

Irish Brokers  
association



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

July 22<sup>nd</sup>, 2011

**Re: Irish Brokers Association Response to CP54**

Please find our response document to Consultation Paper 54 on the Consumer Protection Code. This response has been sent electronically and via post. We look forward to hearing from you in due course and are willing to meet to discuss any issues raised.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ciaran Phelan', with a long horizontal line extending to the right.

Ciaran Phelan

CEO  
Irish Brokers Association



Response Document  
CP 54 Consumer Protection Code  
Section 2  
July 2011

### **Scope of the document**

This document has been compiled by the Compliance Committee of the Irish Brokers Association setting out the practical issues relating to the provisions outlined in Section 2 of Consultation Paper 54 on the Consumer Protection Code.

Although we have not been asked to make any submission with regard to Section 1, we will be engaging with the Central Bank of Ireland to seek clarification on certain provisions within the proposed new Code so we can advise members accordingly.

3.14 A **regulated entity** is prohibited from **bundling** except where it can be shown that there is a cost saving for the **consumer**.

3.15 Prior to the sale of a bundled product, a **regulated entity** must provide the **consumer** with information in writing on:

- a) the cost to the **consumer** of the bundle;
- b) the cost to the **consumer** of each product separately;
- c) how to switch products within the bundle;
- d) how to exit the bundle; and
- e) any **charges** to the **consumer** of exiting the bundle.

3.16 Where a **consumer** wishes to exit a bundle, the **regulated entity** must allow that **consumer** to retain any product(s) in the bundle that the **consumer** wishes to keep, without penalty or additional **charge**, apart from the loss of any loyalty discount.

#### Issue

These provisions have a significant impact, particularly on general insurance brokers who convert sales at time of quotation and operate on a statement of fact / cover on the phone basis. Quotes can be converted to sales on the same day and the requirement to provide specific information in writing prior to the sale would impact on this. Significant changes (incurring additional cost) will need to be implemented to comply with this provision. It is also at odds with the Distance Marketing Directive and cooling off period contained therein.

Clarity is urgently required in this matter.

#### IBA Proposal

We would suggest a new wording for Provision 3.16 to state:

'Where the information specified in 3.15(a), (b) and (e) cannot be calculated immediately prior to the sale, the regulated entity must provide the consumer with indicative amounts. Where the order to proceed with the transaction is provided by telephone, the information set out in 3.15 may be provided by telephone provided it is given to the consumer prior to the order to proceed being received'

3.31 A **regulated entity** may only make an unsolicited personal visit or telephone call to a **personal consumer** who is an existing **customer**.

3.32 A **regulated entity** must not, for sales or marketing purposes, make an unsolicited personal visit or telephone call, at any time, to a **personal consumer** who is an existing **consumer** unless that **personal consumer** has given informed consent in writing to being contacted by the **regulated entity** by means of a personal visit or telephone call.

3.33 In order to comply with Provision 3.32 above, a **regulated entity** must have obtained the consent of the **personal consumer** in a separate document or separate section of a document, which includes a requirement for the **personal consumer** to sign that section/document and which sets out:

a) the purposes for which a personal visit or telephone call may be made if the **personal consumer** consents, and

b) the times and days for the proposed contact, which must be within the times and days specified in Provision 3.35.

#### Issue

In the area of unsolicited contact covered under provisions 3.31, 3.32 and 3.33, pressurised selling of financial products to consumers is of equal concern to the Association and to the Central Bank in light of the consumer detriment which can occur. Strict rules should be in place covering the circumstances of how and when unsolicited contact is allowed in the interest of protecting consumers from unwanted selling tactics which can be perceived as aggressive and overly intrusive. We have however concerns that the proposed approach is not consumer friendly in that with little exception, referrals made to Brokers relate to a real and genuine need for the provision of financial advice.

The two key issues for Brokers in the revised Unsolicited Contact provisions are:

(1) The inability of Regulated entities to make an unsolicited personal visit or telephone call to personal consumers who are not existing customers in any circumstances, even where the informed consent of the personal consumer has been obtained.

(2) The requirement to obtain informed consent in writing from personal consumers to make unsolicited contact with them. The principle is sound, but the precise details in section 3.33 are overly restrictive and don't appear to allow for consent to be given in an online environment or in a call centre environment.

Firstly the Association believes there may be a typing error in provision 3.32 and that it should read "existing customer" and not consumer?

**IBA Proposal**

The Association would go so far as to recommend to the Central Bank that existing Provision 3.31 be deleted entirely and that the words "who is an existing customer" be deleted from Provision 3.32.

This would leave a new Provision 3.31/32 worded as follows:

3.31 *A regulated entity may only make an unsolicited personal visit or telephone call to a personal consumer who is not an existing customer where that personal consumer has;*

*a) given informed consent to be contacted by the regulated entity in writing, by electronic mail, by tick box facility on a website, or by telephone where call recording exists OR*

*b) been referred to the regulated entity by a certified person providing professional services to the personal consumer or an existing customer of the regulated entity that is personally known to that personal consumer,*

This would permit Brokers and other regulated entities to make an unsolicited marketing call to a personal consumer, whether an existing customer or otherwise, only where we have that personal consumer's informed consent in writing.

**3.33** In order to comply with provision 3.32 above, a regulated entity must have obtained the consent of the personal consumer in writing, by a tick box facility on a website, by telephone where call recording exists or in electronic form. This requirement will not apply where the personal consumer has requested that his/her telephone number be passed to the regulated entity by the person making the referral where that person is a certified person which is providing professional services to the personal customer or an existing customer of the regulated entity that is personally known to that personal customer

## Chapter 7: Rebates and Claims Processing

## Provision 7.4

7.4 Where a premium rebate is due to a **consumer**, and the value of the rebate is €10 or less, the **regulated entity** must offer the **consumer** the choice of:

- a) receiving payment of the rebate;
- b) receiving a reduction from a renewal premium or other premium currently due to that **regulated entity**;
- or
- c) the **regulated entity** making a charitable donation of the rebate amount to a registered charity.

In respect of options b) and c), the **regulated entity** must maintain a **record** of the **consumer's** decision.

**Issue**

7.4 Where a premium rebate is due to a **consumer**, and the value of the rebate is €10 or less, the **regulated entity** must offer the **consumer** the choice of:

- a) receiving payment of the rebate;
- b) receiving a reduction from a renewal premium or other premium currently due to that **regulated entity**;
- or
- c) the **regulated entity** making a charitable donation of the rebate amount to a registered charity.

In respect of options b) and c), the **regulated entity** must maintain a **record** of the **consumer's** decision.

**IBA Proposal**

The Association feels that this is an unnecessary administrative burden and a signed Terms of Business Agreement clearly indicating the consumer's choice should a rebate become due is sufficient and should constitute prior written agreement in each instance and the Association will be advising our members of this interpretation.

Does the Central Bank concur?

**Chapter 9: Advertising****Provision 9.4**

9.4 The name of both the *regulated entity* publishing an *advertisement* and the *regulated entity* providing the product or service must be clearly shown in all *advertisements*.

**Issue**

The Association would like to point out that this provision in certain instances is not practical to implement and will confuse the consumer rather than seek to inform.

In a situation where an intermediary may wish to advertise the availability of a home insurance product and that product is available through 15 non life insurance companies and the intermediary has under Section 31 of the Investment Intermediaries Act (1995) an agency agreement with all 15 product providers, how does the obligation to clearly show all 15 regulated entities providing this product seek to inform the consumer?

**IBA proposal**

The IBA would ask that products classed as Insurance Policies under the Investment Intermediaries Act (1995) be exempt from this provision.



9.7 A **regulated entity** must ensure that **key information**, in relation to a product or service, is included in the main body of the **advertisement** for that product or service. This information must not be obscured or disguised in any way by the content, design or format of the **advertisement**.

### Issue

'Key information is defined as "any information which is likely to influence a **consumer's** actions with regard to a product or service"; We believe the requirement to show this information in an advertisement is suitable for 'direct response advertisements' where the consumer can effect the contract without further contact with the product producer. For non direct response advertisements which purpose is to generate a consumer's interest in a particular product or service, we believe that the protections afforded elsewhere in the Code, including those related to pre sale disclosure of information are adequate to meet consumer protection needs. We would have a concern that the requirement to include key information will place a significant cost burden on firm's wishing to advertise and make advertisements over complicated. The effect of these will be to reduce the amount of advertising in Ireland for financial products leading them to fall off a consumer's consciousness with a consequential fall off in uptake leading to customer detriment from below adequate coverage.

This provision appears to be a duplication of the provisions in the code dealing with the provision of information to the consumer. Advertising is a means to generate business BUT prior to providing a product or service and the consumer entering into any agreement, ALL information in relation to policy MUST be given to the consumer in order for them to make an informed decision.

### IBA proposal

Start the Provision with the words 'Where the Advertisement is a 'Direct response advertisement a product producer must .....

## Chapter 12: Definitions

### Issue

We have a concern in relation to the definition of Personal consumer ‘... a consumer who is a natural *person* acting...’.

The rest of the definition of ‘personal consumer’ continues ‘...acting outside his or her business, trade or profession’ which implies that the intention of the definition of ‘*personal consumer*’ is only to be a natural person. The use of the expression ‘*personal consumer*’ throughout the Code would support this interpretation.

### IBA proposal

We believe that the word ‘person’ should not be italicised as the definition of ‘*person*’ means either a natural person or a legal person.