By email: code@centralbank.ie

Consumer Protection Codes Department
Central Bank of Ireland
PO Box 559
Dame Street
Dublin 2

10 January 2011

Re: Consultation Paper CP47 – Review of Consumer Protection Code

Dear Sirs,

Introduction

We welcome the publication of the *Consultation Paper on Review of Consumer Protection Code* which you published in October and we are grateful to have the opportunity to comment on its content. This submission is made on behalf of both our general insurance and also our life assurance businesses in Ireland.

Zurich and Consumer Protection

At Zurich we are strongly committed to having in place robust consumer protection measures. In that context, we welcome the CBI's initiative to conduct a review the Consumer Protection Code and we are particularly appreciative of the opportunity to express our views in relation to it.

Insurers and Banks

In our detailed review of CP47 we found that in several respects, the requirements of the proposed Code are actually aimed principally at, or derive from practices conducted by credit institutions.

This view is reinforced by the fact that the format of the proposed Code has moved away from the sector specific chapters of the existing Code. As a result, it appears that a lot of the provisions that are clearly relevant to certain sectors of the financial service industry will now be extended to other sectors, such as insurers and insurance intermediaries, to which they bear little or no relevance.

Whilst Zurich accepts that the sale of insurance products must be subject to detailed consumer protection requirements, we are of the view that adequate recognition must be afforded to the different operations and types of business by banks as against that of insurers.

Even within the insurance industry, there are considerable differences between the products sold by our life business and those sold by our general insurance business and the approach of the current draft Code to fail to even differentiate between banks and insurers at a most basic level appears, in our view, to be unhelpful.

In recognition of those fundamental differences, we consider that a more reasonable approach would be to separately issue different consumer protection requirements in respect of insurers or at the very least, that the proposed Consumer Protection Code should be divided into two parts, Part I of which addresses the consumer protection measures applicable to banks, and Part II of which addresses the consumer protection measures applicable to insurers and insurance intermediaries. Alternatively, we favour a reversion

to the format of the existing Code so that it is clear to the reader as to which provisions apply to which type of business.

Specific Comments and Queries

I now set out some comments and queries which we have in relation to the proposed Code. We would appreciate the opportunity to meet with you to discuss theses issues in greater detail.

Issue Not Addressed in the Draft Code – Group Business

We are disappointed to find that the Code in no way reflects the practices which prevail when products are sold on a group basis. The proposed new Code ought to reflect the realities of how such business is transacted and we would be happy to discuss this further with you.

Chapter 2, Point No. 10 - Outsourcing

Chapter 2, point 10 seeks to re-impose an obligation on a regulated entity to ensure that any outsourced activity complies with the requirements of the Code. Whilst this requirement is contained in the current Code and we adhere to its terms, there are inherent difficulties requiring a regulated entity to assume the role of regulator vis-à-vis the third party to whom activities have been outsourced.

Chapter 3, Point No. 2 - Instruction

With regard to Chapter 3, point 2, we would welcome the inclusion in Chapter 13, of a definition of the term "instruction".

The two-day time limit for the processing of instructions presents practical difficulties.

A change of address might constitute an instruction, and perhaps could in theory be processed within a relatively short time. Our life business might receive a maturity instruction which might be processed outside the two-day time limit (for example the instruction got mislaid or there was a large number of simultaneous instructions due to a market event such as tax changes etc), however, it would be processed by reference to the price applicable on the date the instruction was received. In those circumstances, the customer has not suffered any detriment and we query whether such an instance should be regarded as a breach of the Code.

We would assert that a five business day time limit would ensure that the client's instruction is acted upon in a timely manner whilst also allowing the regulated entity to process an instruction outside the time limit as long as there is no detriment to the consumer.

Chapter 3, Point No. 4 - Receipts

The change here marks a significant change on the content of the current Code, and the effect appears to be to extend the provisions of S.30 of the Investment Intermediaries Act 1995 to all regulated entities. This will impose a significant additional administrative burden without any tangible benefits accruing to the consumer.

We are unclear as to why the receipting requirement in the current Code needs to be changed. This extra detail will result in added cost with little benefit to the Consumer.

Chapter 3, Point No. 7 – Warning Statement

The proposed obligation to place the warning statement "alongside the benefits of the product" is likely to give rise to some significant practical difficulties. The requirement to show warnings alongside the benefits would not seem necessary in product literature which may have a number of pages

describing the benefits of the product. It should be sufficient for the warnings to be placed in the most appropriate place – as is current practice.

Chapter 3, Point No. 13, 15 – 18 - Tying & Bundling Provisions

At page 21 of the summary which precedes the proposed Code, the CBI addresses the issue of "bundling" under the heading Sectoral Commitments in relation to the Irish Banking sector. It explains the context for these measures, as follows:

> "Earlier this year, Ireland gave a commitment to the EU Commission to implement a package of measures to support the restoration of competition in the Irish banking sector by, *inter alia*, improving customer mobility and enhancing consumer protection. As part of these commitments the Central Bank undertook to place the Irish Banking Federation's voluntary switching codes on a statutory basis and to include a number of requirements in the revised Code."

On the basis that these particular provisions of the Code relating to bundling specifically derive from a banking context, the Code ought to make it clear that points 13 to 18 (inclusive) in Chapter 3 only apply to credit institutions.

In circumstances where the bundling provisions are applicable to insurers, Chapter 3, point 15 should be amended so as to specifically exclude, from the ban on bundling, general insurance products that include several covers on the same policy. Examples would be: household insurance covering damage to buildings, contents, owners liability etc. in one product; commercial insurance covering fire, employers liability, public liability etc. in one product. We assume it is not the intention to include these products within the bundling provisions but it would be helpful if the proposed new Code clearly reflected this.

Chapter 3, Point No. 20(e)

Please clarify what activities are covered by this clause.

Chapter 3, Point No. 41 – Commission Structures

We feel that in view of the fact that the intermediaries in question would themselves be regulated entities, the onus of ensuring that the intermediaries act in the best interests of consumers ought to be a matter between CBI and those regulated intermediaries.

Chapter 3, Point No. 43 – Target Market

We are somewhat concerned at the proposed obligation to identify the "target market for a product" and also "the target market for which the product is not suitable".

Such an obligation will require insurers to make broad generalisations about groups of consumers. This appears to conflict with the extensive *Knowing the Consumer* requirements (consumer's personal circumstances etc.) and therefore this is an issue of concern for us. In those circumstances, we would welcome clarification from CBI as to how the target markets are to be identified and how an Insurer would be expected to communicate whether or not a client has been identified as being within the relevant target market?

Chapter 3, Point No. 44 – Provision of Information

Point 44 presents some practical difficulties as the level of information required to understand a product might differ from one intermediary to another. In recognising that it is not possible to provide for every single eventuality, we are of the view that the Code should be amended so as to delete the final sentence in point 44.

Other concerns which we have in relation to this provision are addressed in the context of Chapter 4, point 32.

Chapter 4 - Information About Products

In the context of life assurance, the Provision of Information Regulations already prescribe in considerable detail, the information to be provided to customers. We query whether the CBI's intent is to increase those requirements in the proposed Code, or whether CBI is seeking to bring the level of information provided by other regulated entities into line with those Regulations.

Chapter 4, Point No. 29 – Terms & Conditions

The inclusion of terms and conditions in policies means that both the insurer and the policy holder are both clear as to the scope and terms of the contract. By their nature, terms and conditions are open to being invoked by both sides in a contract. For example a unit linked life policy would have a management charge which is deducted monthly in accordance with the terms and conditions set out in the policy document. If we deduct the management charges in accordance with the terms and conditions, are we expected to write to clients each time a management charge is deducted? Such a requirement would considerably increase the administrative burden and cost and seems unnecessary.

We are firmly of the view that the operation of point 29 in practice would present difficulties. In general this is a very broad provision and it is not clear to us what type of activity the CBI is seeking to restrict. On that basis, we request that point 29 be deleted or that it be significantly redrafted so as to limit its application to specific and defined circumstances.

Chapter 4, Point No. 32 and 51Information

We make the following comments in relation to points 32 and 51.

Our life assurance business is obliged to comply with the Life Assurance (Provision of Information) Regulations 2001 (SI No 15 of 2001) which requires the business to provide policyholders with extensive details relating to the product.

It is not entirely clear how the requirements of point 32 will interact with the requirements in the 2001 Regulations.

Therefore, in our view it would be helpful if the information requirements imposed on insurers, or particular types of insurers and particular products were harmonised or aligned so that compliance with one set of requirements would suffice.

Chapter 4, Point No. 61 – Subject to Review

Given its centrality to the requirement being imposed under point 61, further clarity is required in relation to the intended meaning of "subject to review". For example, in the context of life assurance, does this include indexation, or top-ups?

Therefore, we are of the view that the term "subject to review" ought to be defined in Chapter 13.

Chapter 4, Point No. 80 – Schedule of Fees

The purpose behind this proposed requirement would appear to be principally directed at financial institutions such as banks. Therefore a question arises as to how such a requirement would operate in respect of insurance companies/insurance intermediaries.

For example, in respect of life assurance policies, the aforementioned Life Assurance (Provision of Information) Regulations provide for statutory disclosure of projected charges and intermediary remuneration to the client at point of sale rather than in a public area of a premises.

In our view, the proposed requirement to be imposed under point 80 needs to be revised so as to adequately reflect the different business models, products and practices prevalent in insurers as against banks.

Chapter 5 **- Knowing the Consumer and Suitability**

We are anxious to receive clarification from CBI on how Group Schemes should be treated in terms of Knowing the Consumer and Suitability.

In a Group Scheme for example:

- Where the policyholder is a company and the company is paying the full premium (i.e. no contribution from the employee and no advice has been provided to the employee) is it sufficient that the sales process is completed with the policyholder (the company)?

- Where the policyholder is a company and the company is paying the premium (i.e. no contribution from the employees) and the employee has made the investment fund choice, in addition to completing the Factfind with the policyholder (the company), presumably the employee should receive a Terms of Business, full Factfind, Reasons Why Letter, complete an Application Form, and receipt?

We request you to provide us with clarification as to whether such an approach is consistent with the proposed Code.

Chapter 5, Point No. 3 – Refusal of Services

Point number 3 proposes to compel a regulated entity to refuse to offer products or services to a consumer who refuses to provide specified information. This would appear to be an overly restrictive approach to take.

Consumers should be free to opt out of an obligation to provide certain levels of information on the understanding that they are aware that they are seeking limited advice

This proposed requirement could also serve to deny a consumer access to a product or service in circumstances where they do not wish to disclose personal information that they would rather keep private or which they believe is not relevant to the policy being purchased.

It is important to recognise that a full fact find may not be an essential requirement for the provision of a pure life cover policy to an individual. The same would be the case for most, if not all, general insurance products.

Consumers should be free to opt out of an obligation to provide certain levels of information and in this event the insurer/insurance intermediary should seek a waiver from the client similar to that under Chapter 5 section 20. For example, a client approaches a life company for advice – as part of the sales process he advises his financial advisor that he does not wish to disclose details regarding his assets and liabilities, however he still requires advice. In these circumstances it would seem unfair to the consumer that the financial advisor would not be able to offer the product or service sought. If a process similar to the Exemption from Knowing the Consumer and Suitability section was introduced, limited advice could be offered in this scenario and a waiver signed by the client confirming the following:

'The client contacted the financial advisor for advice on a product and/or service and they did not wish to disclose full facts on their personal circumstances. The client will also confirm that they are aware that the advice given was limited based on the details they disclosed to the financial advisor'.

Chapter 5, Point No. 10(d) – Due Consideration

In view of the importance of the term "due consideration" we would; welcome the inclusion of a definition of that term in Chapter 13.

Chapter 6, Point No. 3- Joint Accounts

Point number 3 is couched in terms which suggest that it applies only to banking institutions.

We would welcome clarification as to whether this applies to joint policyholders of an insurance company, where such a requirement would lead to 2 identical statements being posted to a husband and wife at the same address on the same day. Such a requirement would considerably increase the administrative burden and cost.

Chapter 6, Point No. 11 – Provision of Information

Our life assurance business is obliged to comply with the Life Assurance (Provision of Information) Regulations 2001 (SI No 15 of 2001) which requires the business to provide policyholders with extensive details relating to the product.

It is not entirely clear how the requirements of point 11 will interact with the requirements in the 2001 Regulations.

Therefore, in our view it would be helpful if the information requirements imposed on insurers, or particular types of insurers and particular products were harmonised or aligned so that compliance with one set of requirements would suffice.

Chapter 8, Point No. 5 - Rebates

Most general insurance policies include terms for dealing with small premium adjustment amounts e.g. waiving charges/refunds under or over a certain threshold as a result of policy adjustment. In many cases this rounding logic is built into rating software. Is this paragraph intended to outlaw such clauses? If so, in our view, this proposed requirement will add an additional cost burden to charging, collecting and administering customer choices in relation to this section. A better approach might be if CBI were to set a threshold which would apply across the board.

Chapter 8, Point No. 9(a) – Leaflet Distribution

The requirement to provide an InjuriesBoard.ie leaflet to potential claimants creates several problems:

- Additional cost to insurers to handle additional paper in post room despatch routines. There would be a need to integrate company printed material with third party material. This could require manual intervention if suitable automated despatch equipment is not available;
- The provision of a paper leaflet fails to recognise the availability of online, web-based resources;
- We may not have details of potential claimants to be able to issue a leaflet;
- Data protection legislation restricts the collection of pre claim personal information that appears to conflict with this paragraph;
- Providing a leaflet may be wasted effort and expense if the claim is actually settled quickly;
- Many of the subsequent claims paragraphs contain the requirement to supply written information to claimants. While these would add costs to the claims handling process it should be possible to include a suitable paragraph to provide contact details for InjuriesBoard.ie on the same basis.

Chapter 8, Point No. 11 – Provision of Loss Adjuster Details

In our view, the requirement to provide written contact details of Loss adjustors will create extra cost and may be redundant given that an appointed loss adjustor may have already made contact with the customer by the time a letter arrives.

Chapter 8, Point No. 16 – Settlement Offer

In many cases the settlement is agreed directly with the customer by phone or face to face. Is it therefore still envisaged that a written offer be made and what appears to be a 10 day cooling off period allowed.

In our view, it would be better to limit this requirement to cases where agreement is not reached or where the claimant requests time to give further consideration to an offer.

Chapter 9 – Arrears Handling

Is it intended that Arrears Handling provisions be applicable to insurance providers. If not, this should be clarified. We note that in the current Code, arrear and guarantees are addressed in Chapter 4 - Loans.

Chapter10, Point No. 18 – Target Market

We would welcome additional guidance in relation to how, in the CBI's view, a calculation of 50% of target market is to be reached in an insurance context.

Chapter 11 – General Queries Regarding Errors

A question arises as to what type of event or incident actually constitutes an "error" within the meaning of the proposed Code. For example, does mis-spelling a customer's name on a policy constitute an 'error'? Does the term

error as used in Chapter 11 apply to individual cases or only 'systemic' errors? The inclusion of a definition of the term in Chapter 13 might be of assistance.

We would welcome a greater degree of specificity around the trigger for reporting.

The move away from a materiality test to one based solely on timeframes is too restrictive. In our view, a better approach would be to produce additional materiality guidelines to those currently included in current CBI guidance on reporting regulatory breaches, rather than a setting a timeframe as the reporting threshold. For example, such guidelines could include:

- Number of customers impacted (absolute number and/or % of customers)
- Average value of error per customer (absolute value and/or % of average value of product)
- Aggregate value of error (absolute value and/or % of product revenue)

Chapter 11, Point No. 3 - Errors

Whilst many errors can be fully investigated within six months, we are concerned that the proposed six month time limit does not allow a sufficient amount of time to complete a full investigation into a complex error. In that context, we suggest that there should be scope for the time frame of 6 months to be extended if agreed with CBI in the case of a complex error.

Chapter 13 – Definition of Vulnerable Consumer

From a general insurance perspective, it seems inappropriate to apply the definition to the sale of non-life products. The need to purchase such a product is different to other financial products, (life assurance, savings, loans, banking products) as for example, motor insurance is obligatory. This would

also carry through to the other considerations relating to vulnerable customers in a non life context such as recording verbal interactions and requiring powers of attorney. In our view, these would appear to be excessive requirements in the context of non-life products.

Collecting and retaining information in order to support the definitions of vulnerable customers will entail the collecting of additional "sensitive personal data", which, from a data protection perspective is currently not required.

Objective criteria identified as indicating levels of vulnerability are not currently required for pricing purposes for general insurance. In addition there will be a significant added burden to make system changes to permit transfer of this information from Brokers to Insurance companies if the requirement is maintained.

It is also important to point out that there may be issues regarding the appropriateness of insurance companies making value judgements about customers based on what appear to be objective criteria and may therefore inadvertently stray into the realms of anti-discrimination legislation. We are aware of instances in the past of medical and age-related questions on proposal forms being challenged by customer complaints and Ombudsman cases.

The examples included within the definition could potentially capture a large number of customers e.g. those that are retiring soon – in our experience, many such customers know exactly what their requirements are and would be very surprised to be defined as vulnerable.

Concluding Remarks

We would like to re-affirm our commitment to strong consumer protection practices and these submissions are made in that context.

At a number of points throughout this submission we have sought clarification on specific issues. As mentioned earlier, we would very much welcome the opportunity to meet with you for the purpose of discussing our submission in greater detail.

Yours sincerely,

Dr. Brian Hunt
Head of Government & Industry Affairs, Zurich