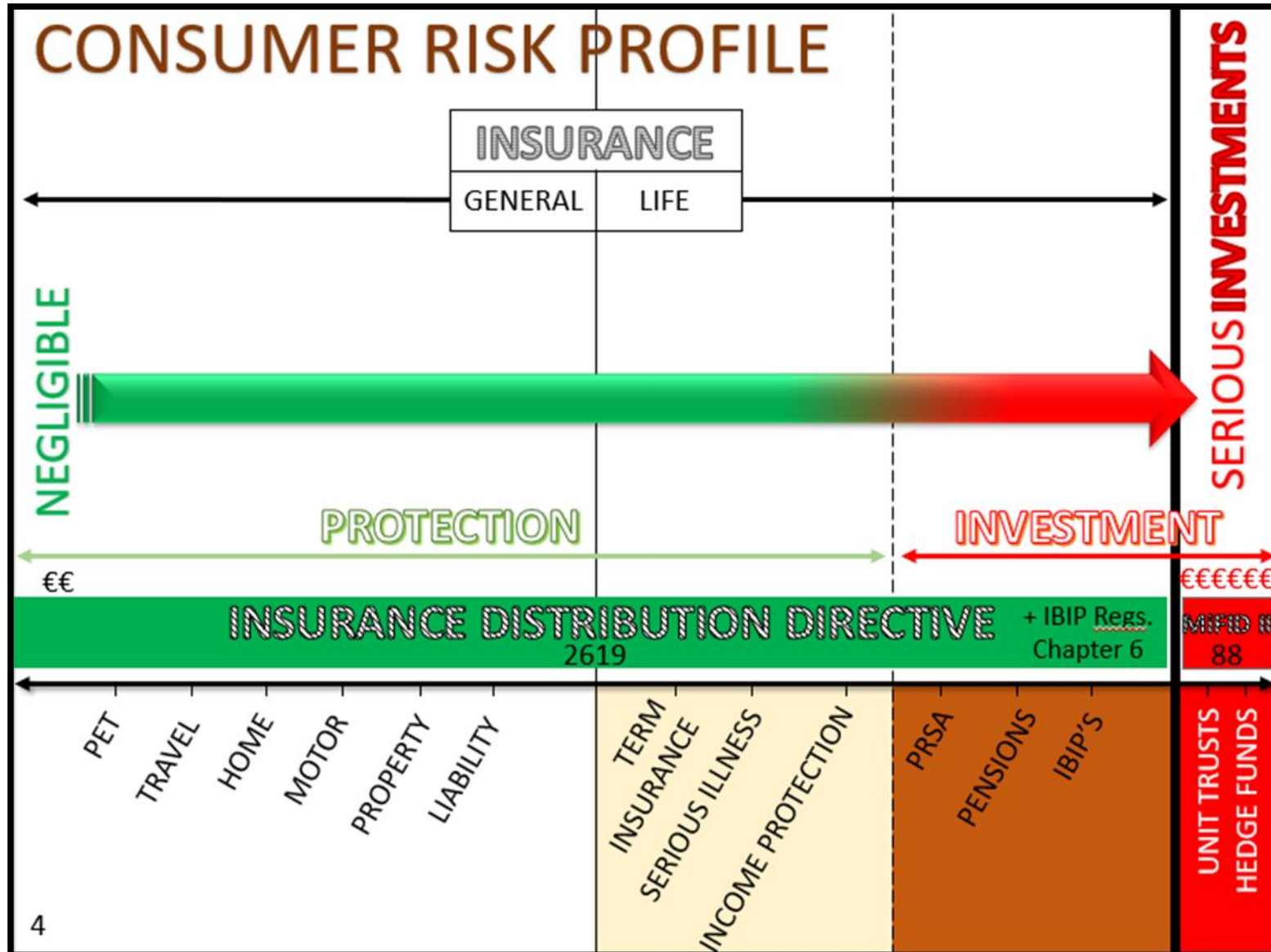
3 Upheld
 5 Partly upheld
 2 Not Upheld

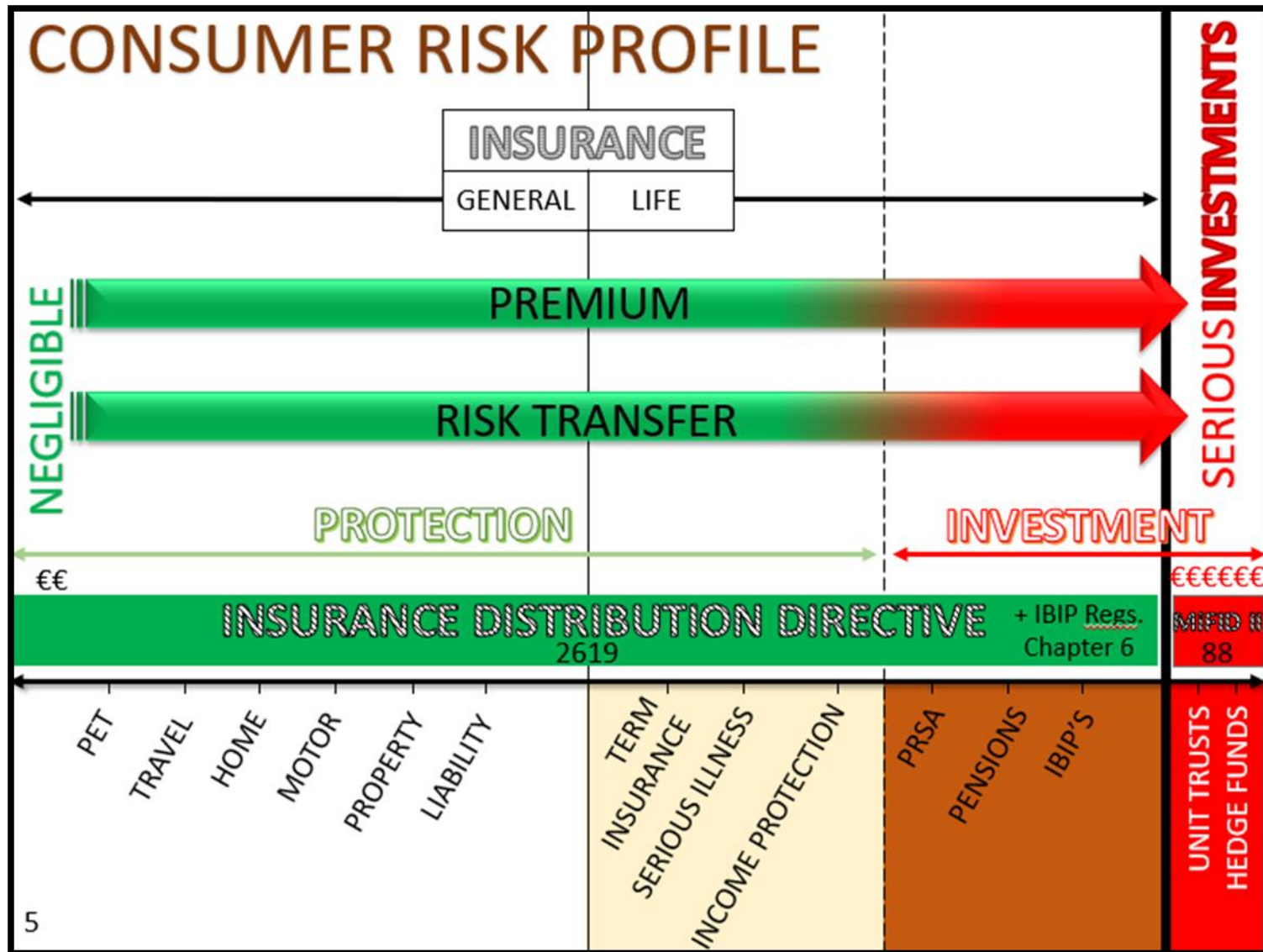
Note: None of the ten disputes where the ombudsman issued a finding were in relation to payments of commissions.

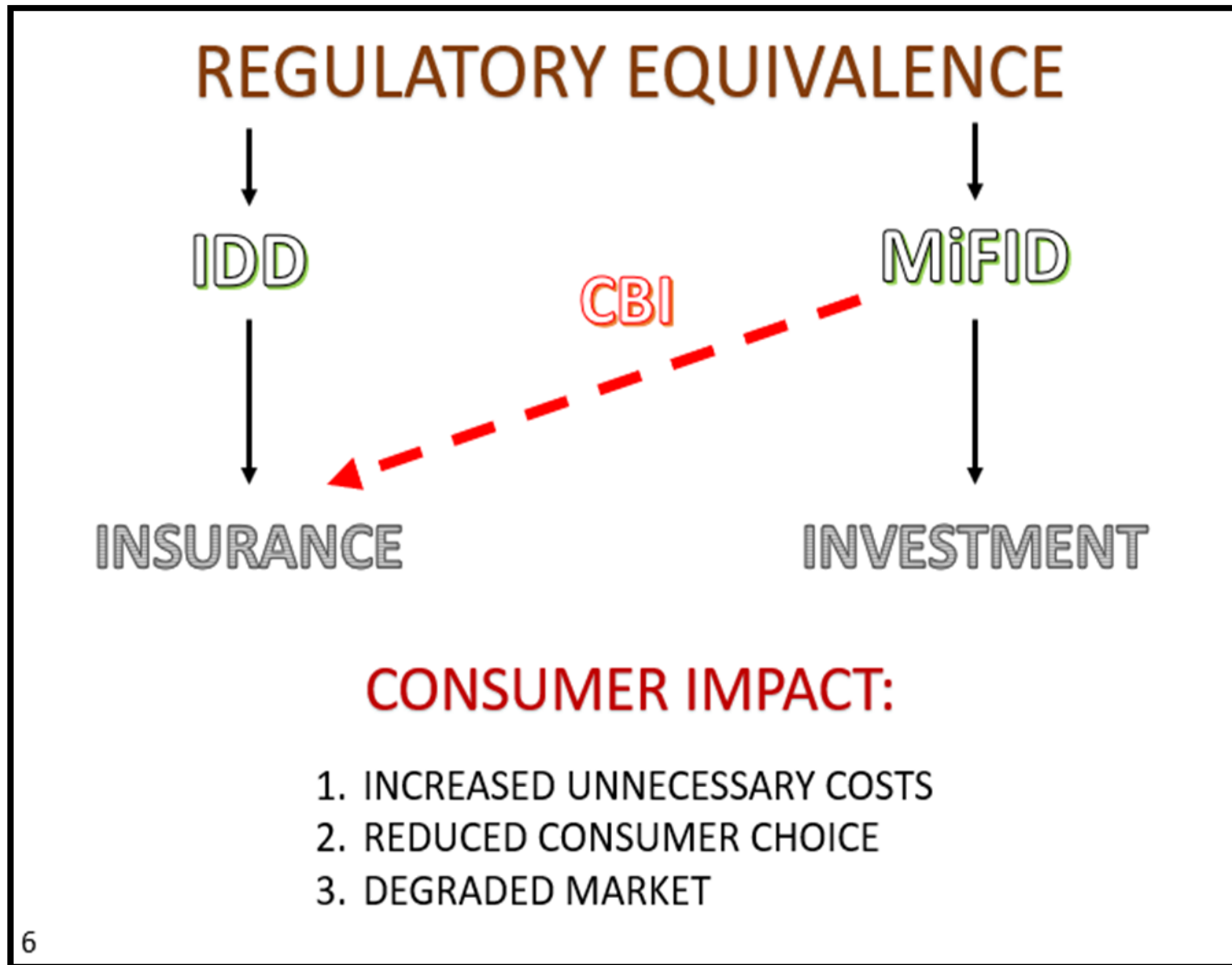
Source: Financial Services and Pensions Ombudsman: March 2017











APPENDIX 4 – Role of Retail Intermediary and Work Transfer

The Relevant Regulations and Definitions

The definitions of insurance mediation and distribution currently in the IMD and proposed in the IDD are defined as follows and contemplate a range of activities as outlined below.

IMR: ‘insurance mediation’ means any activity involved in proposing or undertaking preparatory work for entering into insurance contracts, or of assisting in the administration and performance of insurance contracts that have been entered into (including dealing with claims under insurance contracts).

IDD: ‘insurance distribution’ means the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media.

In the above EU directives there are various different forms of remuneration as defined below that are considered appropriate for such regulated activity.

‘Remuneration’ means any commission, fee, charge or other payment, including an economic benefit of any kind or any other financial or non-financial advantage or incentive offered or given in respect of insurance distribution activities.

Work Transfer

‘Commission’ is a generic term used by Brokers and retail intermediaries to describe remuneration in many forms paid by product producers to Brokers/retail intermediaries who are also Cover Holders, Managing General Agents and Wholesale Brokers. Different levels of commission are paid in respect of different levels of work transferred between the parties as outlined above. Work transfer is beneficial to consumers, avoiding duplication and bringing greater efficiencies as outlined in Brokers Ireland’s response to CP116.

Payment to Brokers/intermediaries by insurers and product producers is, in fact, a Broker’s turnover: it is not profit. Transfer of work in the distribution chain occurs in delegated authority agreements, provision of outsourced services from producer/manufacturers to distributors and the EDI schemes in operation since the 1990s. Such arrangements have been outlined and agreed by various regulators and the Central Bank since 1995. Indeed, the Central Bank carried out a review of product producer activity in Q4 2016. We are concerned at the institutional amnesia that is apparent in the lack of recognition of this fundamental element of the *modus operandi* of a general or composite Broker, in particular in the motor insurance market. We believe that these elements of Brokers’ remuneration have not been taken into consideration by the Central Bank in putting forward the proposals contained in CP116.

All activities described in the regulatory definitions outlined above are heavily regulated aspects of the Conduct of Business Rules contained in the Consumer Protection Code, Minimum Competency Code, CPD and so on. Delivery of this range of professional services and standards in every case comes at considerable cost. Product providers and intermediaries make commercial decisions and negotiate commercial agreements, including the level of payment considered appropriate for the services to be provided by the intermediary (see list below). Any consultation in relation to so-called ‘inducements’, commissions or remuneration that fails to take the above into consideration cannot be described as fair

and equitable or, indeed, sound. It is completely misleading to the consumer and any other interested parties to portray the different forms of remuneration as commission levels or margins paid purely as 'inducements' for a recommendation to a particular provider. A significant portion of so-called commission is paid for work transfer from insurer to Broker, all of which provides benefit to the consumer.

Personal Lines and Commercial Insurance

There are a number of activities that were traditionally carried out in the insurance companies that are now done in the Brokers' offices. These delegated or outsourced activities are typically the inputting and uploading of consumer data to insurance company mainframe computer systems. Many Brokers receive renewals electronically and then print and post to the customer. Midterm alterations are also carried out in Brokers' offices. This applies for both personal lines and commercial insurance, depending on the nature of the agreement between the individual Broker and the insurer.

Wholesale Brokers, Cover Holders and MGAs

These categories of Brokers differ from personal lines and commercial insurance, and higher levels of remuneration are paid to reflect the broad range of activities carried out by these Brokers, such as

- Underwriting of the risk
- Handling consumer queries from the sub Brokers
- Settling claims (in some cases)
- Provision of management information to providers
- Input of the new business information
- Completion of bordereaux
- Issuing all policy documents and printing stationery
- Handling the renewal process
- Reporting on performance of the account
- Input into rating factors
- Construction and design of the policy wording and processes
- Development of Fintech processes to distribute the product
- Carrying out complete audits on behalf of the insurers
- Handling complaints
- Forwarding a significant portion of the commission to the sub Broker for introduction of the business.

Summary

CP116 has not recognised the disparate activities undertaken by intermediaries in bringing a range of protection insurance products to market. Such arrangements ensure competition in the marketplace and enable consumer access to a large number of providers. The value of such arrangements is recognised across the EU territories and the UK, where insurance commissions and remuneration remained unaffected by the RDR project. Anything that reduces the number of insurance providers available to the Irish customer will limit choice in product and provider and result in increased prices for the policyholder.

