

Willis Risk Services (Ireland) Ltd

**Response to Consultation Paper 54 (CP54) on the Consumer Protection Code
July 2011**



SCOPE

We welcome the opportunity to make a submission regarding Consultation Paper CP 54. In principle, we are in favour of making appropriate changes to the Consumer Protection Code. If we had more time within which to respond, we would be in a position to draft a more comprehensive response. However, in the time available, the below points have occurred to us as meriting further consideration.

The format of our response is that we have quoted the relevant provision in the Consultation Paper and inserted our response below it.

We would be happy to provide further information or clarification in relation to any of these points should this be required.

CHAPTER 3 COMMON RULES

PERSONAL CONTACT WITH CONSUMERS

Unsolicited contact

3.34 A **regulated entity** may only make an unsolicited personal visit or telephone call to a **consumer** who is an existing **consumer** if the **consumer** holds a product which requires the **regulated entity** to maintain contact with the **consumer** in relation to that product. In relation to arrears, the limits set out in Provision 8.14 apply.

Willis Comment

In addition, a regulated entity should be entitled to make contact with a client where, in order to meet regulatory requirements, it is reasonable for a regulated entity to do so.

CHAPTER 4 PROVISION OF INFORMATION

GENERAL REQUIREMENTS

4.7 A **regulated entity** must ensure that, where it communicates with a **consumer** using electronic media, it has in place appropriate arrangements to ensure the secure transmission of information to, and receipt of information from, the **consumer**.

Willis Comment

Whilst, in principle, we believe this to be a sensible objective, the required level of security should depend upon the nature of the data to be transmitted. If all communications had to be encrypted it would be unduly onerous. Encryption should only be required where personal data is transmitted. Further guidance is needed as to what is regarded as secure and what types of data need to be encrypted.

INFORMATION ABOUT REGULATORY STATUS

4.9 A **regulated entity** must only use a regulatory disclosure statement as set out in Provision 4.12, in the following circumstances:

- a) on its business stationery used in connection with its **regulated activities**;
- b) on the section of its website that relates to its **regulated activities**; and
- c) on electronic communications with **consumers** (excluding SMS messages) where such communications are in connection with its **regulated activities**.

4.10 Where a **regulated entity** is corresponding with a **consumer** otherwise than in relation to a **regulated activity**, the **regulated entity** shall refrain from including the regulatory disclosure statement in that correspondence.

4.11 A **regulated entity** must have separate sections on any website it operates, for **regulated activities** and any other activities which it carries out.

Willis Comment

These provisions are impractical and inappropriate for pension consultancy firms that provide a range of services to clients that are partly regulated and partly non-regulated. Clients expect a seamless offering that provides all of the relevant employee benefits services, such as administration, broking, investment, actuarial and consultancy. It would be unduly onerous to separate out the regulated from the non-regulated communications. A single communication to a client may relate to both regulated and non-regulated activities. An appropriate alternative approach is to inform clients through terms of business or other communication which services are regulated and which are not. Similarly, in the context of a website, to separate out regulated and non-regulated activities regarding employee benefits is unworkable.

Insurance products

4.52 A **regulated entity** must issue policy documents to the **consumer** within 10 **business days** of all relevant information being provided by the **consumer** and cover being underwritten. This provision also applies in the case where the **consumer** renews an existing policy.

Willis Comment

We believe that this paragraph should be modified in the case of intermediaries to state that the 10 business days commences from the date that the relevant information is supplied by the Insurance Undertaking. Policy documents cannot be issued by an intermediary until they are supplied by the Insurance Undertaking.

Investment Products

4.62 Before offering, arranging or recommending an **investment product** the **regulated entity** must provide the **consumer** with the following information, where relevant, in a stand-alone document:

- a) capital security;
- b) the risk that some or all of the investment may be lost;
- c) leverage and its effects;
- d) any limitations on the sale or disposal of the product;
- e) restrictions on access to funds invested;
- f) restrictions on the redemption of the product;
- g) the impact, including the cost, of exiting the product early;
- h) the minimum recommended investment period;
- i) the risk that the estimated or anticipated return will not be achieved;
- j) the potential volatility in price, fluctuation in interest rates, and/or movements in exchange rates on the value of the investment; and
- k) the level, nature, extent and limitations of any guarantee and the name of the guarantor.

Willis Comment

Whilst we are in favour of enhanced disclosure requirements regarding these items, we do not see merit in requiring them to be included in a stand-alone document. There are more than enough documents being issued to consumers as it is. It should suffice for the content to be included in the statement of suitability.

4.75 A **regulated entity** must make a schedule of its fees and **charges** publicly available. If the **regulated entity** has a website, its schedule of fees and **charges** must also be made publicly available through placing it on its website.

Willis Comment

Willis has a Group policy of requiring full transparency and full disclosure of remuneration to our clients, something that many of competitors do not do. However, we do not see any merit in requiring a broker or employee benefits consultancy to disclose its remuneration structures publicly. This is sensitive information that would allow its competitors to see what their remuneration structures are.

CHAPTER 5 KNOWING THE CONSUMER AND SUITABILITY

KNOWING THE CONSUMER

5.4 A **regulated entity** must ensure that, where a **consumer** refuses to provide information sought in compliance with Provisions 5.1 and 5.3, the refusal is noted on that **consumer's records**. The **regulated entity** must inform the **consumer** that as it does not have the relevant information necessary to assess suitability it cannot offer the **consumer** the product or service sought.

Willis Comment

We believe this to be too simplified. In practice an advisor may seek information and not receive all of what has been requested. However, the regulated entity may have enough to assess suitability. The wording above suggests that any failure to supply information requested prevents the advisor from proceeding. This code item should be modified to allow the regulated entity to assess whether it has enough information to advise on suitability even where the client has only supplied some information.

5.21.../

The **regulated entity** must sign the statement and give a copy of this statement, dated on the day on which it is completed, to the **consumer** before providing a product or service, and retain a copy.

Willis Comment

The regulated entity may post this statement instead of giving it to the client. In addition, there may be circumstances where the regulated entity needs to get cover in place before preparing a suitability statement e.g. life cover. The client's estate will not thank the regulated entity for failing to put cover in place because the statement has not yet been prepared and issued.

5.27..../

The above exemption in Provision 5.27 a) does not apply where:

..../

ii) a **consumer** is seeking an **investment product**.

Willis Comment

We believe that this needs further thought. There are circumstances where it is legitimate for an investment product to be provided on an execution only basis.

If the client picks the product and does not want any advice, the Code should not prevent him proceeding. In addition, there are pension products that may be provided on an execution only basis: for example, a buy-out bond specified by the client where no advice has been given; or an ARF where the member dies and the widow wants the member's ARF transferred into her ARF on exactly the same basis. There are, no doubt, other examples where execution only is appropriate with investment products.

CHAPTER 6 STATEMENTS

Credit

6.4 A **regulated entity** must, at least annually, issue a statement of account in respect of a loan, unless otherwise agreed with the **personal consumer** in writing. This statement must include:

- a) opening balance;
- b) details of all transactions;
- c) interest amount charged;
- d) details of any **charges** applied;
- e) outstanding balance due; and
- f) details of the interest rate applied to the account, during the period covered by the statement.

Willis Comment

We would see this requirement as the responsibility of the lender not an intermediary.

CHAPTER 7 REBATES AND CLAIMS PROCESSING

PREMIUM REBATES

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.

Willis Comment

We have no difficulty with option a) or option c). However, option b) would be unduly burdensome as it would require intermediaries to hold a large number of immaterial rebates for up to one year or more. It would be helpful if the revised code dictated that, should we not receive any confirmation from a client as to what they wished for us to do with a refund of €10 or less, that after 6 months or a year we should simply proceed and make a charitable donation.

7.5 Where an **insurance intermediary** has issued a rebate cheque to a **consumer**, and the rebate cheque has not been presented for payment within six months from the date of issue, the **insurance intermediary** must issue a reminder to the **consumer**.

If the rebate has not been presented for payment within six months from the date of issue, the **insurance intermediary** must return the rebate to the **insurance undertaking**. Should the **consumer** seek the rebate in the future, it must be issued by the **insurance undertaking** or by the **insurance intermediary** in accordance with Provision 7.1 above.

Willis Comment

From an administrative perspective it is easier to simply re-issue the cheque so that it does not become stale as opposed to sending the refund back to the Insurance Undertaking, which potentially may not accept it back. It would be helpful if the Code could be changed to allow for this.

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