

***Private and Confidential***

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

**BY EMAIL**

**Re: CP54 Second Consultation on Review of the Consumer Protection Code**

Dear Sir/Madam

EBS Limited ("EBS") welcomes this second opportunity to provide feedback to the Central Bank of Ireland ("the Central Bank") on the refreshed proposals in relation to the revised Consumer Protection Code (the "Code"). We re-state our support for the Central Bank's efforts in the area of strengthening consumer rights and our view that the existing Code has succeeded in meeting the objective of protecting consumers.

We welcome this Second Consultation as an important opportunity to further refine the contents of the Code. We note the amendments from CP47 and acknowledge the changes made by the Central Bank particularly in relation to vulnerable customers and Transfer of Mortgages. EBS continue to have a number of concerns however in relation to three particular aspects of the proposed revised Code, namely Advertising, Unsolicited Contact and Information about Remuneration.

**Advertising**

EBS believes that the current regime is well embedded within regulated entities and has served to demonstrably improve the standards of disclosure in advertisements. We remain concerned however at the weight of regulation being brought to bear on the important consumer information activity of advertising within the proposals in CP54. Further regulation could be counter productive in that Advertising will be significantly curtailed to the detriment of consumers. In fulfilling the detailed requirements within the Code, the objective of promoting a product and the potential positive benefits accruing to the consumer will be defeated as the message may be overwhelmed by regulatory disclosures and warnings. The provisions as they are currently outlined will seriously call in to question the commercial basis for advertising.

We re-iterate, for completeness, the significant arguments we canvassed at the first consultation regarding the overall potential unintended impacts which the current proposals may have.

- The requirements of the Code should not preclude entities from undertaking advertising or from advertising through certain media. Advertising performs an important function within a competitive market and to dissuade entities from undertaking this activity would not be in the interests of consumers or in the proper functioning of a competitive market in Ireland. This is increasingly important in an environment where

- products are being reviewed / withdrawn and even participants are withdrawing from the market.
- The Sales Process is well regulated in other Chapters of the Code, and in other regulation such as the Distance Marketing regulations. Consumers receive significant further information and documentation as part of the sales process (Product Literature, Know you Customer “fact finds”, Suitability Letters) and have significant rights and protections as well as a regulated Complaints Process and free means of redress in the Financial Services Ombudsman. Advertisements are merely a forerunner to the significant engagement with a financial services provider prior to the closure of a sale of a financial product.
  - We would encourage the Central Bank to take an holistic approach to revising advertising and consumer documentation and to perhaps consider whether its objectives would be better fulfilled if certain information were highlighted to the consumer in the Key Features Document as opposed to Advertising material.

### **Unsolicited Calls**

EBS recognises that unwanted personal visits from salespersons could be a significant nuisance and supports the Central banks objectives in this regard. Considered telephone contact, however, with customers and potential customers is a valuable and valid marketing exercise in the context of a competitive market. We are concerned that the proposals as outlined in the draft Code appear to severely restricting / prohibit this practice.

This activity is already fully regulated by the Data Protection Acts 1988 and 2003, (“the DPA”) and the Electronic Communications Regulations of 2003 and 2011. These are vigorously enforced by the Office of the Data Protection Commissioner. All regulated entities are well used to implementing the provisions of the DPA and for many years, have been including on all applications forms, separate sections for the purpose of allowing consumers to register their preference for receipt of direct marketing contact.

Regulated entities have call scripts and procedures to ensure that calls are handled in compliance with the Acts and with extant regulation. These calls are usually subject to quality assurance monitoring. The steps in Common Rule 36 provide a mechanism for consumers whereby any unwanted / inconvenient telephone calls can be dispensed with promptly and expediently by the consumer, and the consumer is thereby adequately protected by this measure.

### **Information about Remuneration**

We support the Central Bank’s general aim regarding information about remuneration and understand that the aim for requiring a written statement of commission is to:

1. Mitigate potential or perceived conflicts arising from offering or arranging products or services only on the basis of best commission of the agent.
2. Provide clarity to consumers and ensure that they have the relevant material information available to them in making an informed decision;
3. Ensure that regulated entities act “honestly, fairly and professionally in the best interests of consumers; and
4. Enhance competition in the market place for the benefit of consumers.

EBS has a network of tied agencies and own branches throughout Ireland and we believe that our customers are entitled to be informed about the remuneration received while we work on their behalf.



Whilst being cognisant of the aims of the Central Bank, we have a number of concerns in relation to the proposal.

First, we believe that by utilising a network of tied agents rather than open market intermediaries the conflict of interest is limited to whether the recommended EBS products and services is appropriate in light of our customers needs and circumstances. Our existing framework of customer review ensures that all sales are undertaken on a needs based approach. By employing this approach we believe that we mitigate the potential or perceived risk of conflict of interest arising from commission payments, ensuring that we always act in the best interests of our members.

We are also mindful that the primary focus of regulation should be to ensure that the product and service being offered or arranged are suitable, appropriate and competitive for each consumer. By adding commission as an additional factor there is a risk that cost conscious consumers are unnecessarily confused.

Additionally, in some circumstances, the final commission rate may not be known for a number of months and that any calculation or working example of the commission may not appropriately represent the true value in terms of the product or service being provided. Indeed, some commission models may well require complex mathematical modelling and calculations which may not be understood by all consumers. This, we fear, would detract from a needs based approach leading to the rejection of products or services which would otherwise have protected consumers and filled a financial need.

EBS supports the Central Bank in providing greater transparency for consumers. While we believe there are a number of obstacles we are encouraged by the initiative and believe that further investigations and consultation is required into the market before change is implemented.

### **Summary**

We welcome the Central Banks' second consultation process and believe that this initiative is appropriate and will improve the resultant Code. We are grateful to the Central Bank for its considerable work in reviewing the large body of feedback and for re-examining and revising the proposals. We would be happy to meet with Central Bank to expand or address any queries that the Central Bank may have on any of the above.

Yours sincerely



Neil McKeevèr  
Head of Regulatory Compliance