

Submission from One Direct (Ireland) Limited

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Introduction

With regard to the Consultation Paper CP47 while we find some of the proposed amendments contained therein to be useful and are in agreement with same, there are others which we are not in favour of. We also believe that a number of issues need further clarification.

We have taken this opportunity to outline our position below.

▪ Vulnerable consumers

Definition of vulnerable consumer (Chapter 13 Definitions)

The definition of consumer in the Code covers natural persons, groups of persons, partnerships, small businesses with a turnover of less than €3 million annually and members of a credit union.

The requirements of the Code were developed to provide protections to all consumers, regardless of capacity, capability or circumstance. However, having considered

- the findings during themed inspections (particularly those focussed on the provision of financial products and services to older persons),
- the recommendations made to us by the National Financial Abuse Working Group established by the HSE to reduce the incidence of financial abuse of older persons, and
- the findings of complaints investigated by the Financial Services Ombudsman,

it has become apparent that some level of differentiation of consumers is necessary in order to identify those consumers that require a greater level of protection. Such differentiation has been incorporated into the Code in the form of a definition of ‘*vulnerable consumer*’, which highlights various vulnerabilities that may affect some consumers. Where a regulated entity identifies vulnerability, such consumers must be provided with a greater level of care and protection when being sold a financial product or service.

We have defined a vulnerable consumer as ‘*a consumer that is vulnerable because of mental or physical infirmity, age, circumstances or credulity...*’ (Chapter 13). The definition goes on to provide an indicative list of circumstances that could render a consumer vulnerable. The inclusion of this definition in the Code means that regulated entities will now have to consider whether a consumer has any of the characteristics of a vulnerable consumer when making an assessment of the suitability of a financial product or service for that consumer.

A number of new provisions and amendments to existing provisions are designed to have the effect of increasing the protection for all consumers, and particularly for vulnerable consumers. Consideration of the following provisions would be particularly relevant where a regulated entity recognises vulnerability in an individual consumer –

Provision of Information to the Consumer - Verbal Interactions (Chapter 12, Provision 1)

Many consumers place a great deal of reliance and trust on what a regulated entity tells them during the sales process, in particular in relation to verbal assurances and promises concerning the safety and performance of a product or service. Where a verbal exchange takes place, we are proposing that a contemporaneous record of the verbal interactions must be maintained by the regulated entity to verify that such interactions took place and to record the nature of the information provided during such interactions.

Power of Attorney (Chapter 3, Provision 8)

The inclusion of a provision requiring a regulated entity to

- i) obtain a certified copy of a power of attorney, and
- ii) ensure that it operates within the limitations set out in the power of attorney,

is designed to protect the interests of consumers in situations where another person has been appointed to act on their behalf concerning certain aspects of their affairs. Where a person presents himself/herself to a regulated entity as an Attorney for a consumer with the power to make decisions on, and have access to, that consumer's financial affairs, it is important that the regulated entity obtains proof of the power of attorney and is aware of any limitations attaching to the power of attorney, to enable it to act in the best interests of the consumer.

Knowing the Consumer (Chapter 5, Provision 1)

The knowing the consumer provisions have been strengthened by the inclusion of a list of specific details which a regulated entity must gather from a consumer before offering, arranging or recommending a financial product or service. Such details include:

- the consumer's needs and objectives,
- the personal circumstances of the consumer,
- the financial situation of the consumer, and
- the consumer's attitude to risk.

When collecting information on the consumer's personal circumstances, financial situation, needs and objectives and attitude to risk, the regulated entity must have regard to any vulnerabilities that emerge from its interaction with the consumer.

Suitability (Chapter 5, Provision 10)

In line with the amendments to know the consumer provisions, the suitability provisions have also been enhanced and strengthened. In order to ensure that adequate consideration is given to the information provided by the consumer, the regulated entity must, at a minimum, consider and document whether:

- the product/service meets the consumer's needs and objectives,
- the consumer is able to meet the financial commitment associated with the product on an ongoing basis and/or is financially able to bear any related risks consistent with their needs and objectives,
- the consumer has the necessary experience and knowledge in order to understand the risks involved, and,

- the consumer may be a vulnerable consumer, and as such, has particular needs and circumstances that require due consideration.

We acknowledge that the introduction of what is essentially an additional category of consumer, and the incorporation of systems and procedures to recognise vulnerabilities and thus trigger the categorisation of those consumers as being vulnerable, will pose a challenge for regulated entities. However, given the concerns that have been raised about the sales of financial products and services to the older persons, we are committed to including provisions in the Code that require regulated entities to consider a consumer's vulnerabilities when providing him/her with a service.

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'?

No, in our opinion this list of circumstances is too expansive and should be restricted. We believe that the definition of a vulnerable consumer would not be relevant for all products and services and there needs to be more clarity around who it applies to. We also believe that this proposal conflicts with other acts which would need to be amended if this proposal was to take effect. For example, the Data Protection Act states personal information should be "adequate, relevant and not excessive". Firms should seek and retain only the minimum amount of personal data which is needed to achieve the purpose(s). Therefore, a number of the proposed circumstances that could render a consumer vulnerable, would in fact be not relevant and excessive for a number of products and services. For example, a consumer seeking a car insurance policy does not need to supply personal details such as educational attainment, income, etc and therefore an insurance company that seeks such information is indeed breaching the Data Protection Act.

Therefore, in our opinion this list of circumstances is too expansive and should be restricted. We believe that the following circumstances would not necessarily constitute vulnerability;

- Low level of educational attainment,
- those with a low income,
- those who do not have English as a first language
- those recently bereaved

However, we agree that the following circumstances could deem a consumer vulnerable;

- Those with a high level of indebtedness;
- Those with a poor credit history;
- Those whose mental capacity to make a decision is diminished;
- Those who have a substantial amount to invest who have little or no investment experience
- Elderly Persons, not necessarily nearing or just over the statutory retiring age
- Those suffering from a long term illness or disability or episodic illness

We also believe that the definition of a "Vulnerable Consumer" should not apply to all products sold by a regulated entity and that basic products such as general insurance products or basic savings products should be exempt from this rule.

The "Vulnerable Consumer" definition should apply where the nature and the complexity of the product so warrants it. For Example, a car insurance product is not a complex product as most providers now provide similar basic product offerings. Car Insurance products are annual renewable, and can be cancelled at any time and a pro rata return of premium applies. Therefore there is no detriment to the consumer. However savings and investment Products are more complex, whereby the

consumer can be tied into a contract for a number of years and may not easily be able to access funds. In this situation and in the area of sales of highly complex products there should be an onus on the regulated entity to identify if there is customer vulnerability.

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.

As outlined above, we do not agree with the expansive list of circumstances that denotes vulnerability and believe that they do not apply to all products and services. We think that this area needs further clarification.

- **Recommendations from the Review of the Intermediary Market**

Termination of appointments

The Report recommends that insurance providers should not terminate appointments based solely on target levels of business introduced. We believe that the power to cancel an appointment if certain levels of new business are not achieved has the potential to create a conflict of interest for the intermediary. On the one hand, the intermediary must recommend the most suitable product for the consumer; while on the other hand, it will be mindful of meeting the required new business volumes in order to retain an appointment.

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.

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

Yes, we agree with this proposal.

Remuneration disclosure

Requirements regarding disclosure of remuneration are contained in the European Communities (Markets in Financial Instruments) Regulations 2007 and the Life Assurance (Provision of Information) Regulations 2001 in respect of MiFID investment services and life assurance policies, such as term assurance, mortgage protection, serious illness, single premium bonds and regular savings, respectively.

The Report on the Review of the Intermediary Market recommends that remuneration should be disclosed to consumers on request in respect of the provision of non-life insurance by intermediaries. As outlined above, this recommendation has been included in the revised Code. In order to increase transparency further, we are proposing that regulated entities must disclose remuneration received or to be received from product producers in respect of areas not covered by the recommendation or the legislation referred to above. The proposed requirements are set out in Chapter 4, provisions 74 to 79.

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?

No, we do not agree with this proposal. We do not believe that disclosing further remuneration details to the consumer will be of any benefit to the consumer. The consumer has already been made aware that the product producers will pay remuneration to the distributor for the sale of the product. The Intermediary is already committed to completing a fair analysis of the market to find the most suitable product for the consumer, thus avoiding situations where the product producer who is paying the higher commission will be selected. . The consumer is only concerned with the product offering and the suitability of same for them and are not interested in the commercial remuneration details between the intermediary and the Product Producer. Therefore there is no benefit in making further disclosure details to the consumer.

▪ **Errors handling (Chapter 11, Provisions 1 to 7)**

In recent years, we have dealt with a number of situations where errors made by a regulated entity have resulted in consumer detriment. The current provisions in the Code focus on the rectification of errors once they occur and apply only to charging and pricing errors. We believe that firms should be more pro-active in monitoring and testing their systems and controls in order to prevent errors from occurring in the first place.

We propose expanding the Errors Handling section of the Code so that it applies to all errors that have resulted or may result in consumer detriment and requires firms to focus on error prevention as well as rectification. We are proposing that all errors that have resulted or may result in consumer detriment must be rectified within six months. In addition, regulated entities will be required to have procedures in place for the effective handling of errors and to maintain a record of the steps taken to resolve errors.

Our current approach to the reporting of errors is that material errors must be reported to us. This approach has led to inconsistencies in the interpretation of what constitutes a material error. We propose changing our approach so that in the future, regulated entities will be required to inform us about all errors that cannot be resolved within one month.

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?

No, we do not believe that the level of incidence of errors will be reduced as a result of the proposed new approach. Errors are not a deliberate act on the part of any regulated entity and we believe that they may still happen. We do believe that a timeframe for resolution of the error should be put in place. However we do also believe that possibly more clarity on what is to be deemed a “material error“, would allow for consistency of interpretation of the code in relation to errors handling. The introduction of guidelines in assessing a material error may be useful. I.e. what percentage of the book has been impacted or the highest consumer individual loss as a result of the error. This would allow the Central Bank to have a consistent approach across the industry in dealing with error handling.

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

No, errors may still occur.

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

Yes, we believe that this time-frame is appropriate.

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.

No, we believe that strict guidelines should be provided to allow regulated entities assess whether the error is “ material” or not. A one month timeline is not adequate time to rectify errors. We believe that a 3 month timeline is more appropriate and this increased timeline will give regulated entities the time required to plan customer communication, implement system upgrades and organise customer refunds, where necessary, in a organised and controlled manner.

▪ **Unsolicited contact (Chapter 3)**

We propose tightening the provisions in relation to unsolicited contact. Firstly, we propose reducing the times permitted for making unsolicited contact: unsolicited contact may only be made from Monday to Friday between 9:00 am and 7:00 pm.

Secondly, a regulated entity may not make an unsolicited visit or telephone call for the purpose of providing a product or service to a consumer, except in the case of protection policies. In the case of protection policies, a sale may not be concluded on a first unsolicited visit or telephone call alone. A regulated entity may only provide information on a first visit or telephone call. A sale may be concluded on a subsequent visit or telephone call, provided the contact is at least five days and not more than ten days after the first contact with the consumer.

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

No, we do not agree that the proposed times for permitting unsolicited contact are appropriate .We believe that 9.00am – 7.00pm is appropriate but it should also include Saturday’s.

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?

No, we do not agree with the restriction on the sale of products or services to protection policies only. We believe that this should be extended to include basic products and services also. We also disagree with the prohibition on the sale of protection policies on the first unsolicited contact. The regulated entity will have advised the consumer of the purpose of the contact, and if the consumer does not wish for the call/visit to proceed then the regulated entity will end it immediately. If the consumer wishes for the call/visit to proceed, then the regulated entity will carry on to provide the consumer with the information about the product, and the cooling off period that applies. If, based on the information that the consumer has received, they then want to purchase the product, then they should have the option to do so.

▪ **Small Print**

General Principle 6 in Chapter 2 of the Code requires regulated entities to “*make full disclosure of all relevant information, including all charges, in a way that seeks to inform the customer*”. We

are concerned about the amount of information that regulated entities include in the small print of advertisements, and that the inclusion of certain information in small print is not in keeping with the spirit of General Principle 6. Our view is that regulated entities should not include key information or qualifications in respect of a product or service in the small print of an advertisement. Any restrictions or limitations on a product or service or the availability of a product or service should, in our view, be highlighted in the body of the advertisement and in a font size that is equivalent to the predominant font size that is used in the advertisement.

Our proposal is to include a new provision in the Advertising rules stating that '*Key Information must be included in the main body of an advertisement*' and to include a definition of 'Key Information' as '*any information which will influence a consumer's decision with regard to purchasing or not purchasing a service or product*'.

We would deem '*Key Information*' to include 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.

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

No, we do not agree with the definition. Consumers do read the small print. Full product disclosure is provided in policy material and cooling off periods allow the customer to back out of contracts if they so require. If Key information is required to be included in the body of the advertisement, we believe that this could possibly lead to moral hazard.

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.

No, we do not think that you need to go further than proposed. We believe that consumers read small print as well as the main body of advertisements. If the advertisement is for a product or service that the consumer is interested in, then they will read the small print.

▪ Further Clarification needed

There are a number of other issues raised in the new draft code, which need further clarification as follows;

Chapter 8 Rebates & Claims Processing

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

We do not agree to this amendment in the code. Any charges that the consumer may owe the intermediary should be recovered once initial written consent is received from the consumer. Consent given during a recorded telephone conversation should also be acceptable. It is not practical to get written consent from the consumer at each instance.

Chapter 9 Arrears Handling

Does this section only apply to consumer credit?