

Consumer Protection: Policy and Authorisations
Central Bank of Ireland
PO Box 559
New Wapping Street
North Wall Quay
Dublin 1

22 March 2018

Dear Sirs,

Re Consultation Paper CP116 Intermediary Inducements

Introduction

We welcome the opportunity to comment on the above Consultation Paper which you published in November 2017.

In addition we welcome the recognition of the value of commission as a means of remunerating intermediaries to support the distribution of retail financial products and the provision of advice to customers thereby avoiding the “advice gap” created in some other jurisdictions where the option to pay for advice through commission has been removed.

Please note his submission is made on behalf of both our general insurance and also our life assurance businesses in Ireland and our answers to the detailed questions shown in the attached Appendix.

General comments

We would have a concern with the desire to align the requirements for remuneration arrangements over the distribution of insurance products with those of MiFID products. It would be our view that such alignment is not appropriate given the differing nature of the products involved, the differing scale of risk transfer involved between such products and the underlying nature of remuneration practices between the sectors. It is instructive that the Insurance Distribution Directive, which was introduced after the introduction of MiFID II did not take the opportunity to align both regimes in respect of remuneration, inducements and conflicts of interest and we believe it is more appropriate for the current proposals to do likewise and not try to harmonise regulations. In our view, the existing regulatory provisions for the distribution of insurance products have proven itself to be fit for purpose.

The categorisation of all remuneration arrangements as inducements, including using the term in the title of the consultation paper, also fails to recognise the reality that the majority of commission arrangements support the creation of a distribution and advice capability for customers through the use of the intermediary network and in fact represents an element of work transfer from the insurance company to the intermediary for which it is appropriate that this effort is remunerated.

The existence of this distribution channel also facilitates the provision of choice and advice to customers by regulated professionals and their firms. It is the case that the majority of income received by intermediaries distributing insurance products comes in the form of commission from product producers with a smaller element from fees compared to a MiFID service provider where the majority of their income is derived from fees received from the customer.

The categorisation of all remuneration arrangements as inducements could also lead to a false impression among customers that all commission payments create a conflict of interest and undermine the intermediary's role as working on behalf of the customer.

The proposals as currently set out could also lead to an increase in the number of intermediaries relying on a single product provider to avoid the overhead and constraints the proposals contained in the Consultation Paper may create. This would be of detriment to the customer in limiting choice.

The proposals also add additional documentation to be provided to customers adding to the existing volume of information that does not necessarily inform the customer. This creates unnecessary additional complexity for customers who constantly request less information rather than more. Such proposals also imply a significant additional cost to implement and operate which ultimately would be borne by customers.

In relation to the research carried out by the CBI to support the Consultation we note the number of customers in the sample who have purchased life products in the last 5 years is very small (50). This would not be a large enough sample size from which to draw any significant conclusions. In addition the vast majority of responses were obtained from customers who were purchasing general insurance products. It would seem inappropriate to base the core of the proposals to harmonise commission and remuneration arrangements between insurance products and MiFID investment products which carry significantly different levels of risk transfer on such research. There would be little similarity between a motor insurance products and a MiFID investment product to warrant such alignment.

We believe more extensive consumer research is required before making such significant decisions on the distribution of general and life insurance products. Intermediaries have a systemic importance to the distribution of life insurance, pensions, motor and home insurance products to retail customers. Any changes to the current regulatory regime risk damaging the successful operation of the market. As such, a detailed analysis of each proposal should be carried out before any implementation. The analysis should consider the costs of implementing the

proposal, the quantifiable benefits to the customer (if any) and the risks of damaging the availability of advice.

Concluding Remarks

We would like to re-affirm our commitment to strong consumer protection practices and these submissions are made in that context.

We would also welcome the opportunity to meet with you for the purpose of discussing our submission in greater detail.

Yours sincerely,

Anthony Brennan
CEO Zurich Ireland

Appendix

Detailed response to proposals and questions

3.1 Acceptable inducements

Question 1 *Do you see any reasons why the Code should not be amended as set out above?*

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.*

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.*

Question 4 *What other examples do you consider would enhance the quality of the service? Please set out those examples in detail.*

Question 5 *Do you foresee any practical difficulties arising from the implementation of this proposal? Please set out those difficulties in detail.*

Question 6 *Do you have any views on what, if any, unintended consequences may arise in implementing this proposal? Please explain your answer.*

Zurich response

Q1. As noted above we believe the alignment of remuneration rules regarding Insurance products and MiFID II products is not appropriate given the differences between them and, in respect of protection products, the extent of risk transfer from the customer to the insurer.

Q2. Our view is that the IDD wording ("requirement that an inducement is not detrimental to the quality of the service...") is the most appropriate standard for insurance products. Requiring that inducements are linked to providing an additional service is likely to have the impact that customers who wish to pay by fee receive a lower level of service than those who pay via commission. From a regulatory perspective, it should be sufficient that the customer is not losing out by the payment of commission, rather than that they are gaining through the payment. In addition we would feel the categorisation of all commissions as inducements has the potential to create a negative consumer bias given the common understanding of inducements as a term more associated with obtaining favourable treatment.

We note the regulator's desire to align IDD and MiFID II. However, in practice, the vast majority of life, pension and investments business is written through intermediaries regulated via IDD and the main focus of the regulator should

be on an appropriate IDD implementation, rather than achieving perfect consistency. We note that there are areas where MiFID II is potentially weaker than IDD (eg statements of suitability, needs analysis) and the Life Insurance Disclosure regulations do not apply to MiFID II products but there does not appear to be a plan to harmonise the MiFID regulations to align with insurance regulation, where the MiFID standards are lower. .

Q3. We believe the conditions set out in schedule 5 of the MiFID regulations are not appropriate to products covered by the Insurance Distribution Directive. As noted above most commission arrangements related to insurance products reflect the extent of work transfer from an insurer to the intermediary and form the core remuneration to the broker. In many cases there is no fee paid by the customer for the service received, especially in relation to protection products.

Q4. As noted above we do not consider it appropriate that commission payments related to insurance products should be linked to an enhancement of service. The choice and availability of advice to the customers provides an adequate and appropriate level of service for that remuneration.

Q5. Given the nature of insurance products and especially general insurance or protection products it would be difficult to provide a list of activities which would enhance the service provided.

Q6. None, other than those mentioned above.

3.2 Inducements deemed to be conflicts of interest

3.2.1 Inducements linked to targets that do not consider the consumer's best interests

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.*

Question 8 *Do you have any views on what, if any, unintended consequences may arise in implementing this proposal? Please explain your answer.*

Question 9 *Do you foresee any practical difficulties arising in the implementation of this proposal? Please set out those difficulties in detail.*

Zurich response

Q7. We believe it is inappropriate to eliminate all forms of commissions based on a target based on a "one size fits all" approach. The current provisions on the Consumer Protection Code place obligations on firms in respect of remuneration arrangements and conflicts of interest. In relation to commission payments based on a profit sharing arrangements these provide

a means to reward an intermediary for their customer profile and be a differentiator between intermediaries. In the many cases the price charged or risk acceptance criteria are determined by the insurer. In addition such profit sharing would be a standard feature of arrangements with an element of delegated authority for underwriting or pricing transferred to the intermediary. Prohibiting any element of Commission arrangements based on profit sharing may limit the appetite of insurance companies to use such arrangements and thereby reduce customer choice. Any new regulations in relation to target based remuneration should permit such arrangements, possibly up to a suitable limit of total commission earnings which could be agreed through further consultation.

Q8. Introducing a blanket restriction on any target based commission arrangements may reduce customer choice, for example as noted above. This could be to the detriment of consumers' interests.

Q9. Practical implementation difficulties would arise primarily in relation to transitioning from existing agreements but this could be facilitated with a suitable lead in time.

3.2.2 Inducements linked to size of mortgage loan

Question 10 *Do you have any views on the above proposal? Please explain your answer.*

Question 11 *Do you have any views on what, if any, unintended consequences may arise in implementing this proposal? Please explain your answer.*

Question 12 *Do you foresee any practical difficulties arising in the implementation of this proposal? Please set out those difficulties in detail.*

Zurich response

Q10 - Q12 As Zurich is not involved in the mortgage market we have no comments in this regard.

3.2.3 Soft commission

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.*

Q13 Given the nature of our other comments in general on commission arrangements, consideration may need to be given to retain the current soft commission provisions in an appropriate manner.

3.2.4 Recommendations where conflict of interest exists

Question 14 *Do you have any views on the above proposal? Please explain your answer.*

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.*

Question 16 *Do you foresee any practical difficulties arising in the implementation of this proposal? Please set out those difficulties in detail.*

Zurich response

Q14 In relation to insurance products (car, house, term insurance, ie protection products), it is difficult to see how this provision could be implemented in practice as there will be differences in the commission rates paid by different companies (unless the CBI intends to fix the rate of commission). In addition there will be significant similarities in the product features thereby potentially reducing the product recommendation to one based on commissions rather than other factors. In relation to investment and pension products, providers typically offer a wide range of commission options and intermediaries can often select from a range of products with the same commission structure. However, this may not always be possible because there may be slight differences between some aspects of the commission payable from different providers (timing of payment, clawback period, etc) which will make it impractical to operate in practice. In addition the consumer survey responses cited as supporting the rationale for this change appear contradictory without further explanation or analysis.

Q15 Unintended consequences could be a reduction in customer choice as a result of reducing the range of products which an intermediary can recommend from (potentially to a single product), as they will only be able to compare products with the same level of commission. It is difficult to see how this will be of benefit to customers. With appropriate transparency in relation to commission arrangements it should be possible to operate without the need for such a requirement.

Q16 Difficulties would arise in relation significant product similarities particularly in general insurance or protection policies were this type of provision interpreted too narrowly. We understand the CBI's aim is to avoid intermediaries selecting products purely on the basis of commission. However, we note the existing CPC provisions on providing best advice are strong, and we believe transparency on the commission payable is sufficient to address these concerns.

3.2.5 Conflicts of interest policy and record-keeping requirement

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.*

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?*

Question 19 *Do you foresee any practical difficulties arising from the implementation of this proposal? Please set out those difficulties in detail.*

Question 20 *Do you have any views on what, if any, unintended consequences may arise in implementing this proposal? Please explain your answer.*

Zurich response

Q17 The current Consumer Protection Code contains provisions relating to documented conflicts of interest policies and the procedures to be followed. Additional procedures specifically related to inducements should not be necessary and could be deemed to be a case of over regulation

Q18 The requirements to keep individual transactional records in relation to conflicts of interest and commissions is excessive and would needlessly add significant cost to the distribution of insurance products with limited benefit.

Q19 Practical difficulties arise in relation to the requirement to only recommend from products with the same level of commission when the product suitability assessment considers many other factors and in practical terms, commission arrangements or rates are not relevant to the product selected.

Q20 The requirement provide an additional document to customers which may only serve to create an information overload for customers without necessarily providing them with more insight. There is a real risk that the current extensive information provided to customers is not read in detail (until the need arises such as a claim situation) and adding an addition document may only exacerbate this risk.

3.3 Independence

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.*

Question 22 *Do you foresee any practical difficulties arising from the implementation of this proposal? Please set out those difficulties in detail.*

Question 23 *Do you have any views on what, if any, unintended consequences may arise in implementing this proposal? Please explain your answer.*

Zurich response

Q21 There are a range of reasons why a customer may wish to pay the intermediary via the provider rather than the broker (convenience, efficiency etc), and it is difficult to see how it is in the customer's interest to force customers to pay fees directly. We do not see any need to extend the existing Consumer Protection Code requirements for independent intermediaries to offer customers a clear choice between fee payments or commission payments. It is not clear that the term "independent" creates an inappropriate impression for customers.

In relation to insurance products, commission payments to intermediaries supports an advice and distribution network that probably would not exist if it were reliant solely on fee income only.

The research prepared by the CBI does not appear to support a preference for customers to pay fees. There is no reason to believe that fees will be lower than commission - it is more likely that they will be higher.

Q22 See Q21

Q23 If this proposal were implemented it is likely to result in a very small number of "independent" intermediaries (possibly nil). It is difficult to see how this would be in the interest of customers in reducing customer choice.

3.4 Transparency of inducement arrangements

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.*

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.*

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.*

Zurich response

Q24 We support disclosure of all inducements to intermediaries. However, as currently defined there may be practical issues in disclosing some types of inducements in a comprehensive manner and in a way that would be meaningful for customers. We would suggest a summary approach which, for example, shows the total value of inducements received from each provider during the previous year.

Q25 Yes, we think the format and content should be prescribed. Otherwise, there will be inconsistencies in the information provided to customers

Q26 We would suggest that the intermediary's terms of business could inform the customer of the availability of the inducements arrangements summary document.

3.5 Proposed new definitions

Question 27 *Do you have any views on the proposed definitions of ‘inducement’? Please explain your answer.*

Question 28 *Do you have any views on the proposed definition of ‘minor non-monetary benefit’? Please explain your answer.*

Question 29 *Do you agree with the above examples of minor non-monetary benefits? Please set out your reasons.*

Question 30 *Are there any additional minor non-monetary benefits that you think should be included? Please explain your answer.*

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?*

Zurich response

Q27 We would disagree with the categorisation of all remuneration paid to an intermediary as inducements as this fails to reflect the reality in relation to insurance products that the majority of commission payments supports the creation of a distribution and advice capability for customers. General usage of the term inducement needlessly creates a false and erroneous impression in the mind of customers given the common understanding of the term inducement. The term inducement should be restricted to those cases where a payment of benefit is obtained, related to a specific transaction over and above normal commission remuneration arrangements.

Q28 Given the benefits are minor, it should be sufficient that the benefits do not adversely impact the quality of service, rather than enhance the service. As noted above, given the difference between products distributed under the IDD and products distributed under MiFID and the standard nature of remuneration received by intermediaries, the definition would be excessive.

Q29 The proposed definition is very restrictive. Provided a monetary limit is put in place, we don't see a need to specify the types of benefits which could be acceptable. In addition we do not believe it is appropriate to harmonise the requirements of IDD distributed products with MiFID products.

Q30 The definition of minor non-monetary benefit should permit and not preclude normal business and social interactions

Q31 A monetary limit could be appropriate for food, drink, hospitality or goods provided. This limit should be set in such a way as to limit normal social and business interactions. In particular it would not be appropriate to set a monetary limit to the cost of training or seminars.