

**Joint submission by:**

**Irish Brokers Association (IBA) and  
Professional Insurance Brokers Association (PIBA)**

**on the**

**Review of Minimum Competency Requirements**

**Consultation Paper CP 45**



This submission outlines our joint response to the proposals contained in the consultation paper on the review of the Minimum Competency Requirements (CP 45) on behalf of both organisations' members.

From the outset we would like to state that it is our firm belief that it is important for all practitioners and employees in the financial services industry to have a level of competency when dealing with consumers and that advice to consumers is given by those individuals that are competent to do so either through a recognised qualification or relevant experience through the grandfathering arrangements.

While we agree with many proposals in CP 45 we would **completely disagree** with the proposal that all grandfathers would have to obtain a minimum recognised qualification by 2015 or, would no longer be entitled to trade. We will detail our arguments in this submission.

### **Proposals included in draft revised Requirements**

#### **Definition of Advice**

We are in agreement with the recommendation to amend the definition of 'advice' to reflect the definition contained in MIFID. Although it should be noted that the definition of client /consumer is different under MIFID and the CPC. We would however suggest the following change:

*"Investment advice means the provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm ,in respect of one or more transactions relating to financial instruments ( life and non life) and loan restructuring"*

#### **Proposal to change the 3 year CPD cycle to an annual 15 formal hour requirements**

We have no objection in relation to the move to an annual CPD requirement for Grandfathers in line with the QFA & CIP as it is easier to monitor and manage. We propose that there should be some flexibility given in relation to the carrying over of additional hours from a previous year or making up a shortfall of hours from a previous year.

We feel that given the current economic climate, pro-rata adjustment should apply for unemployment subject to a maximum period of 6 months in the calendar year. We also believe that the proposed restrictions in relation to the pro-rata of CPD hours for serious illness of less than 2 months should be on a case by case basis rather than a given.

Informal hours will continue as part of normal working practice within firms as they are part of the day to day learning of the employees of a business but will not need monitoring going forward.

## Additional Proposals

### **Proposal to phase out ‘grandfathering arrangements’ over a 4 year period whereby a recognised qualification must be achieved by 2015**

The Irish Brokers Association and PIBA have grave concerns in relation to the Financial Regulators proposal to phase out Grandfathering arrangements by 2015. Both organisations **completely oppose** any such change.

Firstly, we would question why the financial regulator is proposing to act in a unilateral way and remove the retention of acquired rights for experienced practitioners in our industry, who qualified under the regulator’s own Grandfathering rules. The Insurance Mediation Directive (IMD) introduced the concept of acquired rights (articles 4 and 5) for individuals who were practitioners in an industry prior to the introduction of legislation in the area. It was these acquired rights that introduced the concept of grandfathering and recognized the importance of experience and knowledge as equivalent to a formal qualification. As the current IMD is under review and will be subject to a similar consultation process would it not be in Ireland’s interest to await the new IMD without further gold plating the existing directive and introducing additional local conduct of business rules and curbing further the development of a single market?

No evidence has been presented from the Financial Regulator to suggest that the quality of advice given by a “Grandfathered” individual is in any way inferior to that given by a “Qualified” individual or that any such advice given by a grandfathered individual has been to the detriment of the consumer. The proposed phasing out of the Grandfathering arrangements by the Financial Regulator completely removes recognition of practical experience in favour of the completion of a qualification. A qualification is obtained purely through study - it is only through experience that individuals learn how to practically apply knowledge. The Financial Regulator would seem to be making a judgement call as to the merits of the value of study versus experience. Experience develops the ability to analyse and compare individual products, question and challenge product providers.

The proposal to phase out the Grandfathering arrangement is of **major concern** to the Grandfathered membership of both organisations, who feel that they will be forced out of employment. They have been operating in the industry for a considerable number of years and formed long standing relationships with clients based on trust and integrity. This would suggest that their clients have been very satisfied with the advice they received and whether or not their advisor was qualified with a minimum recognized qualification would be irrelevant to them. Given the serious consequences and impact of the proposal, we would ask that the Financial Regulator undertake comparative research on sales completed by Grandfathered and Qualified individuals.

The status of “Grandfather” was recognised by the Financial Regulator within the Minimum Competency Requirements which were published in 2006, to acknowledge the experience individuals had, and, thereby exempting such individuals from having to complete a qualification. Grandfathered individuals like qualified individuals were required to complete CPD thereby continuously updating their knowledge. The publication of the MCR was following a consultation and submission process within the industry. A joint submission was made by the following: Institute of Bankers in Ireland,

Insurance Institute of Ireland, LIA, Irish Brokers Association, Independent Mortgage Advisers Federation and PIBA (Copy attached). Within this submission it was recognised the experience that many individuals had within the industry and that this experience exempted these individuals from completing qualifications. In line with the recognition of the Grandfathering status it was agreed by all parties that the QFA and the CIP would be the designated qualifications for individuals who did not meet the experience criteria. To now, require a Grandfathered individual to undertake the full QFA or CIP contradicts what was deemed acceptable then and puts exam results above knowledge and experience. The position re grandfathering arrangements was considered and adapted in 2006 so what has changed since then to alter this position?

A conflict of interest clearly now exists for the Educational bodies as the phasing out of Grandfathering and the compulsion by the Financial Regulator to complete the recognised qualifications is in the commercial interests of these bodies. We feel it is inappropriate of the Financial Regulator to compel individuals to become members of educational bodies in order to operate in the industry. We feel that it is incumbent on the Financial Regulator to set up an independent body responsible for the verification of completion of CPD so that individuals are not compelled to retain their membership of the educational body in order to trade.

If the Financial Regulator does intend to progress with a proposal to phase out the Grandfathering arrangement, the current qualifications deemed to meet the MCR will need to be reevaluated. Grandfathered Individuals were grandfathered in respect of products which they had the necessary experience in, they have structured their businesses accordingly and specialise in these particular products. The syllabus for the Qualified Financial Adviser (QFA) and the Certified Insurance Practitioner (CIP) are all encompassing courses so it would be unreasonable to expect a Broker who only advises and sells Life Assurance Protection policies and Pension policies to be obligated to complete a syllabus which would require them to complete two examinations which have no relevance to their business and on which they have no intention of advising on. The whole composition of the current recognised qualifications would need to be restructured in order to have appropriate courses in place for Grandfathered individuals. It would be unrealistic to expect such a review and required changes to take place in time to meet the currently proposed deadline of December 2015.

At no stage when the Minimum Competency Requirements were issued did the Financial Regulator indicate that the status of "Grandfather" was a temporary solution and that it could/would be withdrawn in the future. It is inequitable to now, less than 3 years later require that such Grandfathered individuals complete a formal qualification. It is wholly inappropriate to suggest that individuals who are "Grandfathered" and were deemed to be competent by the Financial Regulator from 2007 to 2015 are then deemed to be incompetent as at the 1<sup>st</sup> January 2016. By 2015, the date set by the regulator to phase out grandfathering, those individuals will in fact have 12 years experience in their particular activity and, therefore, it could be reasonably argued if they were sufficiently experienced in 2007 not to have to undertake formal qualification then being three times more experience by 2015 should imply even less of a requirement for formal educational qualifications.

## **Internet**

We would suggest that anyone providing advice regardless of the medium should be subject to the provisions of the MCR. We do not see any reason why internet providers of financial services or insurance products should be exempt from the requirements.

Use of the internet presents a particular challenge. Whilst it is possible for many financial decisions to be automated it is still appropriate to ensure that the client is not short-changed. We believe this can be managed by recognising:

- Not all on line transactions are “execution only”.
- Where the options available are limited the process is more likely to be “advisory” i.e. the client has been steered in a particular direction.
- The advice provided should issue as a formal report to the client and should indicate “reasons why” etc in line with offline processes
- All online services should have an ability to provide a telephone based and/or offline alternative. This should be provided by suitably qualified or grandfathered persons.

It is important however that where such a change is being implemented the Minimum Competency Requirements should be very clear on what constitutes advice and what constitutes information in the context of internet businesses.

## **Outsourcing**

We agree with the position of the Financial Regulator on this point that those entities offering outsourced functions should also be subject to the MCR.

## **CPD Hours**

Where an individual holds a qualification and is complying with the CPD requirements of that designation but also operates in another sector for which they are Grandfathered; a formula should be developed to determine how much CPD they should complete in the area that they are grandfathered in. This formula should be based on the percentage that this activity constitutes in relation to their overall business. For example if Home Insurance constitutes 20% of the individuals overall business their corresponding CPD requirement should be 3 hours.

The proposed figure of 30 formal hours each calendar year for such individuals would be excessive and onerous and it would be impossible for an individual to complete 15 formal CPD hours annually in Home Insurance only for example.

## **Loan Restructuring**

This activity should be included under category 6 Consumer Credit and Associated Insurances. Given the difficult financial circumstances many consumers now find themselves in more and more people are approaching intermediaries for advice and support.

## **Investment Management**

We believe that this is more a matter for MiFID and should be dealt with in that context.

## **Administration Functions**

Any role in a regulated firm where advice is given to customers should be subject to the MCR. Where the role is purely administrative and it can be clearly evidenced that no advice is given such roles may be excluded from MCR. We would ask the Financial Regulator to provide clarity and guidance on what is deemed to be administrative functions

## **Chapter 2: Scope and Application**

### **2.1.2 Referring/Introducing**

We would propose the following amendment in relation to MCR requirements for referrals:

While the provision is not changing it appears to be ineffectual particularly 'knowing the different registers maintained by the Financial Regulator'. It would be more relevant if the introducer knew that the firm was regulated by the FR and subject to Consumer Protection Code. We would ask that this rule only apply to Individuals whose only activity is referring or introducing consumers to regulated firms *for a fee/commission*.

### **2.1.5 Passporting**

We understand that there is no qualification required for selling Personal lines/General Insurance business in the UK/Northern Ireland. The withdrawal of Grandfathering would lead to a competitive disadvantage for Irish domestic firms when faced with competition with Northern Ireland/UK providers in particular in relation to General Insurance products which are sold over the phone/internet.

## **2.2 Retail Financial Products**

ARF's should be included under category 4 saving's, Investment and Pension Products. Also the exclusion of deposits with a term less than one year should be deleted. Loan restructuring should be added to category 6 Consumer Credit and Associated Insurances.

## **2.5 Recognised Qualifications**

We would request recognition from the Financial Regulator in relation to a number of additional qualifications as meeting the Minimum Competency Requirements, please see Appendix II.

## **2.6 New Entrants/new activities**

In regard to Point 4 we would request guidance to be provided where the 4 year period to attain a relevant qualification has expired and an individual has failed to attain that qualification. We particularly ask the Regulator as to what prescribed action needs to be taken, other than the removal of the individual from the register. Can the individual re-categorised as a new entrant?

## **Chapter 3: Continuing Professional Development (CPD)**

### **3.2.2 Formal hours**

We do not agree that CPD hours for Grandfathered individuals need to be accredited by one of the professional educational bodies. Under the MCR as published in 2006, Grandfathered individuals could arrange their own CPD provided they retained evidence/records to demonstrate that the content of the course was relevant to their activities. We believe that individuals who are Grandfathered are best placed to determine what courses are directly relevant to the activities they conduct so there should be no change in this area.

### **3.2.4 And 3.2.5 Failure to comply/Reinstatement**

We agree with the proposal in this section regarding the recourse should a grandfathered individual fail to comply with their CPD requirement. However, it is our opinion that the penalty CPD hours serve no real purpose. It should be sufficient that the Grandfathered individual will be required to catch up on the shortfall in the current year.

We do feel however that a set maximum number of hours could be carried forward where the individual has exceeded the 15 hour requirement. This could facilitate lifestyle issues such as maternity or redundancy situations. We propose that the maximum number of CPD hours carry forward could be 5 hours.

## **Chapter 4: Demonstrating Compliance**

### **4.2 Grandfathering assessments**

The MCR as published in 2006 required that firms certified individuals as being Grandfathered provided they met the 4 years experience and listed the activities they had the necessary experience in. The code did not state that: *Supporting documentation to confirm the individual's experience, for example, samples of advice or sales to consumers, confirmation from previous employers of the individual's experience, etc. (self-certification by the individual is not sufficient).*

As this requirement was not included in the published MCR in 2007 it is unfair to expect that this information is retrospectively included on competency files.

### **4.4**

#### **Certificate of Experience on ceasing employment with firm**

We would suggest that the Certificate of Experience given to a grandfathered employee on leaving the service of the firm should include the number of formal hours CPD returned in the previous year and that the individual complied with the MCR. A disclaimer should also be included that acknowledges that after the date employment ceases the regulated entity has no further duty or responsibility to the former employee for his/her MCR requirements.

## Summary

In conclusion:

- No evidence of consumer detriment has been advanced to justify the drastic changes to the grandfathering arrangements outlined in this proposal.
- The vast majority of grandfathered individuals have not been through a formal education system in many years and would find the formal examination process unduly stressful.
- The financial costs to business would be significant both from a monetary perspective and a time perspective at a very difficult juncture for our economy – Appendix 1
- As previously stated, most grandfathers have been many years in the industry having built up successful businesses with many loyal clients. This would suggest that their clients have been very satisfied with the advice they received and whether their advisor was qualified with a minimum recognized qualification would be irrelevant to them.
- If grandfathering were to be phased out a lot of people would lose their careers as there would be fewer non customer facing roles available for them to move into.
- Many grandfathers will choose to leave the industry and take their experience with them which would be to the detriment of the consumer and therefore contrary to the objectives of the Consumer Protection Code.
- As Ireland is now a hub for international insurers and a significant growth area for employment will other EU nationals who relocate here and have significant experience in their specialized field have to undertake a professional qualification here in Ireland to advise Irish customers.

It is our collective view that there is no material evidence to suggest the need to phase out Grandfathered individuals who have attained acquired rights. As a member of the EU we should be ensuring that our local rules are in keeping with the ethos of a single market within the member states and that the lead in respect of regulatory change should come from the EU and not unilateral decisions of individual states. The Irish Regulator should be an exponent of harmonizing the rules across the EU as opposed to adding extra layers within their home country to address a problem that simply does not exist. As the current IMD is under review and will be subject to a similar consultation process would it not be in Ireland's interest to await the new IMD without further gold plating the existing directive and introducing additional local conduct of business rules and curbing further the development of a single market?



## Appendix I

### Example of One Broker Member Costs should grandfathering be phased out

A broker member has calculated the costs to the firm should the grandfathering arrangements be phased out. This firm has over 90 grandfathered individuals in their firm which is a large intermediary and provides employment for over 150 people in a rural area. It is estimated that in order to get all grandfathered individuals in this firm qualified by 2015 it would cost the firm in excess of €200,000 and that does not include time off for staff to attend tutorials, exams and study leave. The cost of sitting one exam is €270.00 per CIP exam and €150 per repeat exam so based on 80 grandfathered staff the costs would look as follows:

| Cost Per Exam | Number of exams to complete qualification | Number of students | Total Cost |
|---------------|---|--------------------|------------|
| €270.00       | 6   | 90                 | **€145,800 |

In the majority of cases the broker entity pays for the exams for the staff employed and if the student should have to repeat the cost of the repeat is also a significant amount per module (€150 per repeat). The cost outlined above does not take into account the time element and cost to employers for study leave, tutorial leave and the sitting of the exam itself and it would be envisaged with this brokerage alone the total cost on the employer would reach in excess of €200,000.00 which is a significant cost in normal circumstances never mind the current difficult trading environment..

The cost for completing the QFA is currently €275 per module (it is recommended that 120 hours of study are completed per module) combined with the annual membership fee to the LIA of €200 totals €1850. It is therefore clear that the attainment of the QFA requires a huge amount of investment both in monetary terms and time allocation which in turn reduces the amount of time available to individuals to allocate to their business. For firms who have a high number of Grandfathers employed particularly in these current economic times they will not be able to fund this additional expenditure. It is also economically unfeasible and unfair to compel Grandfathered individuals who have limited time to retirement (i.e. ten years or less) to complete the necessary qualification. Such individuals would not see the value in completing such qualifications.

## Appendix 2

### Qualifications which meet minimum competency requirements for Retail Financial Products

We need clarification from the Financial Regulator with regard to:

- General Insurance Policies; QFA plus Professional Certificate in General Insurance – for personal lines only. There is no mention of Private Medical Insurance and being able to sell and advise on PMI on an incidental basis.
- There is no mention of the ACII (life) under the Life assurance and Protection Policies, Shares and Bonds and other Investment Instruments, Savings, Investments and Pension products, Housing Loans, Home Reversion agreements and associated insurances and Consumer Credit and associated insurances. ACII was deemed a general insurance qualification although some individuals did the life stream of this designation through the CII in the UK and so should be recognised as qualified for these categories.
- DIP CII also a qualification awarded by the CII has not been included in the listing for recognized general Insurance qualifications although a large number of brokers in Ireland completed this Diploma some years ago and even today students sitting the ACII exam are awarded the DIP CII when a certain number of the ACII exams have been completed. The DIP CII is on an equal footing as the CIP diploma and those graduates with this DIP CII should be recognised as qualified for Category 2 General Insurance Products.

**Loss assessors should also be subject to MCR as they assist consumers in the claims process and claims handling.**