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IRISH BANKING FEDERATION

RESPONSE TO CONSULTATION PAPER 45:

REVIEW OF MINIMUM COMPETENCY REQUIREMENTS

Irish Banking Federation (IBF) is the leading representative body for the banking and financial services in Ireland, representing over 60 member institutions, including licensed domestic and foreign banks and institutions operating in the financial marketplace here.

1. Introduction

IBF welcomes the publication of Consultation Paper 45 - Review of Minimum Competency Requirements (MCR) by the Central Bank & Financial Services Authority of Ireland (hereafter 'the Authority'). The MCR is a key element of the consumer protection landscape and has been a significant undertaking for IBF members. We would advocate that an impact assessment be conducted on any proposed changes to the requirements in accordance with Better Regulation Principles.

The introduction of MCR in January 2007 established a comprehensive framework of minimum standards of financial services knowledge across all financial services providers, with particular emphasis on areas dealing with consumers. Now after over three years in operation, the review is welcomed by IBF members to address practical issues that have arisen in this period and to suggest areas for clarification in the interests of consistency of approach. The Authority has made a number of significant proposals which would, in our view, pose a serious resource challenge for our members and would certainly require clarification at the earliest opportunity given the stated timeframe of March 2011. We trust that the consultation process will allow for further engagement around the complex issues under discussion and we would welcome the opportunity to meet with the Authority to further explore these issues. We would hope that this response paper outlining our views and suggesting alternative solutions, where appropriate, will constructively contribute to the successful and effective implementation of improved minimum competency requirements.

1.1 General Observations

Consultation Paper 45 is structured in two parts, firstly, six proposals which are accompanied by corresponding revised requirements in draft, and secondly, seven additional proposals also under consideration on which views are sought.

The inclusion of revised requirements alongside general proposals creates uncertainty as to the final form that the requirements will take and also as to how the stakeholder feedback to the general questions will be incorporated into the final document.

We have sought to respond to the section raising "additional proposals" but these are phrased broadly and are potentially open-ended and would require further clarification. We would call on the Authority to clarify its thinking on these items at the earliest opportunity for the benefit of our members, given the timeframe envisaged.

We welcome the Authority's recognition that not all situations will be covered by specific rules, and we acknowledge that, in those circumstances, firms need to interpret the requirements in a "reasonable and practical manner when considering marginal cases or unusual circumstances" and to document their interpretation and the rationale for it in each case (reference page 3).

1.2 IBF Response

Our response is structured to reflect the consultation paper, as outlined in the introduction (page ii).

We discuss:

1. Proposals included in the draft revised Requirements, including specific comments and queries
2. Additional proposals
3. Additional comments on points requiring clarification

2. Comments on proposals included in draft revised Requirements

2.1 Definition of “Advice”

The proposed new definition appears to be wider in scope, and we would request that the Authority provides some guidance as to what is included under the changed definition. We would specifically request that this guidance includes inserting a section in the new requirements on what would *not* be considered advice (as is the case with the existing requirements).

2.2 Continuous Professional Development (CPD)

IBF members welcome the proposal to move to an annual cycle for CPD hours as more effective and easier to manage than over a three-year period. We also welcome the abolition of the requirement for informal hours.

In relation to the new elements introduced in 3.2.3 (Pro-rata adjustment of CPD hours), 3.2.4 (Failure to comply) and 3.2.5 (Reinstatement), the wording of these sections requires clarification as there may be some unintended consequences as they are currently phrased. We include some comments specific to the draft wording in Section 3.

Formal hours: We would note that limiting any given topic to four hours CPD value may be too narrow in scope in the case of a major change in the regulatory or legislative change etc. The word “topic” needs to be defined in this context, e.g. would MIFID (though vastly expansive and far reaching in terms of ambit) be defined as a topic? The eight hour cap on a given day CPD is fair, but giving only four hours CPD credit for an all day seminar on a given topic would appear too restrictive particularly in the case of an expansive subject.

Pro-rata adjustment: Further clarity is needed to explain how regulated firms should apply the pro-rata adjustment of CPD hours. Currently, the relevant awarding body applies the pro-rata adjustment following a request from an individual/regulated firm, so IBF would like to explore further with the Authority whether this represents a change.

Failure to Comply: IBF would like the opportunity to explore with the Authority and the Institute of Bankers (IOB) the implications of the statement that any individual who fails to complete the required number of CPD hours in a given year must make the shortfall by the end of the following year (see Section 3.2.4).

While we support the proposal in principle, we would welcome clarification on the wording used in the second paragraph of 3.2.4 with respect to repeat shortfalls and how this might work in practice. The consultation paper refers to the opportunity to make up a CPD shortfall by the end of the following year, and states that if an individual incurs a shortfall in any of the three years following the previous shortfall, that they will be deemed to no longer meet the requirements. However, the current position is that the IOB applies a 5 year rule as opposed to a 3 year rule. We presume that such a change in the revised MCR would be clearly communicated to all regulated entities and the IOB.

Our members would like to consider further whether CPD hours should only be valid for the year they are completed, or by exception only, or whether individuals could be required to complete a minimum number of CPD hours before allowing them to be carried forward, i.e. staff member must have completed a minimum of 10 CPD hours in any given year before they can avail of shortfall arrangements, or strict limit of only 2 or 3 per year.

The IOB would be responsible for managing compliance with any agreed rule.

Section 4.5 states that relevance of CPD to the categories of product for which an individual is accredited should be reviewed regularly by the line manager of each accredited individual. IBF has previously discussed this matter with the Authority and the IOB, and we understand that while educational bodies such as the IOB are responsible for keeping records of the CPD hours, it is the regulated entity's responsibility to ensure the relevance of the CPD undertaken.¹

We would recommend that the following wording be added to the final paragraph of Requirement 3.2.4: "without the reinstatement process as outlined in section 3.2.5."

2.3 Reinstatement

IBF welcomes the Authority's intention to clarify the situation for individuals not meeting the requirements and requiring reinstatement, but we would have strong reservations about the workability of such a proposal as currently worded and the risk of its abuse. We would request clarification on some of the wording as drafted in the revised requirements, as follows:

- At a high level, section 3.2.5 would appear to only cater for individuals holding qualifications that **do not require CPD** and **grandfathered** individuals. There appears to be no provision to reinstate where the staff member holds a qualification **that does require CPD**. Is it the case that the Authority intends for this to remain within the remit of the relevant education body, who at present dictates the 'reinstatement' requirement? Should, for example, a QFA holder lose their status due to CPD shortage? If this is the case, then this should be stated. Otherwise it may suggest that there is no process.
- In addition, we would request clarification on the meaning of the second bullet point within this section, headed 'other reinstatements'. We would request that the wording should be changed to clarify what is meant. I.e. does this bullet point apply to second or subsequent reinstatements or does it apply where the staff member is off the register for more than one year?

We would also request clarification on the specific point of reinstatement. In relation to 'other reinstatements' it is clear that a staff member may continue to act as an accredited individual while attaining the necessary qualifications for full reinstatement. However, it is not clear in the first section if the staff member can continue to operate and 'catch up' on the required CPD or if the CPD shortfall hours need to be completed **before** they can continue to act.

¹ See the IOB's March 2010 document, **Information for Member Credit Institutions on The CPD Member Scheme**

We would ask the Authority to define what is meant in the second last paragraph by “consistently working” e.g. if a staff member is not registered for the module within a specific timeframe, for instance 9 months after losing their grandfathered status, then they may not provide advice on or arrange retail financial products. Similar timelines should be built into the new to role procedures.

There is no mention as to whether reinstatement can be retrospectively applied to grandfathered staff who may have lost their status in the past number of years.

Reinstatement will be very difficult to administer by the firm and appears to reintroduce the concept of transitional status (i.e. continue to sell/ advise unsupervised until qualification is obtained within a 4 year period) which will have ceased on 31st December 2010. If a staff member has lost their grandfathered status due to insufficient CPD we would question whether they should be allowed to continue in this role unsupervised for a further 4 year period. Currently, these staff members are removed from an impacted role and must complete the full qualification that is required for their role e.g. Certificate in Consumer Credit and / or Certificate in Housing Loans or Full Qualified Financial Adviser (QFA) as soon as possible.

If a QFA staff member loses their accreditation they are not permitted to continue in a sales/ advising role unsupervised until they complete the necessary exam to reinstate their qualification – the same conditions should be extended to grandfathered staff to ensure consistency. There should be one reinstatement process, and not two different versions, one for grandfathered staff and another for qualified staff.

We would seek to explore with the Authority whether reinstatement of a grandfathered individual also requires completion of the reinstatement exam which qualifies them for the relevant MCR category they have lost their designation in.

Section 3.2.5 states that an individual who has lost their grandfathered status will be required to complete a relevant recognised qualification within four years of reinstatement – is this the QFA or Certificates in Mortgage Practice or Consumer Credit, for example?

We assume the reinstatement process would be managed and administered by the relevant education body.

2.4 Register

IBF accepts the need to maintain a register of accredited individuals for purposes of internal record-keeping and for the Authority. However, we would question the value of such a register to bank customers. This is due to the fact that, as far as we are aware, in the three plus years since MCR was implemented, no member has received a request from a member of the public to view their register. Hence, we believe there is little merit in requiring that the register is available to the public when such a significant administrative burden is not balanced by consumer demand.

Accordingly, we are not convinced of the merits of the requirement to inform customers of their right to view the register. In any case, any requests that are forthcoming in relation to individual accredited staff members can be dealt with locally.

We welcome the Authority’s intention to seek to accommodate our members’ concerns in relation to employee security if the register is made publicly available. However, the proposed alternative of providing individual certificates for each accredited staff member raises concerns due to the risks associated with ongoing production and administration of such certificates.

However, if the Authority is to include the certificate in the revised requirements, we would suggest some re-wording of the certificate be provided as an alternative to the public register; the certificate should be stated to be valid at a particular date in time rather than valid until a year later. This would prevent a situation arising where a staff member would have a certificate stating they are competent in a particular activity for which they may not have completed their required CPD hours or lost their accreditation.

Clarity is required as to how the availability of a register or certificate should be communicated to consumers.

We would propose that the Authority does not make it obligatory to add the name of the supervisor to the MCR Register given that institutions hold these details locally. This is because supervision is required to be completed by an accredited staff member. Therefore, an acknowledgement that the supervisor is accredited should be sufficient without naming the individual on the register. Confirmation of the supervisor's status can be obtained from reviewing the supervision supporting materials if required.

2.5 Certificate of Compliance for Grandfathered Staff

IBF supports the proposal to issue an FR-approved industry standard certificate when a grandfathered individual ceases employment with a financial institution. We would, however, recommend the following:

- (i) that such a certificate would be produced and issued at a specific point in time, i.e. the date of departure, and would be valid at that point in time only;
- (ii) That the draft template provided by the Authority be revisited in a way that reflects **precise** details of experience levels by MCR Product Category and in **tabular format** for ease of understanding. This Certificate should give experience at **Category** level.

3. Additional Proposals

3.1 Grandfathering

We believe that grandfathering is an important mechanism for recognising and valuing the extensive experience and knowledge levels of staff gained over their many years of service in the financial services industry and that this principle should be preserved. Whilst IBF and its members are generally opposed to the proposal to phase out grandfathering, this should not preclude members from insisting its staff have to attain QFA within a reasonable period of time.

IBF would suggest that the issues that arose with the operation of grandfathering (as referred to by the Authority) have been to do with process rather than competency issues. Many of our members have completed robust grandfathering reassessment projects, including collating documentation specifically for each individual, under the direction of the Authority.

We note that this proposal to consider phasing out grandfathering contradicts the Authority's view in July 2006 (MCR) and May 2008 (Addendum to MCR) that relevant experience was sufficient to continue to act as an accredited individual. It would also be impractical for certain individuals to undertake examinations over a 4-year period to 'qualify' to continue a role they will have held for at least eight years by the end of 2010.

For these experienced individuals, we need to consider the cost-benefit balance of requiring a qualification. The cost of the QFA diploma is currently €1,700 for all six modules plus €50 annual study fee. So, for an institution with 100 grandfathered staff, this would amount to €170,000 in fees alone. Such cost excludes the cost of study/exam leave and any reward for qualifications achieved, if applicable.

While IBF members always promote enhanced professionalism and consistently encourage staff to obtain qualifications where appropriate, it should also be taken into account that many highly-experienced grandfathered individuals would not have had any significant exposure to classroom learning or formal examinations for many years.

3.2 Internet

We do not believe that individuals "setting up internet sites", as referred to, would need to be accredited. As set out in Section 2.1.1, the requirements should apply to those individuals in regulated firms that provide advice. It is only where these activities are provided by a regulated firm via the Internet that the Requirements should apply. In such a situation, the requirements should only apply to the individual providing the advice and not, for example, to the web developer who simply posts information on the website. In addition, we would maintain that there must be a distinction between pure web information or advertising to the general public as opposed to tailored on-line communications to individual customers – the former not in our view constituting advice and in any case subject to existing CPC advertising requirements. We would need a more specific indication as to what type of Internet activities the Authority might have in mind with respect to these new requirements in order to facilitate proper consideration of this proposal.

We would note that it is not the case generally that advice is offered through direct engagement between staff and a consumer over the internet and that therefore staff would need to be accredited.

3.3 Outsourcing

The section on outsourcing refers to the activity of the professional management of claims for an insurance or re-insurance undertaking, but then proposes that 'the requirements are complied with by firms undertaking certain activities on an outsourced basis' which would appear to be of a far broader scope. We would seek clarification as to which outsourced activities exactly are proposed to be subject to these new requirements.

3.4 Continuous Professional Development (CPD)

We would propose that an MCR accredited individual (irrespective of whether grandfathered / qualified or a mix of both) should only be required to complete 15 formal hours per annum.

3.5 Loan Restructuring

IBF would consider that staff who are engaging directly with a customer on restructuring their loan, involving new products or additional credit facilities, would be classified as providing advice and hence require adequate accreditation. That said, a clear distinction would need to be drawn between restructuring in the sense of the incorporation of additional facilities or product types as part of a customer proposition and the pure 'rescheduling' of repayments to facilitate the paydown of debt.

For example, a customer in trouble with current debt may engage to take out a term loan to restructure existing loan facilities, as opposed to somebody in debt recovery mode agreeing to pay €200 a month for 6 years, as opposed to €400 a month for 3 years. We believe that in this example while the former would require MCR status, the latter would not as no advice is being provided to the consumer and neither could it be said to be arranging or offering to arrange retail financial products for consumers.

In the context of mortgage debt the choices being offered to consumers are relatively straightforward and simple to explain i.e. a moratorium, interest only, adding of arrears to principal amount etc. It may be hard to justify staff having to undertake such an extensive course of study in order to be able to explain these concepts to consumers, particularly where consumer advisers such as Money Advice & Budgeting Service (MABS) are involved.

We note that the revised Code of Conduct on Mortgage Arrears and Mortgage Arrears Resolution Process may ensure sufficient guidance is available to the staff involved. It would help to know if the Regulator views re-arranging loans using the tools above as coming within the definition of "arranging" as per the current MCR and, if so, what course they would think suitable for those involved in restructuring loans. We would welcome clarification as to what is considered the restructure of a loan, i.e. is this providing a consolidated loan to clear all debts or does it refer to when we change the payments and timeframe of a loan to assist a customer who is in arrears?

IBF would note that the application of MCR to those involved in restructuring loans would not apply to non-accredited debt collectors and debt collection agencies.

3.6 Investment Management

More clarity is needed around what exact activities the Regulator perceives as coming within the remit of “Investment Management”. Investment Management/ Portfolio management/ Wealth Management etc. are all terms that are interchangeably used within the industry. A lot of the instruments that would be used by investment managers are already under the remit of the MCR, so we would question what value would be added by categorising investment management as a separate category.

3.7 Administrative Functions

We would be of the view that any section introduced to this effect should clearly set out the specific activities covered and make a clear distinction based on the nature of the administrative function i.e. the effecting of an amendment to a policy by purely acting on the instruction of a customer as opposed to being subject to any engagement with the customer on options available or best course of action.

4. Additional comments on points requiring clarification or confirmation

We would seek clarification or confirmation generally at the earliest opportunity on the issues raised in this paper and specifically on the following points.

Section 2.2 Retail financial products

Our members would query the rationale for including deposits of more than 1 year. In our view, these are one of the most common forms of banking product, at the lower end of the risk spectrum. For this to be introduced as an accredited activity would create a disproportionate overhead for the retail network. We would like to discuss this further with the Authority.

Should the Authority decide to proceed with the inclusion of new products, we would urge that the full 4-year lead in period be afforded to staff currently engaged in these activities to obtain the necessary qualifications. Furthermore, existing experience to-date ought to count with respect to all relevant provisions of the requirement

Section 2.6 New entrants/ new activities

Our members would welcome clarification on whether the regulated entity's obligation with regard to the competence of new entrants, as envisaged by the last paragraph of this section would be achieved by undertaking points 1-3 of the same section.

Section 3.1.2 Failure to comply (CPD Requirements)

There would appear to be a correlation between this section and section 3.2.4. We would suggest that section 3.1.2 should refer to the fact that it is subject to section 3.2.4.

Section 3.2.2 Formal hours

In our view, the exact intended meaning of "widely spread" and "relevant" would need to be clarified so as to ensure consistency of approach by regulated entities.

Section 3.2.2 refers to "formal or structured CPD hours...". In the previous section 3.2.1, it is stated that 15 hours of formal CPD must be completed.

We would suggest removing the word "structured" from 3.2.2. as there is no reference to 'structured' elsewhere.

Also, Section 3.2.2 states that "surplus hours in one year may not be carried into the following year". How does this align with the provisions in sections 3.2.4 and 3.2.5 addressing shortfall?

Section 4.2 Grandfathering Assessments

Our members would welcome confirmation that the obligation envisaged by point 3 under section 4.2 applies only to grandfathered staff who have failed to complete the required number of CPD hours (section 3.2.4) and are seeking reinstatement under section 3.2.5.

Section 4.3 New entrants/ new activities

We would query the inclusion of item 5 in section 4.3, and in any case would request clarification on what is envisaged by "relevant documentation".

5. Relevance and quality of curriculum

In our view, the quality of the curriculum of a qualification is as significant as the obligation itself. IBF members advocate that the courses that staff are required to undertake are of high quality and that the learning material is up-to-date and relevant.

While we recognise that course content is not the subject of this consultation, we note the Authority's reference to its interest in whether particular qualifications meet the requirements. In this context, we believe that industry concerns around the relevance and quality of some training content should be noted here as part of this response. We would be happy to discuss this further with the Authority, if only to share member feedback for consideration in a cost/benefit analysis and/or for the Authority to lend its influence as it sees fit with the relevant bodies concerned.

6. Conclusion

We welcome the review of MCR Requirements at a timely junction and we look forward to exploring the issues raised in this response with the Authority. We stress the need for clarification at the earliest opportunity on what are significant proposals which could pose serious challenges for our members given the stated timeframe of March 2011.