

Joint submission by:

Irish Brokers Association (IBA),

Independent Mortgage Advisers Federation (IMAF)

and

The Professional Insurance Brokers Association (PIBA)

on the

**Proposals in relation to restrictions on use of the term “Broker” and “Independent”
CP 54**

Irish Brokers
association 

independent
mortgage
advisers federation 


PIBA

This submission outlines our joint response to the proposed additional restrictions on the use of the terms "broker" and "independent", contained in the second consultation paper on the review of the Consumer Protection Code (CP 54) on behalf of each organisation's members.

We are concerned about the additional proposed restrictions contained in CP 54 in relation to who can use the term "Broker" and "Independent" which we feel may have unintentional consequences. The IBA, IMAF and PIBA took part in the "Financial Regulator" led industry working group; which cumulated with the publication of the Review of the Intermediary Market report in December 2008, which recommended the reintroduction of the term "Broker" into the industry.

Our concerns relate to the wording highlighted in bold of the following provisions:

Chapter 4, Provision of information

4.19 The term 'independent' may only be used by an intermediary in its legal name, trading name or any other description of the firm where the intermediary:

- a) **provides all of its regulated activities** on the basis of a fair analysis of the market; and
- b) allows the consumer the option to pay in full for its services by means of a fee.

4.20 The term 'independent' may only be used in any trading name or other description of a regulated activity where the intermediary:

- a) **provides the regulated activity** on the basis of a fair analysis of the market; and
- b) allows the consumer the option to pay in full for the regulated activity by means of a fee

4.21 The term 'broker' may only be used by an intermediary in its legal name, trading name or **any other description of** the firm where the intermediary provides **all of its services** on the basis of a fair analysis of the market.

4.22 The term 'broker' may only be used in any trading name or other description of a regulated activity provided by an intermediary where the intermediary provides that regulated activity on the basis of a fair analysis of the market.

(Pg 22. CP54 Second Consultation on review of CPC)

Our concern is in relation to the insertion of the wording "*all of its services*" and "*any other description of the firm*" into the above provisions. We believe that this proposed wording is not consistent with what was agreed at the Review of the Intermediary Working group. The consequence of these insertions is that if an intermediary is giving fair analysis in relation to life products but not for example, an ancillary general product then they will no longer be able to use either the terms "Broker" or "Independent".

It would also affect intermediaries who may operate on the basis of fair analysis in relation to their life business but hold a single deposit agency. It may also affect where a general insurance intermediary is providing advice in relation to Health insurance, but as only one product provider operates through the broker market is unable to provide fair analysis of the whole market.

Below are the relevant excerpts from the working group report in relation to the terms “Broker” and “Independent”:

“The term 'broker' may be used by an insurance or mortgage intermediary that offers consumers a 'fair analysis of the market'. A 'fair analysis of the market' means providing advice on the basis of a sufficiently large number of contracts and providers available on the market to enable the broker to make a recommendation, in accordance with professional criteria, regarding which contract would be adequate to the customer's needs. The term 'sufficiently large' must be considered in the context of the product or service provided and the extent of the relevant market. The number of providers that constitutes 'sufficiently large' will vary depending on the number of providers operating in the market for a particular product or service and their relative importance in that market. Firms must consider the extent of the market and apply appropriate criteria to select the providers that would constitute a fair analysis of that market. A firm must be in a position to justify the range of products and services selected when acting on the basis of a fair analysis of the market.

Where the broker specialises in a particular area, its description should indicate the specialist area, e.g., pensions broker, marine insurance broker, etc. An intermediary can be a tied agent for a particular product type within a category of insurance but, in such cases, the intermediary may not use the term 'broker' for that category of insurance. For example, if an intermediary describes itself as a life assurance broker, it must act as a broker for all forms of insurance within the life assurance category and cannot tie itself for any form of life assurance. The firm could, however, be tied for one or more forms of general insurance. In such cases, it should explain in its terms of business that it acts as a broker for life assurance and as a tied agent for the relevant forms of general insurance.”

(Pg 18. Review of the Intermediary Market)

The Group recommends that the term 'independent' may only be used where all of the following apply:

- the intermediary provides services on the basis of a fair analysis of the market;
- the entity must allow the client the option to pay for its services in full by means of a fee; and
- if the entity is part of a group of companies to which it directs business, it must disclose the name of the group of which it is a part.

The option of payment by fee must be explained in advance to the consumer. Where a firm charges a fee and also receives commission in respect of the service/product provided to the consumer, it must explain to the consumer how the commission relates to the fee charged, e.g., whether it will be offset against the fee, either in part or in full.

Where the firm provides an independent service for some products and a more limited service for other products, it should explain the different nature of the services in a way that seeks to inform the customer.

It must ensure that there is no ambiguity about the range of services that it provides in an independent capacity.

(Pg 20. Review of the Intermediary Market)

The Intermediary working group met on 12 occasions between December 2007 and October 2008 and discussed issues relating to the intermediary market. It was as a result of the discussions within this working group and subsequent report which was published in December 2008 that the recommendation for the term “Broker” to be re-introduced was published. It was clear from the consumer research carried out that the term “Broker” was most familiar to consumers and it was for this reason that it was recommended that the term be reintroduced to the industry with the more confusing terms of “Multi-agency” and “Authorised advisor” to be discontinued.

We feel that the proposed insertions will inhibit the vast majority of “Brokers” from using this term in their name and description of the firm. This defeats the purpose of aligning industry terms and customer understanding. We feel that the provisions as agreed in the intermediary working group (relevant sections in bold), whereby it can be explained in the firm’s terms of business what services it provides on a “fair analysis” basis and what services are on a limited basis are sufficient to ensure that consumers are aware of the range of services a firm provides.

We can understand that the Central Bank of Ireland may have concerns regarding firms who are only “brokers” for a limited part of their services using the term Broker. We suggest that regulations could be introduced to restrict the use of the terms “Broker” and “Independent” in the firm’s name & description for firms where the majority of their services are not provided on a “Fair Analysis” basis. Separately such firms may be subject to more onerous disclosure requirements to consumers when selling on a non fair analysis basis ie. disclose non broker status for relevant activities and list the firms who they deal with.