



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

T +353 1 224 6000 F +353 1 671 5550

Bosca OP 559, Sráid Wapping Nua, Cé an Phoirt Thuaidh,
Baile Átha Cliath 1, Éire.

*Po Box No. 559, New Wapping Street, North Wall Quay,
Dublin 1, Ireland.*

www.centralbank.ie

BY EMAIL AND BY POST

Bríd Dunne

Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach

Leinster House

Dublin 2

5 September 2018

Re: Request for written submission on the Consumer Insurance Contracts Bill 2017 – Private Members Bill

Dear Ms Dunne

We refer to your letter dated 30 July 2018 inviting the Central Bank of Ireland (the Central Bank) to make a written submission on the above Private Members Bill. We welcome the opportunity to set out the Central Bank's views on the proposed legislation which we note is based on the draft Bill set out in the Law Reform Commission (LRC) Report on Consumer Insurance Contracts dated July 2015, on which the Central Bank previously provided its views in a letter to the LRC dated 13 October 2015 (attached at Appendix II).

We have set out below the Central Bank's views and observations on the draft Bill. Appendix I to this letter provides further technical, legal and drafting aspects of the Bill for consideration and possible implications or consequences arising from the Bill.

General observations on the Bill

The Bill contains a number of measures which the Central Bank supports in principle and believes would enhance the rights of consumers. In particular, the Central Bank is supportive of



provisions clarifying the duties of the parties involved and making the claims process more straightforward and fair (in particular in terms of what is expected of policyholders). The Central Bank welcomes the proposal to simplify the existing legislative architecture governing insurance and supports in principle the following objectives of the Bill:

- providing a more straightforward mechanism to allow third party beneficiaries intended to benefit under an insurance contract to make a direct claim against the insurer where this is appropriate (e.g. in the case of a corporate policyholder having entered an insolvency process);
- resetting the consumer's duty of utmost good faith by placing the onus more explicitly on the insurer to be clear on what information is required of the consumer (both before and during the lifetime of the policy);
- providing for proportionate remedies for honest mistakes or omissions by the policyholder that are not relevant to the claim made; and
- providing that, in circumstances (outside of fraud) where facts not disclosed by the policyholder are relevant to the claim, rather than an outright and total refusal in all cases, the insurer's right to refuse the claim would be explicitly subject to a compensatory and proportionate test, reflecting what the insurer would have done had it been aware of the full facts.

We would, however, urge that a cost-benefit analysis is conducted on the measures proposed in the Bill, having regard to the experiences of other jurisdictions where similar reforms have been introduced, as well as the experiences of the Financial Services and Pensions Ombudsman (FSPO) and the Personal Injuries Assessment Board (PIAB). It would appear that the Bill does not envisage significant roles for the FSPO and PIAB in the reform of the laws governing consumer insurance contracts. The FSPO has explicit jurisdiction to consider a complaint against a regulated financial service provider under a broad range of headings which go beyond simply whether or not the conduct complained of was contrary to law, while the PIAB provides an avenue to many claimants to pursue compensation without the associated legal cost incurred through litigation. In our view, many of the points of flexibility and fairness sought by the Bill might be catered for by the FSPO and PIAB and, therefore, the views and experience of both bodies on the utility and drafting of the reforms proposed should be sought.



The Central Bank is also of the view that a number of the proposed measures in the Bill, particularly regarding pre-contractual and post-contractual information and claims handling, may already be addressed in whole or in part by the Central Bank's Consumer Protection Code 2012 (the Code) or domestic and European insurance legislation. We provide further detail on these measures below and in Appendix I to this letter. While the Central Bank welcomes any effort to simplify the statute book in respect of consumer insurance contracts, there is a concern that the introduction of measures which overlap or are inconsistent with existing legislation will further fragment the legislation in this area.

Observations on specific aspects of the Bill

In addition to the above, some specific observations on aspects of the Bill are set out below:

Scope - insurance intermediaries

We note that the Bill applies only to insurance undertakings and that insurance intermediaries are specifically excluded under section 2(2)(a). Given that consumers deal very frequently with insurance intermediaries in respect of the sale of insurance products, the Central Bank is of the view that further clarification is required in the Bill regarding the role and responsibilities of insurance intermediaries. For example, the Bill imposes requirements on insurance undertakings in obtaining information from consumers. However, under the Bill as currently drafted it is not clear if responsibility would lie with the insurance intermediary in a situation where the intermediary failed to ask all necessary specific questions on their proposal or application form. The Central Bank is of the view that the provisions in respect of the form of contract of insurance and information to be provided by the insurer, the right to withdraw (cooling off period), renewal of the contract of insurance and cancellation of the contract of insurance should also apply to insurance intermediaries.

Pre-contractual duty of disclosure

The Central Bank welcomes the Bill's proposal to place the onus more clearly on insurers to be clear on what information is required of the consumer (both before and during the lifetime of the policy).



However, there are a number of provisions in the Code, the Life Assurance (Provision of Information) Regulations 2001 and European Union (Insurance and Reinsurance) Regulations 2015 that may overlap with provisions of the Bill.

In particular, Chapter 4 of the Code contains detailed provision of information requirements for regulated entities including in relation to the presentation, clarity and legibility of material provided to consumers. This Chapter also requires regulated entities to provide pre-contractual information to consumers about the regulated entity and its regulated activities, as well as information about products including charges, main features, restrictions, terms and conditions. The General Principles of the Code also require that a regulated entity must ensure that it seeks from its customers information relevant to the product or service requested.

In the life assurance context, Regulation 6 of the Life Assurance (Provision of Information) Regulations 2001 (S.I. 15/2001) provides that specific information (to be set out in a clear and accurate manner and in a specified format) is to be provided by an insurer or insurance intermediary before a client signs a proposal or an application form for a policy of life assurance. There are also a number of pre-contractual disclosure requirements for insurers provided for in the European Union (Insurance and Reinsurance) Regulations 2015, such as requirements to provide information on the law applicable to the contract and complaints handling arrangements.

The following recent legislative developments at an EU level introduced pre-contractual disclosure requirements which should also be considered.

- The European Union (Insurance Distribution) Regulations 2018 (IDRs) which transpose the Insurance Distribution Directive come into effect on 1 October 2018 and aim to improve consumer protection by creating common standards across insurance sales and ensuring proper advice. The IDRs include mandatory pre- and post-contractual disclosure requirements for insurance distributors and specifically a requirement to provide a standardised Insurance Product Information Document (IPID) for non-investment-based insurance products. There are a number of relevant disclosure requirements in the IPID, for example in relation to product features and exclusions.



- The Regulation on Key Information Documents (KID) for Packaged Retail and Insurance-based Investment Products (the PRIIPs Regulation) came into effect on 1 January 2018 and introduced a requirement for manufacturers of packaged retail and insurance-based investment products (PRIIPs) to produce a pre-contractual disclosure document in the form of a KID. The PRIIPs Regulation lays down uniform rules on the format and content of the KID and on the provision of the KID to retail investors in order to enable them to understand and compare the key features and risks of the product against other similar products. There are a number of relevant requirements for the KID relating to clarity, legibility, disclosure of charges and key features of the product.

We are of the view that these requirements may overlap with certain pre-contractual disclosure requirements in Section 8 of the Bill. Further detail is provided in Appendix I to this letter.

Post-contractual duties

The Central Bank supports the Bill's proposal to replace the post-contractual duty of good faith with specific statutory duties, including a duty on insurers to handle claims promptly and fairly. However, there are a number of Code requirements with respect to post-contractual information (Chapter 6) and dealing with claims (Chapter 7) which may overlap with areas of the Bill. Again, further detail is provided in Appendix I to this letter.

Unfair and otherwise onerous terms

The Central Bank is of the view that the existing European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. 27/1995) (Unfair Terms Regulations) deals adequately with the issue of unfair terms in consumer contracts. The Central Bank, therefore, is of the view that it is unnecessary to include detailed provisions in the Bill regarding unfair terms.

Renewal of the Insurance Contract

Section 10(1) of the draft Bill broadly reflects Regulation 5(1) of the Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) (S.I.74/2007) Regulations. However, it should be noted that the Cost of Insurance Working Group (CIWG) Report on the Cost of Motor Insurance recommended that the notification period for the renewal of motor



insurance be increased from 15 to 20 working days. The Central Bank issued a Consultation Paper in November 2017 seeking views on the proposed amendments to S.I.74 as recommended in the CIWG Report and a further Consultation Paper was issued on 3 August 2018 seeking views on a further proposed amendment suggested in one of the submissions to the November consultation. Responses to the second Consultation Paper are due by 14 September 2018. It is proposed that all amendments to S.I.74 will be made collectively in Quarter 4 2018.

In the life assurance context, Sections 10(3) and (4) of the Bill appear to broadly reflect the provisions of Regulation 9 of the Life Assurance (Provision of Information) Regulations 2001.

Our detailed suggestions in relation to the renewal provisions in the Bill are set out in Appendix I to this letter.

Cancellation of contract of insurance

Where an insurer cancels an insurance contract, the Central Bank is supportive of the inclusion of an explicit provision in legislation in relation to refunding the balance of the premium for the unexpired period of insurance without any further cost to the consumer (Section 11).

Cooling off periods

The Central Bank supports the proposal in Section 9 of the Bill that a consumer should be entitled to withdraw from an insurance contract by giving written notice, subject to a number of exceptions. As outlined in Appendix I to this letter, the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004 provide for cooling off periods for life and non-life insurance products provided on foot of distance communication. In addition, in relation to life assurance contracts, the European Union (Insurance and Reinsurance) Regulations 2015 provide for a 30 day cooling off period. Section 9 of the Bill appears to provide an additional cooling off period for the category of insurance contracts currently not covered, i.e. face-to-face non-life insurance contracts. The Central Bank considers this to be a positive measure subject to our drafting suggestions and some further considerations (e.g. that the exclusion of contracts renewed from the right to withdraw should be considered) in Appendix I to this letter.



Regulations and Codes of Practice

The Central Bank notes the proposal in Section 3 of the Bill that further details concerning any formalities in a consumer insurance contract can be provided for either in Regulations to be made by the Minister for Finance or in a code of practice to be issued by the Central Bank. However, the provision fails to reflect the trend which favours providing the Central Bank with powers to make technical regulations of this nature in the financial services regulatory area (including existing powers to do so under Central Bank (Supervision and Enforcement) Act 2013). In addition, the Central Bank already has the power to make regulations to include provisions “*specifying the information to be given to customers by regulated financial service providers....*” Moreover the distinction in this part of the Bill between the role of the Minister and that of the Central Bank, and its consistency with existing respective roles of the Central Bank and Minister, is unclear.

Designated regulatory body

Certain provisions in the Bill impose regulatory obligations on insurers (i.e. sections 8, 9, 10, 11 and 14). However, we note that the Central Bank has not been expressly designated as the regulatory body to supervise or enforce these regulatory provisions. The remaining provisions (i.e. sections 5-7, 12-13, and 15-21) do not contain regulatory obligations but rather are enforceable in the courts or through the FSPO (please note there is reference to the enforcement of such provisions in the courts but not to the FSPO and the Bill should be amended to bring such provisions within the remit of the FSPO). Consequently, if it is intended to designate the Central Bank as the regulatory body for such requirements, it is our view that the Central Bank should be designated as the regulatory body for sections 8, 9, 10, 11 and 14 but not for any other parts of the Bill.

Article 2(1) of Decision 98/415/EC requires that national authorities consult the ECB on any draft legislative provision “within its field of competence pursuant to the Treaty” and sets out various matters which are to be explicitly considered as within its competence. If the Central Bank is provided with supervisory and enforcement powers under the Bill, consideration should be given to the obligation to consult the ECB.



Effect of Codes of Practice

The status of statutory and non-statutory codes in litigation has been a matter of debate for some time. The Central Bank supports the proposal in Section 4 of the Bill that relevant provisions in codes of practice should be admissible in evidence for a court or other adjudicatory body such as the FSPO. However, the Central Bank would have a concern about a legislative reform on this matter being limited to one financial services sector.

Technical and drafting suggestions

The Central Bank would like to provide some suggested drafting and technical amendments to the Bill. These suggested amendments are included in Appendix I to this letter.

Yours sincerely

Derville Rowland

Director General Financial Conduct