Insurance Ireland Response to CBI Consultation Paper CP143 - Consultation on Proposals to Address Differential Pricing

October 2021

Introduction

Ireland is a thriving global hub for insurance, reinsurance and Insurtech. Ireland's insurance market is the fifth largest in the EU, and our Reinsurance market is the second largest. Our members represent around 95% of the companies operating in the Irish market, making Insurance Ireland a strong leadership voice for the sector.

Insurance Ireland members are progressive, innovative, and inclusive, providing competitive and sustainable products and services to customers and businesses across the Life and Pensions, General, Health and Reinsurance sectors in Ireland and across the globe.

In Ireland, our members pay more than €13bn in claims annually and safeguard the financial future of customers through €112.3bn of life and pensions savings. Our members contribute €1.6bn annually to the Irish Exchequer and the sector employs 28,000 people in high skilled careers.

The role of Insurance Ireland is to advocate on behalf of our members with policymakers and regulators in Ireland, Europe and internationally; to promote the value that our members create for individuals, the economy and society; and to help customers understand insurance products and services so that they can make informed choices.

Insurance Ireland advocates for 135 member firms serving 25m customers in Ireland and globally across 110 countries (incl. 24 EU Member States), delivering peace of mind to individuals, households, and businesses, and providing a firm foundation to the economic life of the country.

Executive Summary

Insurance Ireland welcomes the CBI's Final Report (the "Report") and Public Consultation Following its Review of Differential Pricing in the Private Car and Home Insurance Markets. We are grateful for the opportunity to provide feedback on this Consultation. It is important for insurers that they continue to deliver fair consumer outcomes through innovative products and services and the proposed rules should support this objective. The proposed measures amount to a significant change for the market and for how insurance has traditionally been managed. A 12-month implementation period would be the minimum that is necessary to implement the required changes effectively.

We agree with the approach outlined in the Pricing Practices section of the Consultation whereby price walking is banned for consumers who remain with an insurer beyond two years while the pro-competitive option for new business discounts is retained. We would be grateful for clarity on the proposed Regulation 2(2)(a) of the Code and on closed books as outlined in our replies to the questions in the Pricing Practices section. We are pleased to note from our interactions with the CBI that it is cognisant of the changes that insurers had already been making following the publication of the “Dear CEO” letter of September 2020 in terms of the approach outlined in the Pricing Practices – Annual Review and Record Keeping section of the Consultation. It is our understanding that the requirement for an annual review is to be conducted within the calendar year and will apply from the commencement of the new Consumer Protection Code (CPC) in 2022.

We have significant concerns about the written opt-in consent approach proposed in the Automatic Renewal section of the Consultation. This proposal refers to written opt-in consent across all personal non-life insurance products, including products such as health and dental insurance, which were not examined in the Report, and should be excluded from the scope of these proposals.

A large proportion of customers in the direct and intermediary channels transact business over the phone. In the telesales scenario we would suggest that consent be given over the phone and relayed to the customer by way of their policy documentation, i.e., explicit consent could be given over the phone and confirmed on documentation received after the sales process

A written opt-in consent approach would result in a risk for consumers of becoming inadvertently uninsured, which would have serious consequences in the areas of motor, home, health, and dental insurance. Indeed, the Financial Conduct Authority (FCA) expressly recognised this danger when introducing new opt-out rules in the UK from 2022 in their Policy Statement “General Insurance Pricing Practices Market Study, Feedback to CP20/19 and Final Rules”, and these opt-out rules specifically exclude health and medical insurance from scope.

Our view is that, if an opt-in approach is to be followed, it should be technologically neutral as we outline in our Response and should only apply to the products examined in the Report, i.e. i.e., private car and home insurance products for personal consumers. However, we believe that it would be more consumer protection focussed to adopt an opt-out approach as the FCA have done. This would be the preferred approach in our view and would lead to the best outcome for consumers.

Pricing Practices

1. **Do you agree that banning price walking from subsequent renewal is the appropriate solution for the Irish market and its consumers? Please outline the reasons for your view.**

We agree with the Report’s conclusion that some aspects of differential pricing can benefit consumers and encourage competition while others can lead to unfair outcomes, in particular, and will require enhanced oversight and governance of pricing practices to be maintained by the insurer.

A fair balance should be achieved as a result of the Report’s proposed ban on price walking practices for consumers who remain with an insurer beyond two years while retaining the pro-competitive option for new business discounts, which benefit those consumers who shop around.

2. **We believe there is a basis for banning price walking in the motor and home insurance markets for personal consumers. Do you agree the products in scope of the proposed ban are appropriate? Please outline the reasons for your view.**

We believe that it is appropriate for private car and home insurance products for personal consumers to be in scope on the basis that the CBI's Review of Differential Pricing examined private car and home insurance products specifically. It is important for the industry to have clarity that these are the products to which the proposal applies in order to ensure effective implementation and avoid any unintended consequences for consumers by extending the scope beyond these products.

3. **What do you see as the positive implications ,for consumers and the market, if the proposed intervention were introduced?**

The effect of the proposed measures cannot yet be known. It will be for each provider to independently assess how they implement the new measures and what the implications for them and their respective portfolios, and ultimately their customers, will be.

4. **What do you see as the negative implications for consumers and the market if the proposed intervention were introduced?**

The CBI Financial Stability Note "Differential Pricing: The Economics and International Evidence" of November 2020 noted that differential pricing can deliver benefits for consumers. It is important that the proposed intervention does not remove the ability of insurers to compete effectively and that consumers can continue to obtain appropriate and competitive insurance products.

5. Do you have any views on what, if any, unintended consequence, may arise in prohibiting price walking? Please outline the reasons for your view.

One possibility is that there could be volatility for customers from one year to the next due to updating of models or full rating changes flowing through to a customer in one renewal. There may also be increased inertia among policyholders as they may believe there is reduced need to shop around at renewal. This would not be a desirable outcome as the objective is to increase consumer engagement in the purchase process.

6. Do you have any views on what, if any, unintended consequence may arise if both dual pricing and price walking were prohibited? Please outline the reasons for your view.

Differential pricing can bring benefits to consumers who are price sensitive and who shop around at renewal for their insurance product. If dual pricing were prohibited, it is possible that the new business market would be less competitive as it would not be possible to offer new business discounts. Furthermore, banning new business discounts would prevent new entrants into the market from building up market share and offering more competition to consumers. Bringing in a dual pricing ban could also lead to less innovation and increase the pace of consolidation in the market as insurers and distributors look to create efficiency savings, which may reduce consumer choice.

7. Do you foresee any practical difficulties arising as a result of prohibiting price walking? Please set out these practical difficulties in detail.

Overall, we expect that IT systems changes will present the biggest implementation challenge. The Regulations will need to be clear and consistent with each other so that insurers understand the requirements.

Proposed Regulation 2(2)(a) of Code –We would appreciate guidance on this provision, which states that in determining the " equivalent first renewal price" the insurer shall assume the customer "has used the same channel as they used when they first renewed the insurance policy concerned".

It would seem sensible that the equivalent first renewal price is based on the current channel for a customer, as this would reflect the actual cost to serve and would also take account of the customer's preference where they have chosen to move channel. We have concerns that if the equivalent first renewal prices are calculated assuming a different channel to the current channel, this could lead to unintended impacts for the customer as well as significant practical difficulties for insurers in calculating the equivalent first renewal.

There are also practical difficulties for the insurer if we assume a different channel to the current channel as the renewal process and premium calculation for a policy will be based on the channel it is in currently. To have to establish a process that identifies the channel that the first renewal happened in and then generate an equivalent premium through that channel to calculate the equivalent first renewal premium will be very complex and costly to implement.

Closed Books - We anticipate difficulties with the proposals for calculating first renewal prices when a policy is in a closed book. As part of the proposed amendments to the CPC, when a consumer's policy is in such a closed book, the insurer will be required to determine the equivalent first renewal price by identifying a close matched product from the products which it currently markets. Failing that, if the insurer is part of a group , it will be expected to identify a close matched product from the products currently marketed within that group.

Pricing information about "close matched products" held by other insurers even within the same group would be sensitive commercial information that would be proprietary to each individual insurer and would not generally be accessible to or capable of disclosure by other entities within the group.

In addition, any sharing of pricing information by entities that do or may operate in the same market and do or may compete, could give rise to competition law concerns. Any change would have to comply with competition law. This proposal could usefully be explored with the Competition and Consumer Protection Commission in terms of how it would operate where part of a group was a closed book insurer, but another part of the same group was operating actively in the market. The issue needs to be clarified because it is currently unclear as to how it would operate in practice and to avoid any potential conflict between the obligations under the new proposals and under Irish and EU competition law.

8. Do you foresee any practical difficulties arising if both dual pricing and price walking were prohibited? Please set out those practical difficulties in detail.

The practical implications associated with implementing a prohibition on dual pricing have not been considered at this time as a ban on dual pricing does not form part of the proposed provisions in the Consultation.

9. Do you have any alternative proposal(s) that would address the concerns arising from differential pricing practices in the Irish private car and home insurance markets?

We do not have any alternative proposals in this regard.

10.Do you see dual pricing and/or price walking practices as posing a reputational risk to the insurance industry? Please outline the reasons for your view.

Differential pricing can encourage competition and innovation and facilitate market access for some consumers. This, in our view, underlines the importance of engaging with insurance providers and intermediaries to get the best deal and shopping around regularly, as consumers would with utilities such as telecoms/broadband or gas and electricity services.

As the above-mentioned CBI Financial Stability Note on Differential Pricing concluded, "It can bring benefits for consumers such as providing market access to customers who would be unable or unwilling to pay a uniform price" The Note goes on to say that "…..a careful weighing of the likely costs and benefits of any potential policy solution is essential, with appropriate consideration given to potential competition and consumer price effects, as well as the impact on vulnerable consumers".

There is a lack of recognition in public and media debates of the benefits as well as the disadvantages of differential pricing and this is what poses a reputational risk to the insurance industry. This makes the weighing of the likely costs and benefits of any potential policy solution all the more important. We believe that more work is needed to make all parties aware that these practices can bring benefits for those consumers who actively engage with their insurance product and switch regularly to ensure that they obtain the most competitive premium for their needs while understanding the cover differences in addition to the price change. In order to support this, for example, Insurance Ireland recently implemented a consumer campaign aimed at raising awareness among consumers of the benefits of switching at renewal time, and we will look to benchmark the impact and efficacy of this campaign.

<u>Pricing Practices – Annual Review and Record Keeping</u>

1. **Do you agree with the proposed requirement on insurance providers to carry out an annual review of their pricing policies and practices? Please outline the reasons for your view.**

Yes. We interpret this requirement for an annual review to be conducted is within the calendar year and will apply from the commencement of the new CPC in 2022.

2. **Do you agree with the focus of the review? In particular, do you see any gaps in the proposed content of the review? Please explain your answer.**

We agree with the focus of the Review. We do not see any gaps in the proposed content. We believe that insurers are generally operating in this way at present. This Annual Review and Record Keeping provision builds on the CBI's "Dear CEO" letter of September 2020, the requirements of which insurers are implementing.

3. **Do you agree with the proposal that, prior to implementing a material decision, insurance providers will be required to retain a record of their consideration of the extent to which that decision is consistent with the new rules?**

We agree with this proposal.

4. **Do you foresee any practical difficulties arising from the proposed measures? Please explain your answer.**

We are not aware of any practical difficulties at this point.

5. **Do you have any views on what, if any, unintended consequences , may arise from the introduction of the proposed measures? Please explain your answer.**

We are not aware of any unintended consequences at this point.

<u>Automatic Renewal</u>

As outlined in the Executive Summary, Insurance Ireland has significant concerns regarding the proposal to expand the scope of the automatic renewal provisions beyond private car and home insurance products for personal consumers, and we are particularly concerned about health and dental insurance in this regard. Within the Consultation Paper itself the CBI notes that automatic renewal provides a valuable benefit to consumers, potentially mitigating the risk of personal detriment in the event that a consumer neglects to renew their policy on time.

For example, in respect of health insurance, automatic enrolment protects the consumer by ensuring they have continuous health cover in place. The need for written consent before entering an auto renewal arrangement potentially exposes consumers to a lapse or a period off cover. For example, if consumers unintentionally do not renew their policy during a period of treatment, this could potentially result in the treatment terminating early.

There is also a risk that consumers would lose cover for pre-existing conditions if they accidentally fail to renew their policy and have to re-serve waiting periods. If a consumer fails to renew and loses cover, they could also be liable to an additional LCR (Lifetime Community Rating) loading charges, which can be quite significant, and this would be detrimental to the consumer and cause undue stress. The current practice is also an important consumer protection mechanism for adult and children dependents who may also be included in health and dental insurance policies. For these reasons we believe health and dental insurance could explicitly be excluded from scope as to be included within scope could cause significant disruption.

1. Do you agree that an insurance provider may not renew an insurance policy automatically unless a personal consumer has provided his or her written consent prior to first entering the automatic renewal arrangement? Please outline the reasons for your view.

The proposed Regulation 10 states that.

"An insurance undertaking or insurance intermediary shall not automatically renew an insurance policy with a personal consumer unless the personal consumer has, prior to the entry into of the policy, which is being renewed, provided **written** consent to such automatic renewal"

This proposal refers to written opt-in consent across all non-life insurance products for personal consumers, including products such as health and dental insurance, travel insurance etc, which were not examined in the Report. We would suggest that opt-in consent should be technologically neutral. We note that draft CPC Regulation 12(1)(b)(iv) relating to the cancellation of an automatic renewal arrangement is technologically neutral in that cancellation can be executed "by way of telephone, e-mail, online and post. We would suggest that these same options should form the basis of how the customer opts in/gives consent also. This would be consistent and would reflect how the customer has chosen to contract with the provider in terms of the broader policy itself, with more consumers favouring online methods which offer consumers efficient, convenient and a sustainable means of consenting to automatic renewal.

For example, a large proportion of customers in the direct and intermediary channels transact business over the phone. In the telesales scenario we would suggest that consent be given over the phone and then relayed back to the customer by way of their policy documents, i.e., explicit consent could be given over the phone and confirmed on documentation received after the sales process.

While the phrasing of this question suggests that the consent must be given "prior to first entering the automatic renewal arrangement", the text of draft CPC Regulation 10 itself states that the consent must be provided "prior to the entry into of the insurance policy which is being renewed". This creates an unworkable scenario in the case where a customer purchases a full-payment, non-automatic renewal policy at inception and only later switches to a direct debit automatic renewal afterwards(e.g., at renewal). In this scenario it does not make sense that providers would seek consent to automatic renewals at inception(i.e., "prior to the entry into of the insurance policy"). Rather it makes sense that such consent should only be sought at the time the customer switches their policy to an automatic renewal format.

We would be grateful if the CBI could clarify what customers these automatic renewal measures are to apply to. It is clear from draft CPC Regulation 14(1) that Regulations 10 to 13 do not apply in respect of a policy entered into prior to the commencement of these regulations. However, the extent to which Regulations 10 to 13 apply to subsequent renewals of such a policy is less clear and Regulations 14(1) and (2) can be read in a number of different ways. Our assumption is that it is not intended to apply Regulation 10 to any subsequent renewals of such a policy in circumstances where the customer was already enrolled for auto-renewal prior to the commencement of the regulations. We would welcome any clarity which can be brought to the wording of Regulations 14(1) and (2) and to the scope of application of Regulations 10 to 13.

We believe that the proposal to adopt a written opt-in consent approach would result in a risk to consumers, especially vulnerable customers of becoming inadvertently uninsured, creating consumer detriment. We would consider it more consumer protection focussed to require insurers to clearly and transparently explain to customers the meaning of auto-renewal, and to provide "opt out" options for customers as is the approach taken by the FCA as part of new rules they have put in place from January 2022.

The FCA in their Policy Statement "General Insurance Pricing Practices Market Study, Feedback to CP20/19 and Final Rules" expressly acknowledged that they did not favour auto-renewal to be offered on an opt-in basis because of the risk that it could lead to more consumers becoming inadvertently uninsured. We strongly consider that there is a significant risk that the CBI's proposal to require written opt-in consent would mean that some consumers would lose the benefit of the protection provided by automatic renewal. Vulnerable customers would be at risk, as would those who may be temporarily affected by illness or bereavement and those who overlook their insurance renewal due to a multitude of day to day demands on their time.

A lapse in cover could have serious consequences in the areas of motor, home, and health. Driving uninsured is a criminal offence and if one is involved in an at fault accident while uninsured one would be liable for the cost of the third-party injury and property claim. A lapse in home insurance could leave one's home without protection against catastrophic damage from fire, storm, flood etc while also leaving one in breach of the terms of any mortgage on the property. A lapse in health insurance could leave one with no cover in the event of illness while being faced with the prospect of serving or re-serving a "waiting period" of up to five years before being covered for injuries and illnesses.

2. Do you agree with the information to be provided to the consumer prior to the automatic renewal of an insurance policy? Please outline the reasons for your view.

We agree but, to avoid the risk of misinformation going to customers, we would suggest that the documentation directs the customer to the CCPC's website more generally rather than to a specific URL which may be subject to change.

Are there any further details that should be included? If yes, please explain your answer.

See above comments re CCPC's website.

Are there details that should not be included? If yes, please explain your answer

We do not believe there are details that should not be included.

3.Do you agree with the proposed requirements relating to the cancellation of an automatic renewal arrangement? Please outline the reasons for your view.

See our answer to question 1 where we comment on draft CPC Regulation12(1)(b)(iv).

4. Do you agree that these proposals should apply to the automatic renewal of all personal non-life insurance products? Please outline the reasons for your view.

As set out above the proposals should only apply to private car and home insurance products for personal consumers. It is our view that before any further renewal requirements are placed on other personal non-life insurance products, a thorough review is undertaken by the CBI in order to accurately assess any detriment, adverse consequences or benefits that can arise for consumers.

Insurance Ireland believes that health and dental insurance should be removed from the scope of these proposals. The Health Insurance Acts outline the principles underpinning private health insurance. Lifetime cover and open enrolment are fundamental to its operation. Under Open Enrolment private health insurers must accept all applicants for insurance cover, regardless of their risk status, age, etc subject to prescribed waiting periods. Lifetime Cover guarantees all consumers the right to renew their policies, irrespective of factors such as age, risk status or claims history. Once a consumer holds private health insurance, an insurer cannot stop cover or refuse to renew their insurance, except in very limited circumstances. The FCA considered the scope of similar proposals in the UK and came to the pragmatic conclusion that health and medical insurance should be excluded from scope as customers could potentially lose cover for pre-existing conditions or acquired benefits if they unintentionally did not renew their policy.

We believe that any proposals around automatic renewals should only apply to private car and home insurance products for personal consumers only. These products were the focus of the Report and we do not believe that the new CPC provisions should apply to other personal non-life products that were not examined in the Report as this raises a risk of unintended consequences by assuming such issues as those identified in the Report exist in other product lines without any investigation of such. Health and medical insurance are excluded from the FCA's opt-out rules, and we would suggest that the same approach is followed by the CBI – see our answer to question 1 for more details on this.

5. Do you foresee any practical difficulties with the implementation of the proposed requirements on automatic renewal? Please set out those practical difficulties in detail.

See our answer to question 1 where we outline the difficulties where business is transacted over the phone. Any requirement for consent should be technologically neutral. This is particularly important, given the expected focus from the CBI on vulnerable consumers in the CPC Review. All customers should be able to choose the easiest and most sustainable way to interact with their insurer for them.

6. Do you have any views on what, if any, unintended consequences, may arise from the introduction of the proposed measures? Please explain your answer.

See our answer to question 1 where we outline the unintended consequences where the written "opt-in" consent requirement leads to inadvertent lapses in cover for consumers.

Other

The Report states that the measures " will apply to insurance providers from 1 July 2022". We interpret the application of the updated requirements as applying to new business quoted effective from 1 July 2022 and renewal invites issued from 1 July 2022 (allowing for Non-Life Insurance Renewal Regulations and Consumer Insurance Contracts Act timelines).

Implementation of these new changes to CPC regulations will require insurers to make significant changes to customer documentation, customer journey, systems, business processes and training. Insurance Ireland considers the timeline of 1 July 2022 is too short a timeframe to design, develop and implement this level of change. We would suggest an implementation timeline of 12 months from commencement of the regulations. A 12-month implementation period would be the minimum that is necessary to implement the required changes effectively.

We note the CBI's comment on page 42 of the Report that insurers are already required to "clearly identify any discounts that have been applied to a quotation", which should include disclosure where any new business price is a discount from the equivalent year one renewal price". The Report also signals those further disclosures may be needed, i.e. " We will propose additional customer disclosures and communications as part of the Code Review to further develop this requirement". We would be grateful for clarity on these requirements so that insurers can consider all the proposed measures in the Consultation in their totality.

ENDS