
Review of Consumer Protection Code

Consultation Paper CP 47

Proposals included in draft revised Requirements

Vulnerable Consumers

1. Do you agree with the indicative list of circumstances that could render a consumer vulnerable that have been included in the definition of 'vulnerable consumer'?
2. Do you think that the inclusion of a definition for a vulnerable consumer and the proposals and amendments outlined above will be effective in improving the level of care afforded to vulnerable consumers during the sales process? If not, please outline any further measures you think are necessary.

Response to 1 and 2:

'because of circumstances or credulity' – this is something that could always be declared by a customer after the event. A company would not have all the relevant information about the customer to know if this would be applicable, e.g., if someone had just passed away, previous dealings with other companies, credit history or on medication. Collecting all this information would be excessive for some products (especially general insurance products) and therefore conflicts with Data Protection requirements. Also believe customers will have a problem providing all this information.

CPC states where an entity identifies a vulnerability, such consumers must be provided with a greater level of care and protection when being sold a financial product or service. Not having English as a first language is very common in non-life insurance business - what would be required to provide a greater level of care and protection in this instance?

One would question the relevancy of this requirement and how practical it is to comply with for non-life insurance and life assurance products.

Suitability of Mortgages

3. Do you think the inclusion of these provisions will result in a greater level of responsible lending or is more needed? If you think more is needed, what additional requirements would be appropriate?
4. Do you agree with our proposal that the SFS should be used when assessing whether a mortgage is affordable for a consumer?

Response to 3 and 4:

No comment.

Information about Products

5. Do you think the proposed requirements in relation to the provision of information about products are adequate? If not, please set out how you think the requirements could be strengthened.

Response:

Main features and restrictions of the product must be disclosed to the consumer before offering, arranging or recommending a product. This is something that would be very difficult to comply with in relation to General Insurance products where instant cover is available. Another thing to consider is if the restrictions would include exclusions as well as endorsements which again would not be practical for non-life insurance.

6. In light of the developments at European level, do you think we should introduce requirements in relation to the presentation of information on investment products in a short 'Key Facts' Document?

Response:

A Key Facts document can be useful to highlight the features of a product and the applicable exclusions but it is very important not to take away from the Terms and Conditions document which includes full details. A customer may focus on the Key Facts document and ignore the Terms and Conditions document – so it would be important to link both.

7. Is there any specific information that should be provided, either in a 'Key Facts' Document or otherwise, in respect of other types of product?
8. Do you have any ideas about how to disclose risk in the case of investment products in a way that would be consistent enough to be useful for consumers?
9. In a system such as a 'traffic light' system, how do you think the different categories of risk, i.e., red, amber and green, should be determined?
10. PRSAs – Do you think these requirements continue to be appropriate?

Response to 7, 8, 9, and 10:

No comment.

Product Producer Responsibilities

11. In relation to indentifying a target market of consumers for a product, what are the key consumer criteria that you believe should be used?
12. Is the consumer information listed in Chapter 4, Provision 32 useful when identifying a target market?
13. Do you agree with the requirements outlined in Chapter 3, Provision 45? How often do you think that reviews of products should be undertaken?
14. Should product producers be required to periodically review applications for their investments products, received through their direct sales force and through the intermediary channel, to ensure that actual sales are consistent with the targeted market? Do you foresee any hurdles to the implementation of this requirement in practice?

Response to 11, 12, 13, and 14:

No comment.

Recommendations from the Review of the Intermediary Market

15. Termination of appointments – Do you agree with this proposal? If not, what specific issues arise in respect of appointments from entities other than insurance providers?

Response:

It's important to get the balance right. Agree that an intermediary should be able to recommend the most suitable product for a consumer without having to be mindful of the required business volumes in order to retain an appointment. However if the appointment is being retained at a loss due to the business volumes, and it's accepted by both the provider and the intermediary to terminate, is this acceptable?

16. Remunerations disclosure – Do you agree with the proposal that a requirement to disclose remuneration from product producers should be imposed in circumstances where there are currently no requirements in place in this regard?

Response:

Would query the benefit to the consumer of providing this information and instead can see it being used commercially by competitors.

Error Handling

17. Do you think this approach to errors handling will reduce the incidence of errors and lead to an improvement in the way in which regulated entities handle errors involving consumer detriment?

Response:

Difficult to know if any approach can reduce the incidence of errors, however we do believe it will help resolve errors more efficiently and in a timely manner.

18. Do you think the proposals are adequate to prevent repeat errors occurring?

Response:

Yes. However further consideration is required in relation to the provision that an entity must not benefit from any balance arising out of a refund in respect of an error which cannot be paid. Difficult to comply with this requirement if the rebate is in an account which earns interest, which is a credit that is allowed under Provision 39 of Chapter 3?

19. Do you think the six-month timeframe to rectify errors involving consumer detriment is appropriate?

Response:

Yes.

20. Do you think our proposal that only errors that cannot be resolved within one month should be reported is an improvement on the current situation? Is the one-month timeframe appropriate? If not, please suggest an alternative.

Response:

Agree that the current approach has led to inconsistencies in the interpretation however feel the one-month may be too short and will result in all errors being reported. Perhaps a two-month timeframe would be more appropriate.

Unsolicited Contact

21. Do you think that the proposed times for permitting unsolicited contact are appropriate?

Response:

No, we believe it would be appropriate to contact up to 8pm.

22. Do you think the restriction on the sale of products or services to protection policies only and the prohibition on the sale of protection policies on a first unsolicited contact will enhance consumer protection?

Response:

No. The decision on whether to contact a client for any other products or services should be made by the consumer. To comply with current data protection legislation, the entity must have a marketing consent from the customer to contact the client regarding any products or services which the customer does not currently hold with the entity. Don't believe this is a subject for consumer protection. If the entity had a special offer, existing customers can complain if the offer was not notified to them however under the proposal, an entity would not be able to do so.

The prohibition on the sale of protection policies would not enhance consumer protection and in our opinion would just infuriate customers. Some protection policies allow instant cover which would not now be available to customers under this proposal.

Additional comments:

Without a definition of 'unsolicited contact', this section leads to confusion and possible misinterpretation.

Provision 30 indicates that unsolicited contact includes contact in relation to a product held by the consumer however we would disagree with this. If the contact is in relation to an existing product, then it could be interpreted that it's not unsolicited contact. Unsolicited contact in our opinion relates to marketing contact and as above, this is covered by Data Protection legislation.

Also, Provision 32 e) states that a regulated entity must abide by a request from a consumer not to make unsolicited contact however this is contrary to allowing unsolicited contact if it's in relation to an existing product.

If the customer has agreed to or requested a future call regarding a new product or service, is this unsolicited contact?

Arrears Handling

23. Do you agree with the proposals in relation to arrears handling? If not, please set out your suggestions on appropriate measures.

24. Do you agree with the proposal to prevent the closure of accounts in arrears cases?

Response to 23 and 24:

In some instances, loans within the scope of the Consumer Credit Act can be used to pay for non-life insurance products, for example, Motor Insurance. Are these type of loans excluded for this chapter?

Small Print

25. Do you agree with our definition of ‘key information’?

Response:

No. In relation to ‘criteria for availing of a product’ and ‘exclusions’, this would be an exhaustive list for some products, for example, motor and home insurance products normally require compliance with a number of acceptance criteria/assumptions and these products would normally contain many exclusions. It would not be possible or practical to display all in an advertisement.

Also in relation to charges, this information is provided at the outset of the relationship with the consumer – it would not be practical to include all possible charges in an advertisement.

An advertisement is used to generate interest in a product. The sales process should ensure that all necessary information is provided to the consumer prior to entering contract or prior to any cooling off period ending.

26. Do you think that we should go further than proposed? In particular, we would welcome your views with regard to the usefulness of small print in advertisements.

Response:

No, the proposal is putting too much emphasis on the advertisement and it should be on the sales process and the policy documentation. The purpose of an advertisement is to generate interest in a product and in financial services, to prompt the viewer to enquire about the product or service advertised. It is not practical for an advertisement to provide key information to the consumer and full disclosure should be part of the sales process/policy documentation and always be provided prior to any cooling off period expires.

Additional comments:

Any statements relating to a minimum price or potential maximum savings must be available to at least 50% of the entity’s target market for that product. This would be difficult to determine by the entity and would seem excessive once the entity has provided all details in relation to the criteria for availing of a price/savings.

Working at its best advertising creates awareness and stimulates demand for more information. There is a balance between providing information to stimulate interest and a campaign that does not raise false expectations. Consumers are not buying off the page and before they buy, they must go through a sales process which includes disclosure of full terms and conditions of the product.

For example the price of insurance varies with the risk profile of the target audience, something which consumers are aware. It would seem onerous for an entity to determine the ‘average’ risk of an audience it has no relationship with and therefore not viable to prove that the price is available to at least 50% of the target market.

Review on the Transparency of Credit Card Statements

27. Do you think this proposal will provide clear and useful information for consumers? Do you think the method of presentation is suitable?

Response:

No comment.

Sectoral Commitments

Response:

No comment.

Comments on sections not referred to in Consultation Paper

1. Chapter 3 Common Rules

a) Provision 2

A regulated entity must ensure that all instructions from or on behalf of a consumer are processed properly and promptly. Where an instruction cannot be acted on within two business days, the regulated entity must acknowledge in writing receipt of the instruction, outline the reason for the delay and confirm when it will be processed.

Comment:

What exactly is meant by 'actioned'? Example, if the instruction is processed but documentation won't be issued in that timeframe, it's not clear if the acknowledgement still needs to be issued! If it does, it would appear to contradict with provision 57 of Chapter 4 which allows 10 business days to issue documentation.

b) Provision 4

This receipt must include the following information:

e) in the case of an insurance intermediary, that the acceptance by the insurance intermediary of a completed insurance proposal does not itself constitute the effecting of a policy of insurance.

Comment:

This will cause confusion for customers who may think they don't have cover although they have arranged instant cover online or over the phone with the intermediary for non-life insurance products.

2. Chapter 4 Provision of Information

c) Provision 22

Before providing a service, an intermediary must explain to each consumer the extent of the service to be provided.

Comment:

Clarity needed on exactly what is required by this provision and for the phone channel in non-life insurance, how practical is it to comply with 'before providing a service'.

d) Provision 26

Where an intermediary is tied to a single provider for a particular product it must disclose this fact in all advertisements and written material for that particular product.

Comment:

For the purpose of this provision, what is the definition of 'tied', for example, what about when the intermediary is not a tied agent of the provider but yet only provides one provider's product?

This could also disadvantage the customer. Example, an intermediary sells motor insurance by one provider but it is not the same price or exactly the same product as the provider sells through other channels, the customer may not consider shopping around if they have a quote from the same provider from another channel.

e) Provision 52

A regulated entity must clearly identify any discounts or loadings applying to the policy at the quotation stage.

Comment:

For consistency for customers, define discounts and loadings.

f) Provision 71

A regulated entity must, where applicable, provide the consumer with a written breakdown of all charges, including third party charges, which the regulated entity will pass on to the consumer, prior to providing a product or service to the consumer.

Comment:

Providing this information prior to providing a product or service is not practical for the phone channel in non-life insurance. At the outset like the Terms of Business should be sufficient.

g) Provision 76

In the case of non-life insurance:

b) Prior to the sale of a product, a regulated entity must either inform the consumer of the amount of remuneration receivable in respect of that sale or that details of remuneration are available on request.

Comment:

Providing this information prior to providing a product or service is not practical for the phone channel in non-life insurance. At the outset like the Terms of Business should be sufficient. In addition, would query the benefit to the consumer of providing this information and instead it could be used commercially by competitors.

- h) Provision 79
Where a regulated entity allows the consumer the option to pay for its services by means of a fee, the option of payment by fee and the amount of the fee must be explained in advance to the consumer. Where a regulated entity charges a fee and also receives commission in respect of the product or service provided to the consumer, it must explain to the consumer whether or not the commission will be offset against the fee, either in part or in full.

Comment:

Clarity needed on exactly what is required by this provision.

3. Chapter 5 Knowing the Consumer and Suitability

- i) Provision 1 to 20
There are additional requirements around knowing the consumer and suitability before offering, arranging or recommending a product or service.

Comment:

It is difficult to see the relevance for and how these apply to, straightforward non-life products such as home and motor insurance. For example, it is a requirement that an entity must assess financial capability to meet financial commitment however such information would not be collected and could be possibly deemed excessive for the type of products.

In addition, how would the information be provided prior to offering, arranging or recommending a product of service in relation to the phone channel in non-life insurance?

4. Chapter 8 Rebates and Claims Processing

- j) Provision 4
An insurance intermediary must transfer the rebate amount to the consumer in full. Any charges that the consumer may owe the intermediary must not be recovered from the rebate amount due to the consumer without the prior written agreement of the consumer in each instance and a record of such agreement must be maintained by the intermediary. Where the consumer has agreed to the deduction of any charges these must be clearly outlined on the accompanying notification of the rebate to the consumer.

Comment:

The Code does not define 'prior written agreement' and therefore is it sufficient to clearly disclose this in documentation and not capture a 'wet' signature?

If the Code requires a 'wet' signature, this is not practical in an industry moving more towards online/direct and paperless channels. Also, the requirement of a 'wet' signature would not be consistent with the Electronic Commerce Act 2000.

- k) Provision 7
A regulated entity must not benefit from any balance arising out of a premium rebate which cannot be repaid. Where a charitable donation has been made, the regulated entity must document the donation and retain a receipt from the relevant charity.

Comment:

Provision 6 allows an insurance intermediary to retain the rebate in its client premium account as an amount due to be available for reimbursement should the consumer seek the rebate in the future however this could mean earning interest on the amount, which is a credit that is allowed under Provision 39 of Chapter 3?

Contrary to this, Provision 7 states that an entity must not benefit from any balance arising out of a premium rebate which cannot be paid. Is earning interest benefiting?