Consumer Protection Code – CP47 Consultation Paper

Aviva Group Ireland

Response

Contents

Introduction

Aviva Group Ireland welcomes the opportunity to provide comments on the Central Bank of Ireland's (the "Central Bank") proposed revisions to the Consumer Protection Code (the "Code").

Since its introduction, Aviva Group Ireland recognises the Code has been an important factor in driving increased standards of customer protection and service in the financial services industry. A review of the Code at this juncture, having been in force for more than three years, is both timely and appropriate. This should be considered in light of the market's experience of the Code's operation and implementation during this period, and most importantly the changing needs of its consumers, including changing market norms.

Aviva Group Ireland has conducted an extensive review of both the existing Code and that proposed within the Central Bank's CP47 document in the context of the consultation papers objectives and proposals. We have considered these based on the market and customer experience. It has been necessary to review these proposals in terms of benefit to the consumers including transparency of the product and the service provided, implementation effectiveness, and the costs that lie therein.

As part of our response to the proposed amendments or requests for comments we have sought to ensure that the consumer and the market are adequately considered. Each of the Aviva companies within the Group (General Insurance, Health and Life and Pensions) has responded to this consultation paper. Their submissions cover specific questions raised by the Central Bank and individual responses per market/business for the relevant questions noted in the consultation paper.

Consumer Protection Code – CP47 Consultation Paper
Aviva Insurance Europe SE
Response

Response to the specific Questions

List of circumstances that would render a consumer vulnerable

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?"***

The indicative list of circumstances that could render a consumer vulnerable is very broad and it is unclear as to how an insurer could gather this level of information without potentially offending the consumer or exposing the Company to potential breaches of legislation, namely: -

- **Data Protection Acts**
  The Data Protection rules are very clear in that insurers must only obtain personal data that is relevant and not excessive and cannot store this data for any longer than is relevant. There is a risk therefore, that by obtaining information from a consumer regarding their level of indebtedness, their level of educational attainment and whether have recently suffered a bereavement for instance, this information could be deemed to be excessive and not relevant to a policy of insurance and as such, potentially place the Company in a position of non-compliance with the Data Protection Acts.

- **Equal Status/Anti Discrimination Legislation**
  In order to ascertain whether a consumer has a diminished mental capacity and/or a poor credit history for instance would require the Company to make a judgment on the capabilities and character of a consumer. This would place the individuals making this judgment in a very difficult position and expose the Company to potential claims of unfairness and discrimination as insurance personnel would not be qualified to make such a decision nor should they be. Also, if the Company feels that the customer does not meet the relevant requirements both under the CPC or the product they may not be in a position to provide a financial product or service to a consumer because of their age. This is another 'judgement call' that a Company would be required to make which would have implications in relation to a potential breach of Equal Status legislation.

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 necessary***

The definition of a vulnerable consumer as outlined in this document is open to broad interpretation. For instance someone who is retired could be in his or her early 50's. Does this make them vulnerable? Moreover, guidance will be required to determine what constitutes a low level of income and a high level of indebtedness.

Furthermore, where business is conducted over the phone or web it would not be possible for the Company to establish if a consumer falls into this category.

The proposal on page 6 that requires a regulated entity to have regard to any vulnerabilities that emerge from its interaction with a consumer when collecting information on the consumer's personal circumstances, financial situation, needs and objectives and attitude to risk would be a

very difficult requirement to comply with as it effectively requires the Company to look into the future to try and ascertain if a consumer will at some stage fall into the list of circumstances outlined. Guidelines will be required from the Central Bank in order to achieve this objective.

There is a need for a higher level of clarity with regard to the practical implementation of these proposals and therefore a response from the Central Bank would be necessary to provide guidelines around these proposals. In its current form; these proposals could compel the industry to lessen its interaction with vulnerable consumers due to much higher costs of sale and the potential increase in the level of complaints.

In addition, we would also seek confirmation from the Central Bank that these proposals would not apply to the sale of General Insurance products.

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?***

We would appreciate some clarification as to what the Central Bank considers to be the main features and restrictions that apply to a product. We believe that the proposed requirements will only be feasible if the definitions of main features and restrictions are common across the industry to ensure consistencies and if this information can be presented in a key features document.

Remuneration disclosure

16. ***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?***

There are no issues with this proposal, where the remuneration information can be shown in a system generated long quote format calculated by an automated system and not manually by the financial advisor. Also, it is assumed that this proposal only requires the remuneration disclosure of the intermediary and not the financial advisor(s) within that intermediary office. Clarity regarding this point from the Central Bank has been requested.

Errors Handling

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

A six-month timeframe to fully resolve every such error is too rigid as some errors may require large-scale development work to complex IT systems, which would not be completed within a six-month timeframe. Also, the new provisions set out in this document make no reference to materiality, which is a significant omission in this regard. This provision would be enhanced if it allowed for the basis of materiality to be agreed with each institution. The provision would also be more equitable if the language used could be amended to allow the Company to make all reasonable efforts to fully resolve such errors within the timeframe outlined except where a longer period has been granted by agreement with the Central Bank. This would prevent a concept of

'one size fits all' being allocated across the industry.

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.

Again, the one-month timeframe to rectify all such errors would be considered too rigid and would be difficult to achieve especially where an error may occur as a result of a fault on broker software applications which are used across the industry and which are outside the company's control as the Company do not own these systems, if, as is suggested by these proposals, the Central Bank requires that Companies report such errors within one month, it is likely that the Central Bank will become inundated with queries, reports etc from the industry for errors that may be minor in nature. Again, the provision would be enhanced if a level of materiality was introduced and the concept of 'one size fits all' is not levied across the industry.

Unsolicited Contact

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

We do not feel that these times are appropriate, as many potential consumers would only be getting home at 7pm. We would propose that the Central Bank amend these times to 9am-8pm Mon-Fri and 10am-4pm on a Saturday.

Response to other aspects of the proposed revised code

Chap 3; Reg 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.

We would ask the Central Bank to define what is meant by "acted on." Does this mean that the Company must begin processing the instruction within two business days or does the Central Bank intend this to mean that the instruction must be processed within this time period? It would be difficult for the industry to achieve a two-day turnaround in all circumstances therefore clarity on this point would be welcome.

Chap 3; Reg 4: - A regulated entity that is in direct receipt of a negotiable or non-negotiable instrument from a consumer as payment for a financial product or service must provide that consumer with a receipt. This receipt must include the following information.
…b) the name and address of the person furnishing the instrument or payment.

It should be sufficient for a Company to include the name and address of the policyholder on the receipt as any payment will be in relation to their policy and in the vast majority of cases, the policyholder will make the payment.

Chap 3; Reg 7: - A regulated entity must ensure that all warnings required by this code are prominent i.e. in bold type and of a font size that is larger than the normal font size throughout the document or advertisement. The warning statement must be in a box separate to other information but must appear alongside the benefits of the product.

We would request clarification from the Central Bank regarding the meaning of the term "alongside the benefits of the product". There is no issue with a requirement to place the warnings on the same page or directly below where the benefits are displayed. However it would present a considerable challenge to the Business to construct these warnings so that they appear beside the benefits on a document or advertisement. The pressure on space would be significant and would result in a confused message to the consumer.

Chap 3; Reg 15: - A regulated entity is prohibited from bundling except where it can be shown that there is a cost saving for the consumer.

It would be restrictive to limit the sale of a bundled product only to circumstances where the consumer can obtain a cost saving. The provision would be enhanced if the wording of this requirement could be amended slightly to also allow for the sale of a bundled product where there is a service enhancement to the consumer by virtue of purchasing the bundle.

Chap 3; Reg 16: - Prior to the sale of a bundled product or service, a regulated entity must provide the consumer with information in writing on:

- ***i) The cost of the bundles***
- ***ii) The cost of each item separately***
- ***iii) How to switch products within the bundle***
- ***iv) How to exit the bundle***
- ***v) The cost of exiting the bundle***

It is assumed that where the sale of an insurance policy is completed over the telephone or internet, where it would not be possible to provide this information in writing at point of sale, that the requirements as set out in the Distance Marketing Regulations will apply here, namely that this information must be provided to the consumer within any cooling off period. It would be useful if the Central Bank could make this explicit in the wording of this provision.

Chap 3; Reg 18a): - Where an optional extra is offered to a consumer in conjunction with a product or service, a regulated entity must:

- ***i) Inform the consumer in writing that the optional extra does not have to be purchased in order to buy the main product or service;***
- ***ii) Set out the cost of the basic product (excluding the optional extra)***
- ***iii) Set out separately the cost of the optional extra(s)***

As set out in relation to Regulation 16 above, it is assumed that where the sale of an insurance policy is completed over the telephone or internet, where it would not be possible to provide this information in writing at point of sale, that the requirements as set out in the Distance Marketing Regulations will apply here, namely that this information must be provided to the consumer within any cooling off period. It would be useful if the Central Bank could make this explicit in the wording of this provision.

Chap 4; Reg 3: - Where a regulated entity intends to amend or alter the range of services it provides it must give notice to affected customers at least two months in advance of the amendment being introduced.

The extension of the time period required to notify a consumer of any alteration to the service provided will present a considerable challenge to the Company and will increase costs significantly within the business as systems will need to be redeveloped to achieve this requirement.

Consideration of renewal regulations

The requirements as set out in the current Consumer Protection Code stipulate that a consumer only needs to be informed at least one month in advance of any alteration to the service provided to them. At present, where the Company intends to alter or amend the range of services it provides, this information is usually presented at renewal and included with the renewal documentation. Although the Non Life Renewal Regulations (S.I. No. 74 of 2007) state that an insurer must provide a consumer with their renewal documents not less than 15 working days prior to renewal, in practice, these documents are issued between 4-6 weeks prior to renewal date. As we do not alter a policy unilaterally mid term, renewal is the only time that the Company can amend the services we wish to provide, therefore the systems that are currently in existence allow this information to be conveyed to the consumer efficiently at renewal.

System development

The introduction of a two-month notice period will require a separate standalone mechanism to be developed to ensure that all relevant consumers receive notification on something that won't affect them until or unless they renew their policy in two months time. This would impose a significant cost as change would be required within the business both from an IT and Business perspective. It would also potentially confuse the consumer to receive such notification on a standalone basis if not aware that their policy cannot be amended mid-term with the resultant increase in consumer queries and subsequent additional cost of these.

We would request that the Central Bank maintain the one-month notification period.

Chap 4; Reg 15: - A regulated entity must draw up its terms of business and provide each consumer with a copy at the outset of its relationship with the consumer.

It is assumed that where the sale of an insurance policy is completed over the telephone or internet, where it would not be possible to provide this document at point of sale, that the requirements as set out in the Distance Marketing Regulations will apply here, namely that this document must be provided to the consumer within any cooling off period. It would be useful if the Central Bank could make this explicit in the wording of this provision.

Chap 8: Reg 5: - Where a premium rebate is due to a consumer, and the value of the rebate is €10 or less, the regulated entity may offer the consumer the choice of:

- ***a) Receiving payment of the rebate; or***
- ***b) Receiving a reduction from a renewal premium or other premium due to that regulated entity, or***
- ***c) Agreeing that the regulated entity may make a charitable donation of the rebate amount***

In respect of options b) and c), the regulated entity must maintain a record of the consumers decision.

This is an onerous proposal, which will slow down the administration process and significantly

increase costs within the business. It is also regrettable that this provision makes no reference to a minimum threshold.

Operation of threshold amounts

It is current industry practice for insurers not to raise a debit where it is less than a certain threshold amount and not to refund a premium where the amount is less than this threshold. As the amounts are so small, it makes sense to operate this way. The cost involved of producing payments for less than these amounts would be excessive and would make the administrative process very inefficient.

Consumer currently at an advantage

Our experience shows that in the vast majority of mid term alterations the amendment that the consumer has made results in a small increase in premium which falls under a threshold amount that the Company has set and as such, the debit for this premium is not raised resulting in a benefit to the consumer. If the Company was compelled to refund every amount no matter how small, it is likely that the Company would subsequently be compelled to charge an extra premium where the alteration necessitates no matter how small.

This provision would be enhanced if it was amended so that a Company does not need to refund an amount less than €10 as referred to in this section, with the proviso that a Company must also not raise a debit of less than €10 where this is the case.

Chap 8; Reg 6: - Where an insurance intermediary has issued a rebate cheque to a consumer and following a reasonable period of time the rebate cheque remains outstanding, the insurance intermediary must issue a reminder to the consumer. If the rebate continues to remain outstanding, the insurance intermediary must either:

a) Retain the rebate to the insurance company, or
b) 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

This proposal would place an excessive and unnecessary administrative burden on the Company. It should not be the responsibility of the Company to send constant reminders to a consumer to cash their rebate cheque. It should be the consumer's responsibility to do this. Also, as cheques go out of date after 6 months, it is likely that if a consumer does not cash their rebate cheque until after this time has elapsed they would most likely contact the Company who would then reissue a new cheque. This process should be sufficient to deal with un-cashed rebate cheques and we would request that the Central Bank reconsider this proposal.

Chap 8; Reg 9: - A regulated entity must have in place a written procedure for the effective and proper handling of claims. At a minimum the procedure must provide that:

a) Where an accident has occurred and a personal injury has been suffered a copy of the Injuries Board. i.e. information leaflet is issued to the potential claimant

We recognize the value of giving these details to the potential claimant. However, the requirement to include a pre-printed form is cumbersome and would provide significant challenges to incorporate into practical processes. We are agreeable with the requirement to provide this information however it would be better achieved if we were able to advise the potential claimant as part of the required documentation.

b) ***Where the potential claimant has been involved in a motor accident with an uninsured or unidentified vehicle or with a foreign registered vehicle, the regulated entity must advise the potential claimant to contact the Motor Insurance Bureau of Ireland (MIBI).***

We would request clarification from the Central Bank as to their intent behind this proposal. It would be acceptable to amend the documentation that is issued to the consumer to address this. Where the Company knows the insurance position, claimants (typically our own insured) are advised at present, but often the insurance position is unknown to the Company at the time it is talking to the claimant. Also, how could the Company know about the insurance position of other potential claimants or defendants?

Chap 8; Reg 11: - Where the regulated entity engages the services of a loss adjustor and/or expert appraiser it must inform the claimant in writing of the contact details of the loss adjustor and/or expert appraiser it has appointed to assist in the processing of the claim and that such loss adjustor and/or expert appraiser acts in the interest of the regulated entity.

We believe that the focus behind this proposal is to ensure that the information is provided to the consumer and we would always ensure that the consumer is furnished which such details. However the requirement to provide this information in writing is, we feel, unnecessary and cumbersome. If the intention is to demonstrate that the information has in fact been given to the claimant, copies of telephone calls or files notes should be suffice.

Chap 8; Reg 12: - In the case of motor insurance and property insurance claims, and other claims where relevant, the regulated entity must inform the claimant in writing that the claimant may appoint a loss assessor to act in their interests and that any such appointment shall be at the claimants expense.

We believe that the focus behind this proposal is to ensure that the information is provided to the consumer and we would always ensure that the consumer is furnished which such details. However the requirement to provide this information in writing is, we feel, unnecessary and cumbersome. If the intention is to demonstrate that the information has in fact been given to the claimant, copies of telephone calls or files notes should be suffice.

Chap 8; Reg 16: - A regulated entity must ensure that any claim settlement offer made to a claimant is fair and represents the regulated entity's best estimate of the claimant's reasonable entitlement under the policy. An offer must be made in writing and allow the claimant at least 10 business days to accept or reject the offer.

Some aspects of this wording are confusing. For instance: -

- Does 'Claimant' include a third party in this case, as a third party has no entitlement under the policy?
- Does the Central Bank propose that every single offer in settlement be in writing including property damage claims?

If this is the case, we believe that this will have a negative impact on consumers in a large number of cases. To have to put an offer in writing, having agreed figures with the 'claimant' over the telephone and then wait for 10 days before issuing the cheque will have a detrimental effect on

customer service. This provision would slow down the payment process and appears to conflict with the obligations set out in Chap 8; Reg 19.

Chapter 9 – Arrears Handling

We would appreciate if the Central Bank could clarify whether this Chapter applies to the operation of monthly direct debit payments through PPP (Premium Payment Plan), where a service charge with APR is applied to the premium payments.

<u>Chap 10; Reg 18</u>: - Any advertisements relating to a minimum price or potential maximum savings must be available to at least 50% of the regulated entity's target market for that product.

<u>Definition of Target Market</u>

Any clarification from the Central Bank as to what they mean by 'Target Market' would be welcome. For instance, does the potential maximum saving or minimum price need to be available for 50% of the targeted audience in the advertisement (i.e. if the advertisement is targeted at 30-45 yr olds) or for 50% of the market as a whole where this product is available to purchase?

<u>Constraints on marketing initiatives</u>

There are many factors, which determine the saving or premium that a consumer may receive. For instance: -

- Different customers will be subject to different underwriting criteria
- Some customers will be able to avail of a loyalty discount for instance where others may not
- Some customers may be able to avail of other discounts linked to number of policies held for instance where others may not

To insist that 50% of all consumers need to receive the maximum saving or minimum premium regardless of what other discounts they are entitled to or underwriting criteria that applies would seriously limit the Company's ability to market and differentiate its products and provide incentives for potential consumers.

<u>Complying with the provision</u>

Also, it is difficult to see how the Company could ensure that 50% of the target market receives the maximum discount or minimum saving as this would require an ability to link every sale of the product to a specific advertisement. This would not be possible as the consumer can come through many different channels and purchase the product without ever being aware of the advertisement

Perhaps the Central Bank could provide some guidance as to how they believe this proposal could work in practice.

Conclusions

In conclusion, Aviva Insurance Europe SE sees revision of the Code as a valuable exercise and hopes that a revised Code will continue to see protection extended to consumers over the coming years. To that end, very many of the proposed amendments and extensions of the Code are wel-

comed by Aviva, for example those to error handling, however, a number of proposed revisions require further amendment prior to their entering into force if customers are truly to be protected and unnecessary administrative costs not to be added which will, ultimately, most likely be passed on to consumers. For example, the requirement that arrears handling processes be adopted by all financial services providers has not been endorsed, given the fact that insurers are not, buy and large, in the business of extending loans, and should not be exposed to credit risk in any greater extent than has been the case previously.

Aviva Insurance Europe SE hopes that the Central Bank will take its submission into account when finalising its new Code and looks forward to the revised Code entering into effect in a timely manner to better protect the interests of consumers in the years ahead.

Aviva Insurance Europe SE

Consumer Protection Code – CP47 Consultation Paper
Aviva Health Insurance Ireland Limited
Response

1. Response to specific questions

1.1. 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'?

Aviva Health recognises that some customers may require protection to a higher standard than is generally afforded to consumers through the Code, and believes it may be correct to label these as "vulnerable customers". Nevertheless, Aviva Health outlines that it should be possible to outline with certainty those contained within this group and that this should not be an open ended, potentially indefinable category of persons with the current proposal being too wide. Aviva Health does not believe that particular processes should be in place, for example, for the recently bereaved, any more than those suffering from a high level of stress, and to that end recommends that the definition of "vulnerable customers" be kept as narrow and unambiguous as possible so as to ensure those who need extra protection most are likely to benefit from it, i.e. the old, ill, and those with diminished mental capacity. Aviva Health submits that a wider category of persons may be too open to subjective opinion and diminish the importance of having real protection to those truly requiring such.

1.2. 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.

Aviva Health believes that special requirements for vulnerable customers in the sales process should lead to a higher level of protection for those persons. In addition to the amendments proposed, Aviva Health believes that provision of prescriptive measures to be taken with respect to vulnerable measures would see the Central Banks aims better realised, allow for better guidance for firms and more protection of vulnerable customers – for example by requiring that such customers are subject to a separate "fact find" process than is the case with non-vulnerable customers, and which takes into account the particular attributes of the person concerned. Otherwise Aviva Health submits that firms may not be well advised as to the extent of this requirement and may be subject to having their procedures "second guessed" on an ongoing basis.

1.3. 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?

No response.

1.4. Do you agree with our proposal that the SFS should be used when assessing whether a mortgage is affordable for a consumer?

No response.

1.5. 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.

Aviva Health believes that a "key facts" document requirement is useful and may help customers, however, it should not take away from the need to review policy terms and conditions which determine whether or not benefits may be payable. Otherwise, Aviva Health believes that a summary document may be useful in allowing customers understand the product or service sold, if presented in the correct way, however, firms and consumers should have the option of providing this information in oral form where both parties consent, as is the manner through which information is provided through the likes of the Distance Marketing regulations, etc. Aviva Health submits that such form of provision may be as effective as any other and stands to help ensure consumers are fully briefed as to the key features of products to be purchased.

1.6. *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?*

As in answer to 2.5, Aviva Health believes a short description document would be a useful tool for consumers, subject to their being presented correctly and informing customers of the need to check full terms and conditions. Aviva Health believes that this information should be capable of provision by telephone prior to a sale where a consumer wishes to have such provided. Aviva believes that any documentation, which more adequately informs a consumer regarding the service, will increase customer satisfaction and reduced rates of complaint and mis-selling. This, however, must be balanced against the need to have a customer understand the importance of terms and conditions.

1.7. *Is there any specific information that should be provided, either in a 'Key Facts' Document or otherwise, in respect of other types of product?*

Aviva Health submits that a key facts document should outline in brief the central features of the benefits / features obtained by purchasing the product concerned, as well as the key limitations or conditions would be the most useful elements of a 'Key Facts' document. Aviva Health also believes such a document should clearly point consumers to product terms and conditions.

1.8. *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?*

No response.

1.9. *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?*

No response.

1.10. *Do you think these requirements continue to be appropriate?*

No response.

1.11. *In relation to identifying a target market of consumers for a product, what are the key consumer criteria that you believe should be used?*

Aviva Health submits that in the identification of target markets, undue pressure should not be placed on product producers, and to that end, the Central Bank should specify the criteria for consideration in developing target markets, and should do this on the basis of groups which it believes have suffered from a lack of such regulation in the past – e.g. the old, those unaccustomed to the market concerned, and those without sufficient financial reserves. On the basis of this, target markets could be developed on the basis of age, sophistication in products concerned and ability to withstand depreciation in principal.

1.12. *Is the consumer information listed in Chapter 4, Provision 32 useful when identifying a target market?*

Aviva Health does not regard the information listed at a) through j) of Chapter 4, Provision 32, as being useful in the identification of target markets.

1.13. *Do you agree with the requirements outlined in Chapter 3, Provision 45? How often do you think that reviews of products should be undertaken?*

In the context of the health insurance market, Aviva Health believes that it is good commercial practice to review product performance across a range of measures on an ongoing basis, as well as upon the completion of certain periods. To that end, we see no prejudice to firms from being required to complete this process at least once annually.

1.14. *Should product producers be required to periodically review applications for their investment 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?*

In the context of health insurance, Aviva Health believes that product producers should be required to review applications received against the product's target market, however, it should not be the case that a sizable, if not significant, number of applications fall outside of the target market for the product concerned. Aviva Health rather submits that applicants falling outside of the target market should be asked to certify that they wish to proceed with purchase of the product concerned, despite their failing outside the target market of that product, and attesting that they understand the risks concerned.

1.15. *We have included a provision requiring that a regulated entity must not knowingly create situations that may give rise to a conflict of interest and we propose expanding on the recommendation from the Report on the Intermediary Market so that an appointment from any product producer may not be terminated based solely on target levels of business introduced. Do you agree with this proposal? If not, what specific issues arise in respect of appointments from entities other than insurance providers?*

Regarding this proposal, Aviva Health submits that should this demonstrably reduce conflicts of interest, underwriters should not be allowed cancel agreements with intermediaries on the basis of poor performance alone. Nevertheless, in order to retain efficient functioning of distribution channels, Aviva Health submits that underwriters should be free to terminate arrangements and vary commission levels on the basis of current market criteria.

1.16. *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?*

Aviva Health outlines that consumers should be made fully aware of how those acting on their behalf are remunerated, if for no other reason that to disclose any conflict of interest which may exist, but submits that any disclosure requirement should be the class across all non-life insurance products and not specific to one product line or another.

1.17. *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?*

Aviva Health regards the occurrence of errors as something which financial service providers strive to avoid, and which the new Code requires active prevention of, and forces speedy resolution. Aviva Health regards a regime, which requires the proactive uncovering, investigation and prompt remedying of errors as appropriate and sees this as an improvement on the existing Code for both financial service providers and consumers.

1.18. *Do you think the proposals are adequate to prevent repeat errors from occurring?*

Aviva Health regards the text of proposed provision 11(3), in requiring errors to be "fully resolved", including where system changes are necessary, should be sufficient in preventing repeat errors from occurring.

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

Aviva Health submits that a six-month deadline may not be contusive to the proper resolution of all issues given that: (i) some may take very much less time to resolve in the interests of consumers and six months may allow an excessive window while; (ii) some issues may be so intricate or wide ranging that six months may not allow full resolution and, a six month limit may lead to further regulatory breach. Aviva Health recommends that an obligation to remedy an error as soon as possible, and in no circumstance later than six months after it was uncovered, except where owing to the scale and complexity of the issue such would not be in the best interests of affected consumers, should be adopted as opposed to a blanket six-month approach.

1.20. *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.*

Aviva Health regards a one-month limit as appropriate and gives more certainty to firms than the "material" error obligation currently in place.

1.21. *Do you think that the proposed times for permitting unsolicited contact are appropriate?*
Aviva Health regards contact up to 9pm as more appropriate than 7pm in light of the fact that consumers may often be unavailable until after 7pm and may see a telephone call between 7pm and 9pm as less intrusive than one in the 5pm to 7pm period. Aviva Health submits that contact after 9pm is overly intrusive but submits that contact between 7pm and 9pm is not so. Aviva Health also submits that similar hours on a Saturday should also be open for financial services providers to make communication.

1.22. *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?*
As outlined elsewhere in this submission, Aviva Health submits that consumer protection is not enhanced simply by not allowing a consumer purchase an insurance policy at first point of contact, and informed consumers should not be presented from entering into policies on such a basis so long as adequate information provision and cooling-off periods exist. Aviva Health submits that customers should be allowed to proceed to full sale in initial contact with an insurance company so long as the consumer concerned has been made aware of key information about the product, positively indicates that they wish to proceed with sale, and are offered a sufficient "cooling off" period following the receipt of policy documentation, including terms and conditions.

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

Aviva Health submits that it is important to differentiate arrears handling in a credit institution scenario, where the institution concerned has decided to take on credit-risk, to that of an insurer, who extends a delayed payment facility to its customers, and especially a health insurer, which must extend that delayed payment facility to all customers on a particular product given that it does not have capacity to enter into different types of contract with different consumers. Specifically, credit institutions should be required to act in a different arrears regime to insurers, who provide a very real service, in return for a product which may be payable in instalment. In health insurance, an underwriter must enter into the same contract with each insurer in a class and therefore, the underwriter has no capacity in terms of whom it extends a delayed payment facility and who it may not – i.e. it must take on credit risk with all contracts. To force some arrears resolution regime on a health insurer would appear unfair given the nature of the contract concerned (i.e. both sides must discharge their duties) and unwise.

1.24. *Do you agree with the proposal to prevent the closure of accounts in arrears cases?*
As outlined in greater detail elsewhere in this submission, Aviva Health submits that it is important to separate arrears-handling in credit institutions, which are in the business of extending credit and managing credit risk, and that in non-life insurers who extend a delayed payment facility, most often through direct-debit, in order to facilitate payment arrangements suitable to consumers. Aviva Health submits that arrears handling requirements should be made to clearly apply only to credit institutions and insurers remain free to require payment of premium when extending insurance.

1.25. *Do you agree with our definition of 'key information'?*

Aviva Health submits that the Central Bank should ensure that any definition be as certain as possible so as to give greatest notice to financial service providers of requirements in this regard. Thus the proposed definition would not be as useful as "criteria for availing of a

product, exclusions, minimum or maximum investment, operating balance, restrictions on access or withdrawals, penalties/charges, fixed or variable rates and rates applicable after promotional rates", which would allow financial service providers clearly assess what must be placed within body-copy, and what need not.

1.26. *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.*

Aviva Health submits that a requirement that defined 'key information' be included within advertisements goes far enough, if not too far, should it be intended that financial service providers be allowed to continue to promote their products in an attractive way. Aviva Health submits that the great majority of advertisements currently promoted by financial service providers are clear, fair, and not misleading, and that any further increase in obligations in this sphere, which is already governed by further sector specific regulation, would not be useful and may indeed act to reduce access to financial services and competition in markets.

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

No response.

2. Submissions on other aspects of proposed revised Code

2.1. Requirement 3.2 - *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*.

Aviva Health recognises that it is important that Financial Service providers are required to act on customer instruction and do so promptly as competitive forces and relatives bargaining power would not be enough to necessarily guarantee this otherwise. Nevertheless, Aviva Health outlines that it is important to give Financial Service provider's realistic timeframes within which requests must be acted on, and two business days is too short in this regard. To that end, Aviva Health recommends that the amended section be inserted, but with a requirement that changes are performed promptly, and without delay, in light of the nature and complexity of the instruction conveyed, as opposed to requiring that all instructions, from the most simple to complex be completed in two business days, which may well not be achievable on a systemic basis in times of peak business activity.

2.2. Requirement 3.13 - *A regulated entity is prohibited from tying products or services, or making the sale of a product or service contingent on the consumer purchasing another product or service from the regulated entity. This provision does not prevent a regulated entity from offering additional products or services to consumers who exist customers, which are not available to potential consumers*.

This requirement should be reconsidered as it would seemingly allow financial services providers to make some products only available to purchasers of others, and continue to allow financial service providers to make products contingent on the purchase of another from that legal entity as opposed to any one product whatsoever. In order to make this requirement truly effective, it should prohibit a regulated entity from making the sale or supply of a product or service contingent on any other.

2.3. Requirement 3.15 – 17: *A regulated entity is prohibited from bundling except where it can be shown that there is a cost saving for the consumer.*

Prior to the sale of a bundled product or service, a regulated entity must provide the consumer with information in writing on:

a) the cost of the bundle;

b) the cost of each item separately;

c) how to switch products within the bundle;

d) how to exit the bundle; and

e) the cost of exiting the bundle."

Where a consumer wishes to exit a bundle, the regulated entity must allow that consumer to retain any product(s) in the bundle that the consumer wishes to keep, without penalty or additional charge.

Aviva Health submits that bundling, or the offering of two products together, is attractive as it allows regulated entities to dispense with sizable acquisition costs with respect to both products concerned and pass some element of the saving on to consumers. Aviva Health recognises that in such situations, protection for consumers needs be addressed, however, the Central Bank must recognise that additional cost will flow to the offer of a bundle when a customer no longer wishes to purchase one of its component parts, and to that end, 3.17 should be amended so as to ensure that a Financial Service provider continues to have the right to pass on increased costs.

2.4. Requirement 3.18 - *a) Where an optional extra is offered to a consumer in conjunction with a product or service, a regulated entity must:*

i) inform the consumer in writing that the optional extra does not have to be purchased in order to buy the main product or service;

ii) set out the cost of the basic product (excluding the optional extra); and

iii) set out separately the cost of the optional extra(s).

b) A regulated entity must not charge a consumer a fee for any optional extra offered in conjunction with a product or service unless the consumer has confirmed that he/she wishes to purchase the optional extra.

Aviva Health recognises that in light of informational asymmetries, it is often necessary to protect consumer from the sale of unsought and unsuitable optional extras to consumers in addition to the product requested. Nevertheless, Aviva Health believes that it is important to allow for an efficient sales process, which sees an informed customer entitled to purchase all products sought in one transaction. To that end, Aviva Health submits that 3.18 should be amended to require disclosure of the status and nature an optional extra in advance of any sale, but that such is only required in writing meaningful advance of the ending of any cooling-off period, before which time full disclosure must be made. Aviva Health understands that this is the case with a number of other information-giving requirements, such as the Distance Marketing Regulations, and the Insurance Mediation Regulations, and believes that this will best serve the needs of both the consumer and provider in ensuring information is provided in a timely manner, but without adding undue cost.

2.5. Requirement 3.20 - *A regulated entity may pay a fee, commission, other reward or remuneration in respect of the provision of regulated activities only to a person that is:*
a) a regulated entity;
b) a certified person;
c) an individual for whom a regulated entity has taken full and unconditional responsibility under the Investment Intermediaries Act 1995;

d) an authorised credit intermediary (within the meaning of the Consumer Credit Act 1995 and the European Communities (Consumer Credit Agreements) Regulations 2010); or
e) a former regulated entity, where the fee, commission, other reward or remuneration is in respect of activities that the entity provided when it was regulated.

Aviva Health submits that it is not clear as to what the Code means with respect to "the provision of regulated activities" and that this should be revised to something along the lines of "provision of activities requiring authorisation of the Central Bank of Ireland" should that be what is meant by this section.

2.6. Requirement 3.31 - *An unsolicited personal visit or telephone call may be made only between 9.00 a.m. and 7.00 p.m. Monday to Friday (excluding bank holidays and public holidays) except where the purpose of the contact is to protect the consumer from fraud or other illegal activity.*

As outlined in Section 2 to this submission, Aviva Health submits that a consumer should not be unfairly prejudiced by receiving contact between 7pm and 9pm, and such may be more suitable than during the period 5pm to 7pm, as well as within a shorter time period on Saturdays.

2.7. Requirement 3.43 - *A product producer must not terminate a letter of appointment with an intermediary solely based on the volume of new business introduced by the intermediary.*

As outlined otherwise within this correspondence, should this demonstrably reduce conflicts of interest, underwriters should not be allowed cancel agreements with intermediaries on the basis of poor performance alone. Nevertheless, in order to retain efficient functioning of distribution channels, Aviva Health submits that underwriters should be free to terminate arrangements on the basis of current market criteria and vary commission levels, as is the case currently.

2.8. Requirement 4.8 - *A regulated entity must include a regulatory disclosure statement:*

a) on its business stationery;

b) in all advertisements; and

c) on all electronic communications with consumers including on the home page of its website, if any.

In respect to c) above, a regulatory disclosure statement is not required on an SMS message.

Aviva Health welcomes the Central Bank's proposal to not require regulatory disclosure statements be contained within SMS messages, however, and while Aviva Health recognises the value to be had in including statements as to the regulator of an entity, the length of the disclosure statement appears to preclude the use of radio advertisements due to the extent of information which must be provided, especially where more than one regulated entity is making an advertisement concerned. This is also the case in certain online media (such as online internet providers 'ad words', and within various social media) where space is limited. In light of this, Aviva Health submits that the Code should allow for the combination of regulatory disclosure statements, and a trading name variant or no disclosure statement be used for radio advertisements, provided that consumers are notified of a website address where all material regulatory information needed is displayed; and that with respect to advertisements using electronic media, these only be required to include a regulatory disclosure statement where the advertisement itself is in ex-

cess of a certain number of alphabetic characters, provided that where not, 'clicking through' on the advertisement must afford instant access to all material information, including regulatory disclosure statement(s).

2.9. Requirement 4.15 - *A regulated entity must draw up its terms of business and provide each consumer with a copy at the outset of its relationship with the consumer*

Aviva Health acknowledges that it is important that a consumer is made aware of the terms of which a Financial Service provider conducts its business at the outset of doing such. As outlined with respect of 3.18, it is important that a fully aware consumer is facilitated in purchasing a product from purchasing relatively non-complex products from a financial services provider. To that end, Aviva Health submits that it would be helpful to clarify what "at the outset of its relationship with the consumer" means, i.e. should this be prior to providing a quote or form part of a quote pack with a quote, or where a customer receives a quote and proceeds to purchase a policy with a provider by telephone, is it sufficient to provide a terms of business with policy information and before a "cooling off" period expires? Aviva submits that this rule should be styled something along lines of other requirements, with face-to-face interaction requiring a "terms of business" at first interaction, telephone contact requiring it with the first documentation forwarded to a consumer, and contact otherwise by electronic means requiring issuance at the time of provision of first service, i.e. on a website.

2.10. Requirement 4.20 - *A regulated entity must always disclose the following to consumers:*

a) where the regulated entity has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in another regulated entity;

b) where another regulated entity has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in the regulated entity.

Aviva Health submits that this requirement should be clearly limited to specific documents, classes of documents, or other situations as disclosure may be both unnecessary and unhelpful in all situations, e.g. within advertisements, in account servicing documents, and on SMS messages. Aviva Health concedes that this information may be worthwhile prior to a customer purchasing a product or service from a provider, but not otherwise, and proposes that this requirement move from "must always disclose" to "must always disclose on its Terms of Business, on any product or service terms and conditions document, and within any renewal notice, where applicable".

2.11. Requirement 4.30 - *Where a regulated entity intends to amend or alter the range of services it provides, it must give notice to affected consumers at least two months in advance of the amendment being introduced*.

Aviva Health submits that the current Code requirement, i.e. that changes to range of services requires one-month's notice, offers sufficient protection to consumers in that they may plan for any change, while limiting the commercial freedom of financial service providers in a manner which is not overly intrusive. Aviva Health submits that a change to require two months notice of change presents little by way of additional protecting consumers, while making it very much more difficult for financial service providers to change their services, often as a reaction to market developments and on the basis of legitimate commercial interest. To that end, Aviva Health requests that given the marginal benefit to consumers, and significant implications for financial services firms, the existing Code requirement remain in place as oppose to the amended form proposed.

2.12. Requirement 4.40 - *A regulated entity that is in direct receipt of a negotiable or non-negotiable instrument from a consumer as payment for a financial product or service must provide that consumer with a receipt. This receipt must include the following information*:

a) the name and address of the regulated entity;

b) the name and address of the person furnishing the instrument or payment;

c) the value of the instrument or payment received and the date on which it was received;

d) the purpose of the payment; and

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.

Aviva Health requests that the Central Bank clarify in this section of the Code whether each direct debit payment constitutes a separate payment requiring receipt or whether receipt of a mandate is sufficient. Aviva Health submits that receipt of a mandate should offer consumers sufficient notice of the payments, which are to be deducted from their bank account during a policy term.

2.13. Requirement 4.71 - *A regulated entity must, where applicable:*

a) 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. Where such charges cannot be ascertained in advance, the regulated entity must advise the consumer that such charges will be levied as part of the transaction;

b) advise affected consumers of changes in charges, specifying the old and new charge, or the introduction of any new charges, at least 30 days before the change takes effect; and

c) where charges are accumulated and applied periodically to accounts, advise consumers at least 10 business days before deduction of charges and give each consumer a breakdown of such charges, except where charges total an amount of €10 or less

Aviva Health submits that while this information set out above is clearly relevant with respect to protecting consumers from undisclosed and confusing charges, within the context of insurance, the definition of a "charge" should be amended so as to exclude "premium" as insurers have clear obligations already in place with respect to notifying, charging, and refunding premium. This is particularly true in the context of health insurance, where all charges must be notified to the Health Insurance Authority ten business days prior to their being affected. To that end, Aviva Health requests that "premium" be excluded from the definition of charges given consumer protection measures already in place.

2.14. Requirement 5.20 – *Provisions 1- 4, 10-11 and 17-19 (inclusive) do not apply where:*
a) the consumer has specified both the product and the product producer and has otherwise not engaged with the regulated entity in relation to that product; or
b) the consumer is purchasing or selling foreign currency; or
c) the regulated entity has established that the consumer is seeking a basic banking product or service; or
d) the consumer is seeking credit that falls within the scope of the European Communities (Consumer Credit Agreements) Regulations 2010

In relation to a) above, before providing the product or service the regulated entity must warn the consumer that the regulated entity does not have the information to determine the suitability of that product for the consumer and must obtain written confirmation from the consumer that such warning has been received.

Aviva Health submits that the warning required and written consent where a consumer has indicated the product they wish to purchase is both unnecessary and unhelpful with respect to the purchase of non-life insurance products, and in particular health insurance. A customer who has not elected to seek the opinion of a financial services provider, e.g. they have obtained independent advice as to which product to purchase, should not be classed as behaving so recklessly as to require a warning statement and written confirmation prior to sale proceeding. Consumers may be well advised as to the nature of a particular product and should not be required to see a warning, which may in itself prevent sale, never mind go through the time consuming and again unattractive step of providing written consent. With respect to health insurance, a customer may be as well advised on the market and its products as any person seeking advice from underwriters (see for example the Health Insurance Authority's online product comparison tool at www.hia.ie) and should not be impeded from purchasing simply because advice was not received from an undertaking, which may not for that matter may not provide recommendations as part of its service to customers or trade solely through intermediaries. Further, in the context of the health insurance market, to require regulated entities perform such an obligation but not an underwriter with in excess of 60 percent of market share would seem unfair and unnecessary, while offering more in the way of consumer inconvenience and panic than consumer protection.

2.15. Requirement 6.1 - *Statements must be issued to the consumer's last known postal address, or be made available to the consumer electronically if the consumer so requests*.

With respect to health insurance, Aviva Health requests that references to 'statements' be clarified as applying to bank account statements and not statements relating to the balance of an insurance policy or otherwise.

2.16. Requirement 4.27 - *Before offering, arranging or recommending a product, a regulated entity must provide information about the main features and restrictions of the product to the consumer, including where relevant, the nature and extent of the risks inherent in the product and the level, nature, extent and limitations of any guarantee attaching to the product and the name of the guarantor*.

Aviva Health sees the value in providing a "key features" document to consumers; however, it submits that the detail of such a document must be reflective of the terms and risks inherent in the product or service concerned. Aviva Health also submits that consumers should be allowed to receive such a document after cover has been underwritten, but before the termination of any applicable "cooling-off" period, so as to ensure that an informed consumer is offered the opportunity to proceed with purchase of relatively uncomplicated products without undue interference.

2.17. Requirement 4.29 - *A regulated entity must inform each affected consumer in advance of acting on any term or condition attaching to a product or service purchased by the consumer*.

Aviva Health submits that this proposed new Code requirement is unnecessary, will significantly reduce efficiency, and lead to a great deal of waste with respect to insurance poli-

cies. For example, where an insurer is required to inform a customer prior to declining a claim on a term or condition, and then inform a customer of such a claim decline, two communications will be issued with respect to one action. Aviva Health submits that it does not foresee any real consumer protection extended by this proposed amendment, but that considerable administrative effort will be imposed on financial service providers in return. To that end, Aviva Health submits that this amendment should not be made.

2.18. Requirement 4.76 - *in the case of non-life insurance:*

a) A regulated entity must disclose in general terms that it is paid for the service provided to the consumer by means of a remuneration arrangement with the product producer.

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.

Aviva Health sees the value of requiring some element of disclosure of payment so as to make consumers aware of potential conflicts of interest. Aviva Health submits, however, that this requirement should be one for intermediaries as opposed to insurance underwriters given that an underwriter is remunerated by payments from a consumer and should not be subject to any conflict.

2.19. Requirement 4.77 - *A regulated entity must disclose in general terms any remuneration arrangements with product producers that are not directly attributed to the service provided to an individual consumer but are based on levels of business introduced by the regulated entity to that product producer or that may be perceived as having the potential to create a conflict of interest.*

As is the case with 3.21 above, Aviva Health requests that this obligation is clearly identified as one applying to intermediaries as opposed to insurance underwriters.

2.20. Requirement 4.79 - *A regulated entity must display a schedule of its fees in a public area of its premises.*

Aviva Health requests that the Code clarify whether premium is a "fee" for the purpose of this and related sections of the Code, given that premium is often different in different circumstances, and health insurance premiums are highly regulated in any event.

2.21. Requirement 5.1 - *Before offering, arranging or recommending a product or service, a regulated entity must gather and record sufficient information from the consumer to enable it to provide a recommendation or a product or service appropriate to that consumer. The level of information gathered should be appropriate to the nature and complexity of the product or service being sought by the consumer, but must be to a level that allows the regulated entity to provide a professional service and must include, where relevant, details of the consumer's...*

Aviva Health submits that existing suitability requirements offer maximal protection to consumers and are sufficiently onerous on providers – i.e. the most suitable product from amongst its range must be offered where a recommendation is given. While it is recognised that vulnerable consumers may constitute a number of specific categories, these will not all be affected in the same way with respect to all products (e.g. a typical non-life policy) and to that end, the requirement to take into account vulnerable customers should only

apply where the class of customers is vulnerable with respect to the particular product class for delineated reasons.

2.22. Requirement 5.2 - *A regulated entity must gather and maintain a record of details of any material changes to a consumer's circumstances before providing that consumer with a subsequent product or service. Where there is no material change, this must be noted on a consumer's records*.

Aviva Health submits that the requirement that no material change must be noted adds administrative burden on Financial Service providers for no seeming return from the perspective of consumer protection. Surely the absence of record of material change should be enough to show no material change has occurred, providing that 5.2 has been implemented correctly in any event.

2.23. Requirement 5.18 - *The written statement must be dated on the day that it is completed and tailored to the particular circumstances of each consumer. In the case of personal motor and home insurance, a statement of suitability may be in a standard format.*

Aviva Health submits that health insurance products are standard contracts, which are not capable of individual tailoring and more akin to other non-life products such as motor and home insurance, than any variant product. To that end, Aviva Health submits that this requirement should exclude health insurance products in the same manner as motor and home policies.

2.24. Requirement 5.19 - *The regulated entity must give a copy of this statement to the consumer before providing a product or service and retain a copy. In the case of non-life insurance policies, a statement of suitability may be issued to the consumer immediately after the product has been provided only in urgent situations.*

As outlined elsewhere in this submission, Aviva Health outlines that it should be open for a consumer who wishes to proceed with transacting a policy before receiving information designed to protect the consumer in writing, so long as a version of that information is given through the means of transaction, e.g. phone, and is received in full prior to the end of any "cooling off" period. Aviva Health understands that this is the position already with respect to Distance Marketing Regulation obligations, and information due pursuant to Insurance Mediation regulations. Aviva Health understands that this approach facilitates information being provided prior to a consumer suffering detriment and ensuring all due information is available, but also facilitates sales to customers with adequate knowledge and who wish to purchase a product in a time-efficient manner. To that end, Aviva submits that this requirement should allow a suitability statement be forwarded upon underwriting an insurance product, provided it is forwarded well in advance of the end of any cooling off period, and a customer is offered the opportunity to have the terms of the statement concerned relayed to the customer by telephone at point of sale.

2.25. Requirement 7.18 - *Any statements in an advertisement relating to minimum price or potential maximum savings must be available to at least 50% of the regulated entity's target market for that product.*

Aviva Health submits that although a worthwhile idea, a requirement that advertisements must be available to at least 50 percent of target market of the advertisement will be most difficult to implement in that target markets may be expanded or contracted to meet the needs of a particular campaign, and to that end offer little by way of protection to consum-

ers. Aviva Health submits that the already considerable advertising regulation in place both in the Code as well as statute and voluntary codes should be enough to guard consumers with respect to advertisements.

2.26. Requirement 8.5 - *Where a premium rebate is due to a consumer, and the value of the rebate is €10 or less, the regulated entity may offer the consumer the choice of:*

a) Receiving payment of the rebate; or

b) Receiving a reduction from a renewal premium or other premium due to that regulated entity; or

c) Agreeing that the regulated entity may make a charitable donation of the rebate amount.

In respect of options b) and c), the regulated entity must maintain a record of the consumer's decision.

Aviva Health submits that in order to process refunds cost often flows to financial service providers, and that so long as such are not of such an extent as to constitute a penalty, providers should be allowed pass on the costs of refunds. Otherwise, Aviva Health recognises that a *de minimus* amount for the purposes of refund payments would be helpful for all stakeholders.

2.27. Requirement 8.14 - *Where a method of direct settlement has been used, a regulated entity must not ask the claimant to certify any restitution work carried out by an expert appointed by the regulated entity.*

While Aviva Health understands that the general process for claims administration will remain non-applicable with respect to direct settlement payments in health insurance – largely due to the fact that it does not reflect the process followed by health insurers – this new requirement would seem to apply to situations where direct settlement is used, crediting potential for confusion. Aviva Health asks that this section, as the processing section as a whole, be amended to explicitly exclude health insurance claims.

2.28. Requirement 9.2 - *Without prejudice to a regulated entity's regulatory and/or legal obligations and legal rights a regulated entity must:*

a) give the consumer reasonable time, having regard to the circumstances of the case, to resolve an arrears problem; and

b) endeavour to agree an approach that will assist the consumer to resolve an arrears problem.

As outlined above, Aviva Health submits that it is important to differentiate arrears handling in a credit institution scenario, where the institution concerned has decided to take on credit-risk, to that of an insurer, who extends a delayed payment facility to its customers, and especially a health insurer, which must extend that delayed payment facility to all customers on a particular product given that it does not have capacity to enter into different types of contract with different consumers. Specifically, credit institutions should be required to act in a different arrears regime to insurers, who provide a very real service, in return for a product which may be payable in instalment. In health insurance, an underwriter must enter into the same contract with each insurer in a class and therefore, the underwriter has no capacity in terms of whom it extends a delayed payment facility and who it may not – i.e. it must take on credit risk with all contracts. To force some arrears

resolution regime on a health insurer would appear unfair given the nature of the contract concerned (i.e. both sides must discharge their duties) and unwise.

2.29. Requirement 11.9 - *When a regulated entity receives a verbal complaint, it must offer the consumer the opportunity to have the complaint treated as a written complaint*

Although this is a restatement of an existing Code provision, Aviva Health submits that the complaint handling procedures set out within the Code are so prescriptive so as to allow for little difference between a written and verbal complaint. Aviva Health suggests that the Code allow for handling of complaints by electronic means, in writing, or verbally so long as all necessary information is conveyed and appropriate procedures are in place. Should this be the case, customers could be offered the option of having their complaint handling one or more of these means.

2.30. Requirement 11.10 - *A regulated entity must have in place a written procedure for the proper handling of complaints. This procedure need not apply where the complaint has been resolved to the complainant's satisfaction within five business days, provided however that a record of this fact is maintained. At a minimum this procedure must provide that …*

Aviva Health submits that, in order to avoid confusion, clarity should be added as to the requirement to send letters within 5 days of receipt, while the process concerned does not need apply until a 5-day threshold is passed. Aviva Health also submits that consideration should be given to providing updates by telephone as opposed to in writing, provided it can be demonstrated that all required information is provided by the financial service provider concerned.

2.31. Requirement 12.1- *Where there is a verbal interaction with the consumer to assist the consumer in understanding the product or service on offer, a regulated entity must keep a contemporaneous record of the detail of such verbal interaction.*

Aviva Health believes that this may be an onerous obligation in light of the very-wide definition of 'consumer' contained within the proposed Code, which would appear to be wider than that generally adopted within Irish legislation, in that this would force financial service providers, and their staff, to keep records of all interactions. Aviva Health submits that it may be difficult to practically implement such a proposal and suggests that the same result may be obtained in terms of consumer protection without adoption of such a wide ranging measures – for example requiring that telephone calls with customers, or inquirers with respect to products, are recorded.

2.32. Requirement 12.4 - *A regulated entity must maintain a list of its customers who are consumers and the subject of this Code*.

Aviva Health submits that the definition of a "consumer" in the current and revised Code is so wide that it does not lend itself to easy identification of "who is a consumer" – i.e. it is not readily discernable whether the arbitrary line of three million euro turnover is crossed, and this definition makes Aviva Health treat many institutions which are readily capable of protecting their own interests, such as intermediaries, as though they were consumers. In light of the difficulty of identifying consumers, as well as the fact that no element of consumer protection would appear to be added by this requirement, Aviva Health asks that the Central Bank remove this requirement from the Code.

3. Conclusions

In conclusion, Aviva Health sees revision of the Code as a valuable exercise and hopes that a revised Code will continue to see protection extended to consumers over the coming years. To that end, very many of the proposed amendments and extensions of the Code are welcomed by Aviva, for example those to error handling, however, a number of proposed revisions require further amendment prior to their entering into force if customers are truly to be protected and unnecessary administrative costs not to be added which will, ultimately, most likely be passed on to consumers. For example, the requirement that arrears handling processes be adopted by all financial services providers has not been endorsed, given the fact that insurers are not, by and large, in the business of extending loans, and should not be exposed to credit risk in any greater extent than has been the case previously.

Aviva Health hopes that the Central Bank will take its submission into account when finalising its new Code and looks forward to the revised Code entering into effect in a timely manner to better protect the interests of consumers in the years ahead.

Aviva Health Insurance Ireland Limited

Consumer Protection Code – CP47 Consultation Paper

Aviva Life & Pensions Ireland Limited &

Ark Life Assurance Company Limited

Response

CONSUMER PROTECTION CODE

CONSULTATION PAPER CP47

Response to specific questions

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?"***

The indicative list of circumstances that could render a consumer vulnerable is very broad and it is unclear as to how a regulated entity could gather this level of information without potentially offending the consumer or exposing the Company to potential breaches of legislation, namely: -

- **Data Protection Acts**
  The Data Protection rules are very clear in that insurers must only obtain personal data that is relevant and not excessive and cannot store this data for any longer than is relevant. There is a risk therefore, that by obtaining information from a consumer regarding their level of indebtedness, their level of educational attainment and whether have recently suffered a bereavement for instance, this information could be deemed to be excessive and not relevant to a policy of insurance and as such, potentially place the Company in a position of non-compliance with the Data Protection Acts.

- **Equal Status/Anti Discrimination Legislation**
  In order to ascertain whether a consumer has a diminished mental capacity and/or a poor credit history for instance would require the Company to make a judgment on the capabilities and character of a consumer. This would place the individuals making this judgment in a very difficult position and expose the Company to potential claims of unfairness and discrimination as insurance personnel would not be qualified to make such a decision nor should they be. Also, if the Company feels that the customer does not meet the relevant requirements both under the CPC or the product they may not be in a position to provide a financial product or service to a consumer because of their age. This is another 'judgment call' that a Company would be required to make which would have implications in relation to a potential breach of Equal Status legislation.

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 necessary

The definition of a vulnerable consumer as outlined in this document is open to broad interpretation. For instance someone who is retired could be in his or her early 50's. Does this make them vulnerable? Moreover, guidance will be required to determine what constitutes a low level of income and a high level of indebtedness.

Furthermore, where business is conducted over the phone or web it would not be possible for the Company to establish if a consumer falls into this category.

The proposal on page 6 that requires a regulated entity to have regard to any vulnerabilities that emerge from its interaction with a consumer when collecting information on the consumer's personal circumstances, financial situation, needs and objectives and attitude to risk would be a

very difficult requirement to comply with as it effectively requires the Company to look into the future to try and ascertain if a consumer will at some stage fall into the list of circumstances outlined. Guidelines will be required from the Central Bank in order to achieve this objective.

There is a need for a higher level of clarity with regard to the practical implementation of these proposals and therefore a response from the Central Bank would be necessary to provide guidelines around these proposals. In its current form; these proposals could compel the industry to lessen its interaction with vulnerable consumers due to much higher costs of sale and the potential increase in the level of complaints.

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?***

We would appreciate some clarification as to what the Central Bank considers to be the main features and restrictions that apply to a product. We believe that the proposed requirements will only be feasible if the definitions of main features and restrictions are common across the industry to ensure consistencies and if this information can be presented in a key features document.

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 customers?

- A five tier system of Low, Low to Medium, Medium, Medium to High and High should describe most products and should provide a quick reference for customers. It would be a challenge to implement this in a uniform way across the industry due to the differentiation between products. It would also be useful if consumers could confirm formally the level of risk that they wish to assume and that this was recorded as part of the fact find process.

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?

A system of RAG would be too crude to describe the current range of products available, see answer to question 2.8 above.

11 In relation to identifying a target market of consumers for a product, what are the key consumer criteria that you believe should be used?

- Identifying specific market segments would be very restrictive e.g. a Managed Fund could appeal to a very wide market for a wide range of reasons, which would change over time for any given segment. Funds are selected initially and switched at different points of time for different reasons within the same policy structure. Implementing specific criteria may be restrictive to the consumer in terms of the choice of fund that may be available to them based on the consumer criteria that could be put in place. There is also the matter of evidencing by the consumer that they met the requirements in place to ensure that the industry can monitor and control this in a realistic manner, which would then incur significant costs across the market.

14 Should product producers be required to periodically review applications for their investment 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?

Segmenting the market poses challenges, see answer 11 above. Product Producers do not have access to sufficient client information e.g. Fact find to check for consistency.

Surveys

The principle of surveying the market to ensure that the correct products are being purchased is a good idea, however as each customers circumstance is different it would be necessary to survey at an individual customer level with full information on all of their circumstances, in practice this would not be practical.

16 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?

Clarification is required on whether the intention is to impose remuneration disclosure on Group Pension Schemes.

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

A six-month timeframe to fully resolve every such error is too rigid as some errors may require large-scale development work to complex IT systems, which would not be completed within a six-month timeframe. Also, the new provisions set out in this document make no reference to materiality, which is a significant omission in this regard. This provision would be enhanced if it allowed for the basis of materiality to be agreed with each institution. The provision would also be more equitable if the language used could be amended to allow the Company to make all reasonable efforts to fully resolve such errors within the timeframe outlined except where a longer period has been granted by agreement with the Central Bank. This would prevent a concept of 'one size fits all' being allocated across the industry.

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.

The one-month timeframe to rectify all such errors would be considered too rigid and would be difficult to achieve. If, as is suggested by these proposals, the Central Bank requires that Companies report such errors within one month, it is likely that the Central Bank will become inundated with queries, reports etc from the industry for errors that may be minor in nature. Again, the provision would be enhanced if a level of materiality was introduced and the concept of 'one size fits all' is not levied across the industry.

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

We do not feel that these times are appropriate, as many potential consumers would only be getting home at 7pm. We would propose that the Central Bank amend these times to 9am-8pm Mon-Fri and 10am-4pm on a Saturday.

Submissions on other aspects of proposed revised Code

Chap 3; Reg 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.

This requirement would incur significant cost on the industry to implement and the timelines described would not be feasible. The requirements to issue receipts could potentially cause delays within the process and reduce the level of customer service provision to the customer. Clarification from the Central Bank regarding the existing requirement of "properly and promptly " insufficient would be appreciated.

Chap 3; Reg 4: - A regulated entity that is in direct receipt of a negotiable or non-negotiable instrument from a consumer as payment for a financial product or service must provide that consumer with a receipt. This receipt must include the following information.
…B) the name and address of the person furnishing the instrument or payment.

It should be sufficient for a Company to include the name and address of the policyholder on the receipt as any payment will be in relation to their policy and in the vast majority of cases, the policyholder will make the payment. The receipt should ensure that no confidential information is included on it to prevent any security or potential fraud matters arising in the future should the consumer lose the receipt etc.

Chap 3; Reg 7: - A regulated entity must ensure that all warnings required by this code are prominent i.e. in bold type and of a font size that is larger than the normal font size throughout the document or advertisement. The warning statement must be in a box separate to other information but must appear alongside the benefits of the product.

We would request clarification from the Central Bank regarding the meaning of the term "alongside the benefits of the product". There is no issue with a requirement to place the warnings on the same page or directly below where the benefits are displayed. However it would present a considerable challenge to the Business to construct these warnings so that they appear beside the benefits on a document or advertisement. The pressure on space would be significant and would result in a confused message to the consumer.

Chap 3; Reg 15: - A regulated entity is prohibited from bundling except where it can be shown that there is a cost saving for the consumer.

It would be restrictive to limit the sale of a bundled product only to circumstances where the consumer can obtain a cost saving. The provision would be enhanced if the wording of this requirement could be amended slightly to also allow for the sale of a bundled product where there is a service enhancement to the consumer by virtue of purchasing the bundle.

It would be useful if the Central Bank could make this explicit in the wording of this provision.

Chap 3; Reg 16: - Prior to the sale of a bundled product or service, a regulated entity must provide the consumer with information in writing on:

i) The cost of the bundles
ii) The cost of each item separately
iii) How to switch products within the bundle
iv) How to exit the bundle
v) The cost of exiting the bundle

It is assumed that where the sale of an insurance policy is completed over the telephone or internet, where it would not be possible to provide this information in writing at point of sale, that the requirements as set out in the Distance Marketing Regulations will apply here, namely that this information must be provided to the consumer within any cooling off period. It would be useful if the Central Bank could make this explicit in the wording of this provision.

Chap 3; Reg 18a): - Where an optional extra is offered to a consumer in conjunction with a product or service, a regulated entity must:

i) Inform the consumer in writing that the optional extra does not have to be purchased in order to buy the main product or service;
ii) Set out the cost of the basic product (excluding the optional extra)
iii) Set out separately the cost of the optional extra(s)

As set out in relation to Reg 16 above, it is assumed that where the sale of an insurance policy is completed over the telephone or internet, where it would not be possible to provide this information in writing at point of sale, that the requirements as set out in the Distance Marketing Regulations will apply here, namely that this information must be provided to the consumer within any cooling off period. It would be useful if the Central Bank could make this explicit in the wording of this provision.

Chap 3 Req 41 - Where a product producer distributes its products through an intermediary and imposes target levels of business or pays commission based on levels of business introduced, the product producer must be able to demonstrate that these arrangements:
a) do not impair the intermediary's duty to act in the best interests of *consumers*; and
b) do not give rise to a conflict of interest, either between the product producer and the intermediary or between either of them and the *consumer*.

Can the Central Bank provide guidance on how a Product Producer would be able to demonstrate that commission arrangements do not impair the intermediary's duty to act in the best interest of consumer and do not give rise to a conflict of interest, either between the product producer and the intermediary or between either of them and the consumer.

Chap 3; Reg 44; - A product producer must ensure that the information it provides to an intermediary about its *investment products* is clear, accurate, up to date and not misleading, and includes the information outlined in Chapter 4, Provision 32. This product information must be sufficient to enable those who sell the product to understand it so as to be able to determine whether it is suitable for a *consumer*.

This obliges Product Producers to ensure that product information is sufficient to enable product sellers to determine whether a product is suitable for a consumer. While Product Producers provide comprehensive information to sellers the obligation should be on the seller to ensure that the information is sufficient for them to make a recommendation.

Chap 3; Reg 45; - Within the first year of launching an *investment product*, and annually thereafter, a product producer must check whether the product is continuing to meet the general needs of the target market for which it was designed. Where the product producer

establishes that a product no longer meets the general needs of the target market, the product producer must:

a) reassess the product to identify the *consumer* type for which it is suitable;

b) immediately update the information it provides under Provision 44 above; and

c) notify the Central Bank.

See answers to sections 11 and 14 above.

Chap 4; Reg 3: - Where a regulated entity intends to amend or alter the range of services it provides it must give notice to affected customers at least two months in advance of the amendment being introduced.

The extension of the time period required to notify a consumer of any alteration to the service provided will present a considerable challenge to the Company and will increase costs significantly within the business as systems will need to be redeveloped to achieve this requirement.

Chap 4; Reg 20: - ***A regulated entity must always disclose the following to consumers:***

a) ***where the regulated entity has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in another regulated entity;***

b) where another regulated entity has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in the regulated entity**.**

Aviva Life & Pensions and Ark Life submits that this requirement should be clearly limited to specific documents, classes of documents, or other situations as disclosure may be both unnecessary and unhelpful in all situations, e.g. within advertisements, in account servicing documents, and on SMS messages. Aviva Life & Pensions and Ark Life concedes that this information may be worthwhile prior to a customer purchasing a product or service from a provider, but not otherwise, and proposes that this requirement move from “must always disclose” to “must always disclose on its Terms of Business, on any product or service terms and conditions document, and within any renewal notice, where applicable”.

Chap 6; Reg 1: - Statements must be issued to the *consumer*’s last known postal address, or be made available to the *consumer* electronically if the *consumer* so requests.

Aviva Life & Pensions and Ark Life requests that references to ‘statements’ be clarified as applying to bank account statements and not statements relating to the balance of an insurance policy or otherwise.

Conclusion

In conclusion, Aviva Life & Pensions and Ark Life sees revision of the Code as a valuable exercise and hopes that a revised Code will continue to see protection extended to consumers over the coming years.

To that end, very many of the proposed amendments and extensions of the Code are welcomed by Aviva, for example those to error handling, however, a number of proposed revisions require further amendment prior to their entering into force if customers are truly to be protected and unnecessary administrative costs not to be added which will, ultimately, most likely be passed on to consumers. For example, the requirement that arrears handling processes be adopted by all financial services providers has not been endorsed, given the fact that insurers are not, in the majority, in the business of extending loans, and should not be exposed to credit risk in any greater extent than has been the case previously.

Aviva Life & Pensions and Ark Life hopes that the Central Bank will take its submission into account when finalising its new Code and looks forward to the revised Code entering into effect in a timely manner to better protect the interests of consumers in the years ahead.

Aviva Life & Pensions Ireland Limited & Ark Life Assurance Company Limited