



**The PIBA submission on the second consultation on the Review of the Consumer  
Protection Code  
Consultation Paper CP 54**

The Professional Insurance Brokers Association (PIBA) is the largest independent representative body for insurance and mortgage brokers with nearly 900 member firms throughout Ireland. This submission outlines the response, on behalf of PIBA members, to the additional proposals contained in Section 2 of the second consultation paper on the review of the Consumer Protection Code - CP 54. Also included are other issues which we included in the previous PIBA submission, which we were disappointed to find have not been addressed or included for debate in the second consultation paper.

## **Section 2**

### **Unsolicited Contact**

#### ***Personal contact with Consumers***

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

This proposed change has caused the greatest amount of concern amongst the membership. We can understand that the Central Bank of Ireland is trying to avoid inappropriate or pressurised selling, however, we believe that the current restrictions whereby unsolicited contact can only be made in relation to protection policies only is sufficient to address these concerns.

We note that unsolicited contact of non-existing customers was previously prohibited in 2001 and that the Central Bank in January 2004 relaxed these rules for protection only products after consulting with industry bodies and a number of consumer groups who at the time favoured the active selling of protection policies. The need for adequate Protection provision is of great importance for consumers. Research commissioned by Irish Life carried out by Amarach Research indicated that:

- Almost 50% of the Adult population in Ireland has **NO** Lifecover – that’s approximately 1.6 million people
- Of the 50% of people who have Lifecover, 2 out of 3 of this segment only have enough to cover their mortgage
- On this basis:
  - 1.6 million have NO Cover
  - Only 1/3 of 50% have cover other than Mortgage Protection
  - Out of a population of approximately 3.2 million only 528,000 people have cover beyond mortgage protection
  - Therefore there are 2.6 million people with no adequate cover

- On top of that the estimate is 75,000 babies will be born in 2011 – that equates to 75,000 families with real needs as their lifestyle and needs change
- 1 in 5 people surveyed – said they are actively considering buying a life assurance product within the next 12 months

We would pose the question to the Central Bank –if intermediaries cannot contact potential customers how will this coverage be put in place?

Generally speaking consumers of protection products have to be prompted to identify the need for protection for themselves and their families. A regime prohibiting intermediaries to proactively contact consumers will lead to bias insurance product distribution through Banks and other tied outlets, which ultimately will deny consumers independent advice, choice and access to highly competitive rates in premiums. If the proposed insertion is made in the code it will restrict the ability of intermediaries to contact potential consumers, which will needlessly restrict the market and lead to a serious lack of protection coverage in the market. It is very common for existing clients who were happy with the service provided to them to refer family and friends to an intermediary. Under the proposal outlined currently, this would no longer be permissible as intermediaries would no longer be able to contact these potential consumers. The proposal will also prevent referral agreements. Referral agreements between intermediaries and other intermediaries (eg. between a life intermediary and a general intermediary) and Accountants are commonplace in the industry.

Feedback received from members has indicated that the proposal in its current form will inhibit the ability of intermediaries to expand their client base and will ultimately mean the closure of their business. The knock on effect of this will be the loss of jobs in the industry.

Given the serious consequences of the proposed changes in this area and the effect on an intermediary's business, we would request that the Central Bank outlines the reason for introducing these restrictions as there is no knowledge in the industry of an abuse of the current cold calling provisions. The issue has not been highlighted i.e. there has been no reported cases in any of the Data Protection annual reports which would indicate that this is a problem. We believe that the existing restrictions whereby contact can only be made in relation to protection policies within certain time parameters adequately protect consumers from inappropriate selling.

*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.

We believe that the above proposals interfere with the client/broker relationship. Most insurance products require regular contact between intermediaries and clients and the above proposal will hinder this relationship. For many intermediaries, client banks have been built up over the years and the proposal if introduced will prevent intermediaries from contacting these clients as they will not have a signed confirmation from the client that the intermediary can contact them.

3.38 Where a personal visit or telephone call to a consumer other than a personal consumer is as a result of a business lead or referral, a regulated entity must:

- c) disclose to the consumer the source of the business lead or referral supporting the contact, and
- d) retain a record of the business lead or referral.

PIBA requests clarification in relation to this provision - Can intermediaries continue to contact potential consumers such as self employed individuals and partnerships as previously permitted by sourcing contact details in trade telephone directories?

## **Chapter 4: Provision of Information**

### ***Restrictions on the terms “Broker” and “Independent” - Provisions 4.19 – 4.22***

PIBA is opposed to the further restrictions included in these provisions and is making a joint submission with the IBA and IMAF specifically on this issue.

## **Comments regarding revised code with incorporated changes**

### **Chapter 3: Common Rules**

#### **Requirement to receipt Direct Debits and Payroll mandates**

PIBA welcomes the removal of the obligation to receipt direct debit and payroll mandates.

## **Conflicts of Interest**

3.23 –The reference to remuneration arrangements should be deleted. We believe that this is too vague and will cause confusion and impede normal commission variation in the market.

There should be no restriction in relation to appropriate remuneration incentives for use of technology systems by intermediaries as this adds benefits to the service provided to consumers and also saves costs to the product provider.

3.24 – PIBA feels that the wording “in circumstances where this could create a conflict of interest between the intermediary and the consumer” should be removed from this provision as this may lead to situations where a Product Provider can attempt to argue that the cancellation of an agency or imposition of target levels does not create a Conflict of Interest. This wording was not envisaged by the Intermediary Working Group.

## **Product Provider responsibilities**

3.46 – Product Providers should not be permitted to impose targets on intermediaries in any circumstance to retain agency appointments.

3.47 – PIBA is mindful of the need to promote consistency in the risk assessment of products. PIBA believes the first step should be to ensure that each Product Provider conducts a risk assessment of the product they manufacture and clearly communicates its views to Brokers and consumers. The provider must also be made stand over that view if challenged at a later stage.

## **Chapter 4: Information about regulatory status**

Provisions 4.9 – 4.11- PIBA believes that the requirement to include the disclosure warning statement as outlined by a previous Central Bank communication is sufficient rather than obliging firms to have two separate letterheads or two separate websites, which will mean additional costs for intermediaries. The requirement to display the relevant warning achieves the desired consumer protection more effectively than separate letterhead or separate section of the website which has no warnings and the consumer may be unaware that it falls out of the remit of regulation by the Central Bank of Ireland.

Provision 4.24 - We believe that this provision should be extended to require that the following warning be included on all marketing literature of Banks & Direct Sales:

Warning: You are only been offered advice in relation to one Product Provider. You may wish to seek independent advice on similar products available in the marketplace.

## Insurance products

Provision 4.45 - Underwriting will generally be necessary before insurance loadings are known i.e. these will not be known at quotation stage.

Provision 4.47 - We would question the rationale for identifying underwriters on renewal notices. General Insurance Brokers usually conduct search for clients and send the best option to the client – sometimes without the underwriter identified. The proposal here would force disclosure of search options and allow the client to “free ride” on the Broker services and perhaps complete the insurance elsewhere.

## Provision of Information

Provision 4.50 – We have concerns over the wording in this provision albeit an existing code provision. The nature of serious illness cover is that cover is limited to illnesses defined by the policy. The words “restrictions, conditions and exclusions” could apply to every conceivable event outside these definitions. The word “conditions” could apply to every policy term in the policy document. The key information that a consumer needs to know is that cover is limited to illnesses defined in the policy and attention should be brought to specific policy exclusions.

We therefore suggest that provision 4.50 be amended to read as follows:

“A **regulated entity** providing serious illness policies must, before completing a proposal form, explain clearly to the **consumer** that cover is limited to illnesses defined in the policy document and explain clearly any express exclusions that attach to that policy. “

Provision 4.52 - This should be dated from point of policy issue. We would suggest 15 days from policy issue with an obligation on product producers to send documents to Brokers within 5 days of issue if they are passing them to clients.

Provision 4.56 - It should be an option to use “will” rather than “may” in the warning where it is certain the premium will rise.

Also this provision needs to clarify that the premium increase referred to is an increase in premium for the *same* benefits, and hence does not cover policies where the premium will increase and where the cover is also increased, e.g. automatic indexation of cover and premium under term assurance policies which have guaranteed premiums for the term of the policy.

## **Investment Products**

4.62 – There is no reason for this to be a standalone document, there should be option for this information to be incorporated in existing documentation which is provided to the client. Member feedback has advised that consumers often comment on the ream of information they already receive so increasing the number of documents a consumer has to review will reduce the impact of the information supplied.

## **Information about charges**

Provision 4.75 - This is not an appropriate provision for the intermediary market. Fees are a tiny fraction of the intermediary market – even for fee based brokers whose clients invariably choose the commission option.

## **Information about remuneration**

Provision 4.76 - For products other than insurance products the disclosure regime should be similar to that proposed for non-life insurance.

Provision 4.77 - We do not believe it is appropriate that the Central Bank of Ireland force intermediaries to outline services they will conduct for the customer in return for recurring commissions. The basis of recurring remuneration may be deferred initial commission or for services conducted for the product producer. The wide variety of policies and amounts of recurring payments would make any description of services meaningless, generic and generalised.

## **Chapter 5: Knowing the customer and suitability**

Provision 5.04 - The information sought may not be critical to assess suitability and there may be “work around questions” with the client where certain information is withheld.

We believe the regulated entity should be allowed, in the circumstances outlined in Provision 5.4, to proceed with a product recommendation, subject to an appropriateness test, similar to that applying under MIFID to execution only business.

## **Mortgages**

Provisions 5.06 -5.08 - We note the removal of the provision (Chapter 5: Knowing the Consumer, provision 6 of CP 47) enabling mortgage intermediaries to submit signed declarations to the lender for each mortgage application, to confirm sight of all original documentation.

PIBA questions the reasoning for the removal of this provision. We would also like to state that it should not be mandatory for the lender to sight documentation evidencing the consumer's identity where intermediaries have signed a declaration confirming they have sighted original ID documents. This proposal is impractical particularly for consumers of intermediaries in rural areas who would have to post the required documentation. Consumers may be wary of sending original sources of ID such as passports, driver's licences to lenders, where they would not have access to the documents for a number of weeks whilst the lender is processing the application.

PIBA requests that the existing provision Chapter 4 (loans), Provisions 14 of the Consumer Protection Code is reinserted in the revised code and that lenders can proceed without having to sight documentation evidencing the consumer's identity where they have a signed declaration from an intermediary confirming same.

### **Statements of Suitability**

Provision 5.21 - PIBA would like to reiterate that it believes that the provision of the Statement of Suitability/Reason Why letter should be permissible up to the conclusion of contract or expiry of cooling off period, if later. Members have consistently outlined that the current requirement is impractical. For example, if the consumer is being presented with options at the point of sale, the reason why letter will be a strategy statement with different options – what relevance will this be to the consumer if he is reviewing it in five years; surely the specific option selected and salient details for this would be better to have in a post point- of- sale reason why letter? We would request again that this issue is investigated prior to the publication of the finalised code.

PIBA does not believe that there should be a 'most suitable' requirement when a provider offers a range of product options to the consumer. IMD currently only requires an '*appropriate*' recommendation in relation to fair analysis advice, while MIFID only requires '*suitability*' where investment advice is being provided. Therefore, a 'most suitable' requirement is goldplating IMD and MIFID requirements.

In any event, 'most suitable' at the point of sale is a subjective judgement in the case of many pension and investment products, where future benefits may not arise for many years and will be dependent on future investment returns, which cannot be predicted in advance.

Provision 5.24 - PIBA believes that this provision is superfluous. The Statement of Suitability should contain the reasons that the specific product is most suitable to the client's needs and objectives and outline the characteristics of the product. It is unnecessary to detail conversations with the client or



address queries which the consumer may have had and which are being answered verbally to their satisfaction and not a core reason for the recommendation.

Provision 5.26 - We feel that the requirement to issue statements of suitability for non-life insurance products should be removed completely; as these are demand driven products, where the consumer can (in most instances) define much of their own needs and price competition regulates the market effectively. This is especially the case given that these products are annually renewed giving consumers the opportunity to change providers every year.

#### **Exemption from knowing the consumer and suitability**

5.27 - PIBA believes an insertion should be made into the Consumer Protection Code to allow for a Basic Insurance products exemption from the knowing the customer and suitability requirements similar to the exemptions outlined for deposits with a term of less than a year.

a) PIBA feels that the criteria for determining execution-only sales be expanded to include where a client determines their own need and advice is only provided in relation to the choice of provider.

#### **Chapter 7: Rebates and Claims Processing**

Provision 7.4 - PIBA would like clarification that it is sufficient for a firm to outline within their Terms of Business the treatment of rebates and provided the client signs an acknowledgement of this, the provision is satisfied.

Provision 7.5 – PIBA believes that the obligation for a reminder to be sent to a client by an intermediary is superfluous and it should not be the responsibility of the Insurance intermediary to remind the client about the cashing of a rebate cheque once they have sent the rebate cheque in the first instance.

#### **Chapter 9 – Advertising**

Provision 9.23 - requires acronyms to have a “clear and understandable definition”. This may be challenging for some regulatory required disclosures, where the use of such terms is not standardised in the industry, e.g. CAR and AER are used interchangeably.

We suggest that the Central Bank provide a list of clear and understandable definitions for commonly used acronyms used in the financial services industry, and such definitions be included in the CPC.

## **PRSAs**

We believe that Appendices B and C in relation to PRSAs add little value to the consumer and are no longer required for the following reasons:

- The requirements effectively assume that a consumer is always better off with a Standard PRSA than with a non Standard PRSA, particularly in relation to charges. This is not necessarily accurate for a wide variety of reasons:
  - Some Standard PRSA products in the marketplace have higher charges than other non Standard products.
  - Non standard PRSA products offer a wider range of investment fund options, as Standard PRSA are legally confined to funds which meet the requirements of ‘pooled funds’ in the Pensions Act.
- The requirements duplicate existing PRSA disclosure and declaration requirements under the Pensions Act, 1990.
- Other provisions of the CPC, such as General Principles 1,2,3 and 6, already provide adequate protection for consumers against the potential risk of being mis-sold a non Standard PRSA.
- Not all PRSA providers offer both Standard and non Standard PRSAs; therefore there is not necessarily always a choice between recommending a Standard or Non Standard PRSA from the same PRSA provider.
- The requirement to explain the choice of non-standard PRSA is now separately noted for the statement of suitability.

## **Definitions**

### **Complaint**

The current definition is far too wide by including any ‘*expression of grievance or dissatisfaction*’ by the consumer including verbal ones. In practice, many regulated entities use a materiality test to determine whether a verbal expression of dissatisfaction by a consumer is or is not a ‘complaint’ for the purposes of the CPC.

Therefore, we suggest the term ‘or dissatisfaction’ be deleted from the definition, as well as the insertion of a materiality test for verbal complaints.

## **Additional issues**

Outlined below are issues which we included in our previous submission which have not been addressed in the second consultation. These are issues of significant concern to our membership at present and we again request that the review of Consumer Protection Code encompass an examination and debate in the following areas:

### **Banks targeting clients by using the money transmission system**

Over the past number of years, PIBA has continuously highlighted the issue of Banks contacting clients on foot of monitoring bank account transactions and offering in house competing financial products to the Central Bank of Ireland. This issue was also highlighted in the Data Protection 2011 annual report. Whilst we understand that this may fall under the remit of the Data Protection Commissioner, we feel that it is incumbent on the Central Bank of Ireland to introduce measures to prevent this practice. This is an abuse of the money transmission system. Since the last submission PIBA has collated a log of member's experience of this practice, member's advice that clients are advising of the pressure they are coming under from these institutions and of their reluctance to complain considering the financial position some of these clients find themselves in. (Appendix 1)

Banks are in a privileged position and are abusing this by aggressively targeting clients using information gained from actively monitoring client's bank account transactions. This practice is clearly undermining the integrity of the financial services system, exposing consumers to predatory commercial practices by the banks involved and undermining independent advice and choice.

We again, would request that this issue is addressed as part of the review of the Consumer Protection Code. We call for a direct prohibition in the Code on credit institutions using client account information gleaned from the operation of the money transmission system for the purpose of promoting insurance or investment products and services to clients.

### **Dual pricing in the lending and insurance markets**

Another issue of great concern to PIBA, which we feel is appropriate to be considered as part of the review of the Consumer Protection Code, is the practice of *dual pricing* by some credit institutions in the lending market, i.e. Lenders offer more favourable underwriting criteria and rates to borrowers who deal directly through their branch network than to similar clients who seek to borrow similar funds from the same credit institution, using the services of an independent credit or mortgage intermediary. This is clearly disadvantaging consumers who wish to use the services of an independent credit or mortgage intermediary.

Dual Pricing in the insurance market is also another practice of concern to PIBA whereby Insurers offer lower premiums to consumers who deal directly with the insurer than to similar consumers who access the same insurance product through an independent insurance Broker. This is particularly prevalent in general insurance and especially in “hard markets” where the product is being rationed and distribution cut. It has also been used as a strategy by general insurers to increase their direct book which has a greater persistency and retention rate. This operation impedes competition and boosts prices in the long run for the consumer. In 2005, the Competition Authority’s study of “Competition issues in the non-life insurance market” report pointed out that insurer’s faced significantly higher price elasticity of demand for Broker business than direct business i.e. if they increased premiums, Brokers were more likely to search for alternatives for their consumers than direct consumers who were more likely to accept premium increases.

General insurers may retort that there are higher costs in dealing with Brokers compared with dealing direct. However, some of the differential figures that have been reported over the years make nonsense of this claim e.g. it has been common enough to hear motor insurance direct rates of €400 compared to Broker rates of €600 with commission of €45. Is it realistic to suggest that it costs €400 to deal directly with one client and yet to deal with a Broker with perhaps hundreds of clients with the insurer (and the cost of client interface is borne by the Broker) and is dealt with by the EDI system, the cost is €555 for the same risk?

It seems clear to us that dual underwriting and pricing allows general insurers and credit institutions to manipulate the market to suit its own ends. It means consumers are being discriminated against on the basis of the method of introduction to the provider. We believe the Central Bank of Ireland should take action to stamp out this insidious practice by insisting that products are delivered at the same “wholesale rate” for different channels. Where a provider offers different underwriting or pricing terms between direct and Broker channels, it should be required to justify this to the Central Bank on the basis of proven product, target market or distribution costs.

### **Applicability of the CPC to certified persons**

The CPC does not currently apply to “*certified persons*”. Instead certified persons are subject to conduct of business rules provided by their approved professional body. These rules are not readily available for independent inspection, are frequently years out of date, and do not reach the same standards as the CPC. Approved professional bodies tend to ‘guard’ their conduct of business rules, keeping them to themselves and their members.

Therefore, there is an unequal playing field with intermediaries, who must comply with the CPC when providing insurance and investment services to clients, and certified persons who do not have to comply with the CPC when providing similar services. Pending the conclusion of a review of the IMD at European level and its potential application to all persons involved in insurance mediation, including those involved on an incidental basis, we would urge the Central Bank of Ireland to:

- Require all approved professional bodies to place their current conduct of business rules on the Central Bank of Ireland website, available for public inspection.
- Use the powers provided to it by Section 58 of the Investment Intermediaries Act, 1995, to require all certified persons to comply with the CPC when providing relevant financial services in the State.

## **Conclusion**

PIBA welcomes the opportunity to contribute to the second consultation in relation to the review of the Consumer Protection Code. The key issues which PIBA would like to highlight in our submission relate to the proposals in relation to unsolicited contact and the further restrictions on the use of the terms “Independent” and “Broker” (included in separate joint submission of broker representative bodies). We would like to highlight that even in this early stage of the second consultation there is significant alarm among the membership in relation to the prohibition of unsolicited contact with consumers. PIBA would like to officially request a meeting to discuss this issue and other aspects of this submission with the Central Bank of Ireland as it finalises the revised Code.

## Appendix 1

### Sample of members clients experiences of been targeted by banks by monitoring of banking transactions

- A client received a phone call recently from a branch requesting an appointment to meet the branch advisor on the basis that a direct debit for life assurance was being paid to another institution from their current account.
- Another client who is in a little financial difficulty was also informed by a particular bank in Wexford that her loan portfolio review in the future would be looked upon more favourably if she placed her loan protection (life Assurance) with them.
- A client who moved house 3 weeks previously had a large deposit lodged to his current account. The Bank called him and tried to set up an appointment with a financial adviser to speak about investments. He was quite annoyed as they had declined a mortgage application only eight weeks earlier.
- A case where a client was refused a loan from a bank, and when he advised he was moving his ARF (€500,000), to another provider, he was subsequently granted the facility.
- Considerable pressure exerted on bank customers to purchase investment products, when the bank sees that the client has considerable funds on deposit.
- Considerable sales pressure on customers when lodging or withdrawing substantial sums from their accounts.
- A client who was looking to move from a PRSA with a leading credit institution to a personal pension to be arranged through an intermediary. She approached bank for a loan, they agreed to lend the client the money on condition that she top-up her PRSA with them.
- A client's overdraft was up for renewal. Bank said that it would only be approved for the following year if he would also open a PRSA account with them and not with the broker he was currently dealing with (and had been for the previous 15 years). The Bank also requested that he move all of his pension arrangements to them without carrying out any analysis or research on his current funds etc (Southside, Dublin).

- Client called to a branch requesting 6 months current account statements and was asked why they needed them. They explained for a mortgage application through their broker. A couple of days later, the broker received a phone call from the banks Head Office to say that they had received an application from a branch and that the bank would no longer process the application through the broker. The client was furious as they had not made any application with the branch and were very embarrassed as their family members had dealt with the broker for over 10 years. The bank made the broker seek a signed letter from the client that they wanted to proceed with the broker over the branch. The bank added a 3 week delay into the mortgage process on the client. Thereafter, any time the client called to the branch, they were continually questioned about the mortgage and why they would not deal with the branch (Northside, Dublin).
- Client withdrawing cash from bank and was questioned specifically were they investing the money. The client asked why and the cashier tried to sell them an investment product while standing at the counter and was not asked any questions around financial suitability or risk etc. Client said it was very common for the cashiers in this branch to try and sell you some product every time you visit the branch (Southside, Dublin).
- Example of email received by client from a Credit institution “Wealth Manager” after having been bombarded first with several calls to her mobile which she did not return.

Thank you for your e-mail XXXXXX.

I have been trying to contact you as I believe it is necessary for us to meet again. This would have arisen regardless of your decision on the pension front, there appears to be a number of significant direct debits to xx hitting your account. I do not know whether we have full clarity on what they are for and would like to call xx on your behalf.

Please let me know your availability as it is crucial for us to sit down in the near future.

Regards

xxxx

- We receive reports on an on-going basis from members regarding Banks approaching clients when a Direct Debit is received for a Life or Pension Policy.