By email: code@centralbank.ie

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

20 July 2011

Re: Second Consultation on Review of Consumer Protection Code – CP54
Consultation Paper on Review of Consumer Protection Code – CP47

Dear Sirs,

Introduction

We welcome the publication of the *Second Consultation on Review of Consumer Protection Code* which you recently published.

We are grateful to have the opportunity to comment on aspects of its content. This submission is made on behalf of both our life assurance business and our general insurance business in Ireland.

Whilst we note that the current round of consultation is intended to be confined to certain aspects of the draft Code, we feel that we must reiterate some of the issues which we raised previously as these still remain as issues of concern to us. In that context, we request that you give fresh consideration to all of the issues which we addressed in our initial submission.

Insurers and Banks

In our detailed review of CP47 and CP54, 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 differentiate between banks and insurers is disappointing.

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.

Product Producer Responsibilities

In respect of paragraph (d) on page 9 and para.3.46 et seq on pages 16 and 17, the proposed Code assumes that the Product Producer takes responsibility for 'policing' intermediaries. As intermediaries are regulated entities authorised by the CBI, subject to the CBI's Minimum Competency Requirements among other codes, policing of intermediaries remains the responsibility of the CBI.

We would appreciate if CBI were to detail the manner in which CBI expects product providers to police IFAs and ensure that the IFA passes on the information provided to them by Product Producers, to the consumer.

Information About Products

In respect of paragraph (c) on page 9 and para. 4.25 et seq on p.23, we must point out that the Life Disclosure Regulations already require that a high level of information be provided to customers.

Is the CBI seeking to increase the amount of information provided by life companies or simply to bring the level of information provided by other regulated entities into line with this? We would welcome some clarity on this issue.

Group Business

We are disappointed to find that the revised 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.

Knowing the Consumer and Suitability

Can the CBI provide some clarity 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 would ask that CBI provide clarification that such an approach is consistent with the Code? From our perspective it is essential that clarity is brought to bear in respect of this very important issue at the earliest opportunity.

Specific Comments and Queries

I now set out some comments and queries which we have in relation to the proposed Code. In several instances we are seeking clarification and we would welcome this clarification either in writing or in the context of a meeting with you.

Comment on Para. 3.5

The proposed receipt requirement 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.

Comment on Para. 3.12

On the basis that these particular provisions of the Code relating to bundling appear to specifically derive from a banking context, the Code ought to make it clear that points 3.12 to 3.17 only apply to credit institutions.

In circumstances where the bundling provisions are applicable to insurers, they 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.

Comment on Para. 3.38

Para. 3.38 appears to contradict para. 3.31, which states that an unsolicited personal visit or telephone call can only be made to a personal consumer who is an existing customer. This issue requires clarification.

Comment on Para. 3.46

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.

Can you please confirm that this provision will not apply to an intermediary who is tied to a single product producer.

Comment on Paras. 3.47 & 3.50

We are somewhat concerned at the proposed obligation (in para.3.47 & 3.50) to identify the "target market of consumers for the (investment) product". 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.

Comment on Para. 4.15

Implementing the necessary changes will take some time. We would ask that CBI please confirm that some 'lead-in' time will be afforded so as to allow entities make any necessary changes to Terms of Business.

Comment on Para. 4.17

Are any changes required to Terms of Business as a result of the requirements of para.4.15 considered 'material'?

Comment on Para. 4.43

In the context of life assurance, the Life Assurance (Provision of Information) Regulations 2001 (SI No 15 of 2001) 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.

Comment on Para. 4.48

Is it intended that para.4.48 (b) be applicable to life assurance providers or only to general insurance?

Comment on Para. 4.56

It would be of some assistance if the phrase "Subject to review" were to be defined. Does this include premium indexation? What about top-ups?
We would welcome clarification on CBI's intention in respect of this provision. For example, if a client chooses on the application form, to have premium indexation, we write to the client again before the premium is due to change to remind them of their choice and offer them the option of not proceeding with the premium indexation. Should the warning in para.4.56 be included on these letters?

Comment on Para. 4.62

In the context of life assurance, the Life Assurance (Provision of Information) Regulations 2001 (SI No 15 of 2001) already prescribe in considerable detail, the information to be provided to customers. We query whether 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. We also query whether para.4.62(k) applies to guaranteed products only?

Comment on Para. 4.68

Three business days is a very short period of time within which to issue such a document. We would suggest that ten business days is a more appropriate and achievable.

Comment on Para. 4.75

We would welcome clarification in relation to para.4.75. For Life Assurance policies, the Life Assurance (Provision of Information) Regulations provide for statutory disclosure of projected charges and intermediary remuneration to the client at point of sale. Is it intended that para.4.75 be applicable to life assurance providers?

Comment on Para. 4.80 et seq

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 para.4.80 needs to be revised so as to adequately reflect the different business models, products and practices prevalent in insurers as against banks.

Comment on Para. 5.3

Para.5.2 should apply to group schemes in general, not just PRSAs. We would ask that CBI please clarify why this provision is limited to PRSAs?

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

Comment on Para. 5.4

Para.5.4 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 para.5.27. 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".

Comment on Para. 5.17

Based on experience, regulated entities are rarely provided with 100% of a customer's circumstances during the 'Knowing the Consumer' stage, e.g. salary, other income, investments, savings etc.

Compliance with para.5.17 will be limited to the amount of information disclosed by the client to the regulated entity.

Comment on Para. 5.27

Para.5.27 appears to contradict para.5.4. Can CBI please clarify.

Does para.5.27 (a) apply to a 100% pure life cover policy?

Comment on Para. 7.4

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.

Comment on Para. 7.10

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.

Comment on Para. 7.17

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.

Comment on Para. 7.18

Is it intended that para.7.18 be applicable to life assurance providers or only to general insurance?

Comment on Para. 7.19

We question the appropriateness of this requirement in circumstances where a regulated entity refuses a claim for medical reasons. Naturally, such a decision would involve sensitive medical information.

If such information was sought by way of a Data Protection Access Request, the Data Protection (Access Modification) (Health) Regulations 1989 (SI No 82 of 1989), which provide that health data relating to an individual should not be made available to the individual, in response to an access request, if that would be likely to cause serious harm to the physical or mental health of the data subject, would apply. A person who is not a health professional should not disclose health data to an individual without first consulting the individual's own doctor, or some other suitably qualified health professional.

We are of the view that a similar principle should apply here.

Comment on Para. 9.11

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.

Comment on Para. 9.34

Perhaps CBI might give some consideration to re-wording the warning to read "Warning: If you invest in this product you may not get back 100% of the money you put in".

Comment on Para. 10.2

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.

Comment on Para. 10.3

Is the CBI proposing that where an error has been fully resolved (as outlined in para.10.2) within 40 business days of the date that the error was first discovered, there is no obligation to notify the CBI of the error?

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 which are of particular importance to us. As mentioned earlier, we await receipt of that clarification, alternatively we are happy to meet with you for the purpose of discussing our queries.

Yours sincerely,

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