Subject: Consumer Protection Code

To: Consumer Protection Codes Department, Central Bank of Ireland.

From: Peter Wrafter

Chapter 1: Scope – Introduction

New Issue : "The Code is binding on ***regulated entities***" – are there **un-regulated entities** operating? If so, if there is a time factor in catching up with them then why not have the code applied to them as well so that in court they can be charged, not only with trading illegally but also with breaking the code, where applicable ? The regulated entities are defined and listed yet history has shown that re-invention occurs when entities are listed and new categories are put in place to circumspect the listed ones. I propose that the term should apply to all "**Financial Services Providers**" or to all "**Financial Instruments Provided**".

Specifically, the code should not exclude "**to persons outside the state**" as it is written. Many Irish persons must now work outside the state, for the known reason of failure of financial regulators to implement the existing laws, and a case must be made to include a category of such persons where the following applies: a regulated entity sends a solicitation to the known Irish home address of a person, which is then forwarded to the named person who is working abroad and then concludes an agreement by e-mail with the regulated entity and remits the necessary funds from abroad with a view to having a product working for them, which they can capitalise on when they return.

Chapter 2: General Principles

General Principle 6: and your questions 25 and 26

You should go further than proposed **and blanket ban the use of small print in all financial instruments**. 'Small Print' always includes the key data that is vital to all consumers understanding what they are purchasing and, invariably, is what leads to court cases. All data promoted should be of same size. Also, I find it incredible that audio advertising is allowed to race through and make 'light' of small print and treat it as unimportant.

Also, bearing in mind that persons targeted are often older people with eyesight problems, I recommend that a minimum font size be specified for use e.g. certainly **not below 12;** there is a case to be made for making the historic "small print" a font size bigger than the bulk data.

General Principles 1,2,3, 7, and 9, are not sufficient, as written, because the text assumes a common understanding of honesty, fairly, care, diligence etc.; the bankers and regulators etc have proven by their actions/inactions that this is not the case; these principles need additional bolstering by e.g. a specific, spelt out **Ethics Charter** that defines/illustrates a worded common interpretation.

In answer to **question 25:** Mainly

In answer to **question 26:** Go further; **abolish small print altogether – the primary producer and intermediaries have abused its use in print form and absolutely insulted us by racing through it in audible ads on radio.**

Chapter 3: Common Rules:

Rule 5: Re a direct debit mandate there should be an addition that adds responsibility to the bank to terminate at the end of a defined 'contract period/performance'- currently, the Bank will not terminate unless written directive received from customer; what if customer is out of the country for 2 months? Currently, they will not refund overpayments.

Rule 20: Commission should be removed and confine to a fee.

Rule 24: Commissions, by definition, automatically create a "conflict of interest" and should be stopped.

Rule 27: Commissions are an ***inducement***

Rule 28: Stop **'soft commission agreements**

Rules 29- 34: Unsolicited contact: The answer to questions 21 and 22 is "yes" but more is needed and this should tie in with item 1 of Chapter 12. I **recommend that a copy of the written/ recorded record of the initial verbal conversation should be sent to the consumer contacted and this allows for any discrepancy in understanding between the two to be picked up/discussed at the earliest.** This would trigger immediately if/why they are not on the same wavelength.

Rule 41: This has an inherent contradiction and it is critical that it be addressed because "imposed target levels" and "paying commissions" by the product producer automatically impair the intermediary's duty to act in the best interests of consumers and automatically give rise to a conflict of interest.

Rule 45: The first review should take place **6 months** after the launch and thereafter annual will be sufficient

Chapter 4: Provision of Information:

1. This should include "and jargon free" otherwise it is only clear to those working in the industry

2. This is too vague "clearly legible" to a 20 year old and a 60 year old are two different things – specify minimum 12 point or whatever

24. Broker: This is an inadequate definition of a broker and requires additional criteria. Using this definition, the broker may also be a tied agent or a sole agent but in his mind give a *fair analysis of the market.* Who 'owns' the broker? I paid a broker to put in place a "portable pension" for me; subsequently, when I signed what I believed was a change of company name I later learned that a 2nd set of commissions were taken; the primary supplier stated that I had signed a new contract with my broker and it had paid new commissions, but refused to disclose the amount and that if my broker did something wrong that was a matter between us; the law of contract stated that: an offer, acceptance and payment of consideration constituted a contract; fair enough, there was a contract between the broker and me; the broker also created a contract with the primary supplier on the same document as there was an offer, acceptance and consideration (payment of commissions); the primary producer has always claimed, in these cases, that it my broker. How can it not be a conflict of interest when the broker took fees from me and then took fees (commissions) from the primary producer for the same entity and the primary producer accrues the second set of fees to my account? The misrepresentation by the broker of the entity

took place because of the commission system of payment. How many 1000's of cases of this have taken place ?

60. Secondary Market: should be disallowed because commissions will occur, again, along the trail which the consumer will ultimately finish up paying; also the original contract has occurred between the consumer and the original provider and there is no way that the full implications will be made clear to the consumer of the transaction between the original and secondary provider.

72. Surcharges: should not be allowed in circumstances, such as currently exist, where the credit institution is at fault in creating/being part of a material distortion of the available market, which the consumer relies on in normal circumstances, to liquidate the asset in question and clear the debt owing (property market); it is totally inequitable that the credit institution is allowed to recover all its costs from the consumer when it was partly responsible for taking away his only option of selling his asset.

73. Charge: where a regulated entity is imposing a charge in relation to arranging a mortgage e.g. engineer's report, from its own prescribed list, it should not be allowed to disclaim all responsibility if the report proves inadequate.

74 – 80: If commissions are not abolished, it is not sufficient to have to disclose the amount and nature of the fee/commissions or other remuneration and the service provided **– it must also disclose the impact of these charges on the amount that actually goes into the fund and is working for the consumer from day 1, because the reason so many people receive a shock when they ask for the surrender value in year 5 of a 20 year term product, is because so little of the money paid over is actually invested for them e.g. consumer hands over €10,000 and is not told that €9000 has been taken up front in commissions and charges so that only €1,000 is actually working for him and it takes 20 years of premiums to show any return.**

In answer to **question 5:** in some cases yes but suggestions as above

In answer to **question 6:** yes

In answer to **question 7:** yes as per comments above

In answer to **question 8:** Basically, risk arises in two main areas; 1. How/where the funds are invested 2. How/where charges are taken by the intermediary/ primary provider; the average consumer has no control on item 1, because this is technocrat area; the area of risk in item 2 is due primarily to **"commission selling" because all ensuing corruption/misrepresentation arises from that and the risk will remain until commission selling of financial instruments is banned;** the second area of risk that arises from point 2, for the consumer is that corruption/ misrepresentation that comes from the financial services providers saying that the broker/ intermediary is the "consumer's broker/ intermediary" but at the same time they are directly, also, paying that broker/intermediary money in the form of "commissions" in a manner/form unknown to the consumer who is paying a fee/commission to the broker/intermediary.

In answer to **question 9:** the 'traffic light system' there should be "**red and green only"**

Regarding **Product Producer** Responsibilities:

Yes, Product Regulation must be introduced to vet and authorise each product; too much financial damage has been done in too short a time after the introduction of dubious products; it only takes

seconds to transfer large sums of money for products but years of misery and legal fees to try and recover money taken; animal and human medicines must be vetted/ authorised because of a threat to consumer's health; financial products are a threat to financial health and therefore mental health; an ounce of prevention---------.

Yes, the product producer should be responsible for defining the target market

Yes, the product producer should develop a clear, accurate "**Training Manual"** for each product produced for training intermediaries.

No, it is pointless to expect the product producer to demonstrate that "imposed target levels" and "paid commissions" do not impair the intermediary's duty to the consumer because they both contain an inherent corrupting influence (see my discussion above on "Broker"). The broker/intermediary cannot act impartially as my agent, and fulfil his obligations to me as an agent when he is also taking payments from the product producer and thereby acting as his agent also.

In answer to **question 12:** yes

In answer to **question 13:** as answered above: 1st Review after 6 months (critical) then annually

In answer to **question 14: Yes;** hurdles, yes – but only from the producer/intermediary

In answer to **question 15:** I agree

In answer to **question 16:** I agree

Chapter 5: Knowing the Consumer & Suitability:

In answer to **question 1**: I agree with the list as put forward

In answer to **question 2,** I firmly believe that **"every person, who is not working in the financial services market and is therefore not familiar with the jargon used, is a vulnerable consumer"**

No. 13. This needs to be strengthened. Impact assessment should not be confined to a 2% rise in interest rate

No. 14. An interest- only mortgage is really dabbling in 'sub-prime lending' the only case for it is as a measure of assistance when hard times fall on a consumer in the course of a 'normal mortgage.

In answer to **question 3:** more is needed as in my comments above

In answer to **question 4:** yes

Chapter 6: Statements

No.1. This should be amended to make a provision for statements being returned to the primary provider/intermediary from the last known address or no contact acknowledgement from the consumer for over a year; there are cases where the new address was supplied but lost/not entered and nothing was done even though the premium was being paid at the required time by direct debit; life assurers in particular do not do enough to follow up on new addresses; **should consumers be asked for their PPS number on financial instruments as a means of tracking in the event of lack of timely response?**

Chapter 8: Rebates and Claims Processing:

No. 6. The same suggestion as per no.1. chapter 6.

No 16. 10 business days is not enough for something as important as a 'claim settlement offer'; the consumer could be away on business or holiday; **I recommend a minimum of 30 business days.**

Chapter 9: Arrears Handling:

No.2. reasonable time must be quantified as there is always a difference of enterpretation on this;

No 16. " more than 3" should be revised to "more than 2".

In answer to **question 23:** Yes

In answer to **question 24:** Yes

New Issue:

Financial institutions that have "cut deals (discounts)" for some clients and especially for their own staff must be required to do so for all and to explain to a client why it is refusing to do so in his/her case.

Arrears Handling, in the current economic climate of heavy unemployment, can easily lead to continuous default and legal action being taken; some consumers may be able to borrow from alternate sources on a long-term deferred basis but on more onerous terms and therefore approach the current lender to "offer a discount deal to clear the outstanding amount"; I am aware of instances where the financial institution has stated bluntly to consumers "no" we don't do that but I am also aware that the same financial institution did "cut deals" particularly for arrears for its own staff.

Chapter 10: Advertising:

No. 3. The adv. should also give the address and a telephone/e mail number; initial contact with the advertiser, very often, gives a bad vibe and is enough for the consumer to decide not to pursue it further.

No. 6. Small print should be banned completely in ads

No. 9. Replace "Reasonable" with--- assumptions----"must state source"

No. 11. (a) must state if "fee based" or "commissions based" as most consumers will assess independence on that basis and even then its not guaranteed

Chapter 11: Errors & Complaints

No. 9. Not good enough; I recommend: all verbal complaints must be logged and the consumer asked to put it in writing; if unable to do so (arthritis etc) the verbal complaint must be responded to in writing setting out the complaint and the verbal decision made and what to do next. **Most on-going agro stems from differences arising from verbal complaints.**

In answer to **question 17:** Yes

In answer to q**uestion 18:** No

In answer to q**uestion 19:** Yes

In answer to q**uestion 20:** Yes

Chapter 12: Records & Compliance

No.1. As per the above No. 9. in Chapter 11 - the written record must be forwarded to the consumer; it is not sufficient to keep a record because the consumer is not aware if it is an accurate reflection of the verbal – this may apply to the following points as well.

Chapter 13: Definitions:

" fair analysis of the market": This is too vague a definition for providing advice as it relies on a volume of contracts as a criteria; the intermediary could have made an initial error in interpretation on the first contract which is then replicated

"**inducement":** I vehemently disagree with excluding a "**disclosable commission**" from this definition; the most fundamental cause of corrupt, misselling of financial instruments is commission based selling; it is the reason for the banks breaking their own rules and your regulations and the only reason that the bankers suspended risk analysis and jeopardised themselves and the economy was because the financial gain to themselves, through commissions, made it personally worthwhile. Why do you think the UK is banning commission selling of 'financial instruments? For the same reasons I disagree with the exclusion of "**soft commission agreement".**