Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

Consumer Protection Code Review

Fermat Point Ltd t/a Everlake Response

Response Information

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What is the name of your organisation or representative body?

Fermat Point Ltd t/a Everlake

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Financial adviser

Broad Theme A – Availability and Choice

Q.1 What are your views on availability and choice of financial services and products for consumers?

"At the core of consumer protection is the need for markets and firms to serve the interests of consumers."

"Consumers require appropriate levels of product and service availability and choice to meet their financial needs."

"Clear disclosure of product features, risk and price, allows consumers to select the provider and product that can best serve their needs, promoting competition amongst firms."

• The Incumbent industry for financial advice products in Ireland is dominated by life companies and structured product providers with very few new and even fewer innovative entrants into the market over the recent decades.

• The dominant financial advice model resulting from this puts the Life Insurance companies at the top of the tree developing products which are sold via intermediaries to consumers who come last in the value chain. Because of the way intermediaries are remunerated, they are agents of the insurance company rather than of the client. A better functioning market should put the client at the top being served by an intermediary acting as their agent and sourcing the most suitable and appropriate solutions from the market.

• The incumbents all provide very similar solutions with innovations being thin on the ground other than thematic investment products which are designed for selling to popular demand e.g. gold funds in 2010, property funds in 2005 etc, deposit style products after market falls.

Arguably this works against savers own best interests by playing to the behavioral biases such as loss aversion, availability bias and herd behavior to mention a few.

• More transparent, non-commission paying platform style business has been available for some time now but given it's current size versus the rest of the market, is clearly largely ignored by the vast majority of the intermediary market in favour of the commission paying structures. Fee disclosures for end clients in the commission paying structures is of a lower and more opaque standard than open architecture investment platforms. Easy to understand transparency is key and this is not being achieved under the current regulations which appear to favor the status quo . CP116 was an attempt to level the playing field in fee disclosures and this should absolutely be prioritised in the CPC review so that consumers can make informed decisions when presented with various options by financial advisers/intermediaries.

Q.2 How important are new providers and new delivery channels to serving consumers' financial needs?

"An effectively functioning market will have a flow of new entrants coupled with ongoing orderly exit of firms from the market."

• Very few new entrants have entered the market for pensions and investment service over the last 20 years.Those that have tried need distribution to gain market share and that generally means operating via life insurance companies. This becomes a self-fulfilling prophecy which would be addressed by restricting commissions available to intermediaries

• Retail Banking illustrates the difficulty of providing competition in a relatively small market. In order to be profitable providers need scale and by definition this reduces competition.

• Evidence of the negative effects of this lack of evolution driven by new entrants can possibly be seen in the very weak private pension coverage in Ireland at only 35.5% of GDP in 2020 according to a recent report from the Financial Planning Standards Board. Rates of deposit savings are disproportionately high and not effective as a long term savings vehicle – the lack of clear price transparency from life company offices and often poor outcomes from structured products or thematic investments may be contributing to this problem.

Q.3 In implementing its consumer protection mandate, how should the Central Bank reflect the importance of competition in its regulatory approach?

• Regulation should aim to create a level playing field between life company fees and charges and investment platform (mifid) fees and charges. Currently the latter is far more transparent and is often misinterpreted as 'more expensive' as a result by investors. Life companies should not be allowed to report an Annual Management Charge instead of a more transparent Ongoing Charges Figure.

• Fee disclosure in the form of PRIIPS KID documents hasn't resulted in more transparency of fees as the document simply defaults to the maximum possible commission rather than the charge the client actually pays. Furthermore, it does not apply to Pension products

• MIFIID II ex-ante fee disclosures are a more powerful way of informing an investor of the fees that they will be paying and when tied to an ex-post fee disclosure ensure that the quality of an ex-ante report is maintained.

Broad Theme B – Firms Acting in Consumers' Best Interests

Q.4 Do you agree that the Central Bank should develop guidance on what it means for a firm to act in the best interests of its customers?

Agree

Q.5 Does the suggested outline of ‘customer best interest’ guidance capture the essence of the obligation to act in customers’ best interests? What other guidance would you suggest?

Not Sure

• The evidence from the UK suggests that simply introducing the concept “treating customers fairly” wasn’t sufficient to change the practices of financial advice in the UK. The regulator felt the need to intervene via the Retail Distribution Review to further raise professional standards.

• It is arguable that the RDR has resulted in an advice gap which needs to be considered and planned for.

• However, the Central Bank default of principles-based regulation is leaving the door open for questionable advice.

• Examples would include making recommendations for investments ahead of debt repayment due to the inherent conflict of interest presented by sales commissions or defaulting to an ARF instead of an Annuity

• It would be helpful if the Central Bank of Ireland as regulator provided more guidance as to what their expectations are in terms of best practice. The UK regulator has issued numerous guidance documents to advisers which could act as a model.

“Inducements from third parties must not impair compliance with the regulated firm’s duty to act honestly, fairly and professionally in the best interests of the customer;”

• Commission and the resulting agency problem creates clear conflicts of interest which can often result in firms putting their financial interest ahead of customers

• Examples of “double-dip” commissions where an intermediary takes a commission on one product such as a pension and then another commission on another product such as a structured product within the penson are still to be found in the market. These should simply not be allowed to be facilitated by product providers. How can this or for example the existence of poorly disclosed 5% up front commissions be consistent with regulated firms having a duty to act in the best interests of customers.

• Life company commission options are unnecessarily complex and the practice of allocation rates, bonus allocations, commissions paid from marketing budgets and other practices should be disallowed by the Central Bank

• The temptation of large commissions paid by a product producer is too high for many and it creates an eco system which then requires over regulation and oversight. If the conditions in the market were setup well to begin with then there would be less need for oversight and regulation as the mis incentives would not be there to begin with

• Insufficient fee disclosures by traditional product providers creates an information asymmetry between many traditional product providers in Ireland and their customers including intermediaries.

• Many new investment options are thematic in nature and seek to take advantage of customer behaviour and habits which may not be in their best interest. For example, investing in a asset class after it has already gone up in value (property, gold etc). Structured products prey on customers preference for the safety blanket of guarantees whilst being potentially very unsuitable for retail customers due to their underlying complexity (derivatives etc) and the nature of the remuneration structures associated with them.

• So long as the guidance does not result in additional layers of regulation and compliance which result in genuine professional advice firms spending a disproportionate amount of time on compliance related work rather than client facing work.

• Other guidance: In the USA there exists the fiduciary concept. This allows firms to identify as a 'fiduciary' and thus hold themselves to a much higher standard.

• A customer should have a legitimate expectation that 'advice' is given in their best interest and that conflicts of interest which may work against this, are minimised. This is currently extremely challenging in an environment with high levels of potential provider paid commission and lack of transparency.

• Customers should be easily able to differentiate where they are receiving genuine advice or being sold to. Currently there are low barriers to entry and low minimum competency standards in the industry and it is almost impossible for a retail customer to make this distinction.

Theme 1 – Innovation and Disruption

Q.6 Do you agree with our proposed approach to enhancing our Innovation Hub?

Q.7 What more should be done to support innovation while ensuring consumers' best interests are protected?

Q.8 How can regulators ensure that neither firms currently in the market, nor new entrants, have unfair advantages which could be a barrier to fair competition?

• Create a level playing fields around cost disclosures

• Create transparency around remuneration

• Prevent excessive commission being paid

• Address the conflict of interest inherent in commission payments and the agency-principal problem whereby an intermediary accepting commissions is legally an agent of the product provider, however the client has the understandable impression that they are receiving advice from the adviser who they believe is their agent.

• The taxation environment around investment products is extremely complex and difficult to administer and favours the incumbent life industry, further reenforcing their dominance relative to new non-life providers.

Theme 2 – Digitalisation

Q.9 Do you agree with our analysis of the benefits, challenges and risks around digitalisation in the area of financial services? What are the key issues for you?

Q.10 How do you think the personalisation and individual-targeting of ads can be made compatible with the requirement for firms to act in the best interests of customers?

Theme 3 – Unregulated Activities

Q.11 The Code requires regulated firms to provide a statement indicating that they are 'regulated by the Central Bank'. Do you think this is useful for consumers?

Not Sure

• The Central Bank should recognise that certain activities of a regulated financial advice firm fall outside of being regulated, for example, financial planning and work with the sector to manage those issues more positively for the consumer. What is not acceptable is regulated firms conducting business with unregulated product providers and receiving a payment for placing business with them under the guise of 'advice'

Q.12 How can the difference between regulated and unregulated activities be made clearer for consumers?

• Don't allow regulated intermediaries sell unregulated products for commission

Q.13 Should there be additional obligations on regulated firms when they undertake unregulated activities?

Yes

Theme 4 – Pricing Matters

Q.14 What can firms do to improve transparency of pricing for consumers?

"Firms cannot be permitted to implement 'dark pricing' practices to covertly manipulate or coerce consumers into choices that are not in their best interests or to exploit information asymmetries or behavioural vulnerabilities in order to misdirect their focus to products that are more expensive than valid alternatives, or that are ill-suited to their needs and/or risk appetite. Increasing product complexity or including features which increase the attractiveness of products can interfere with price transparency and the ability of consumers to compare products effectively."

• Current life company fee disclosures are arguably not consistent with above

• Structured product features seek to prey on behavioural vulnerabilities to attract clients seeking safety when often these are very complex products which even intermediaries selling them do not understand.

• For investment and pension products there should be consistent fee disclosure to the standard of Mifid i.e. Total costs including Ex Ante Ongoing Charges Figures and not simply Annual Management Charges.

Q.15 In relation to pricing, are there examples of firms using unfair practices to take advantage of customer vulnerabilities?

• Customers are unable to fairly compare costs across life companies and Mifid style platform providers.

• For investment and pension products there should be consistent fee disclosure to the standard of Mifid i.e. Total costs including Ex Ante Ongoing Charges Figures and not simply Annual Management Charges.

• Currently consumers are left in a situation of comparing apples with oranges in a complex environment which often results in a consumer making an incorrect assessment of which product is more or less expensive.

• Common practices such as increased allocations are used to distract from the true underlying cost to the customer, for example a life company offering 103% allocation to 'cover' the 3% up front commission payable – meanwhile reduction in yield over the long term will be higher to pay for this and the customer is subject to early surrender charges to pay for this.

Theme 5 – Informing Effectively

Q.16 How can regulation improve effectiveness of information disclosure to consumers?

• Currently too many cost/fee disclosures are buried in mountains of paperwork and 'illustration tables' are misleading and incomplete.

A Key facts document should be signed off by a customer clearly showing what the total costs are and who is being paid how much. Mifid II ex ante fee disclosures are the gold standard for transparency. “Information disclosure requirements are a key consumer protection tool used by regulators to address this issue. Good quality information can empower consumers to choose the most appropriate and competitively priced product for them.”

“However, there is a concern that disclosure and transparency requirements do not always work effectively.”

• They do not work effectively. Life company versus platform fee comparison is a prime example. Customers believe life companies are cheaper but it is an apples v oranges comparison.

• Customers being provided with endless amounts of terms and conditions documents and disclosures is also counter productive as customers do not have the time or in many cases expertise to read and understand the information contained in the disclosures.

“Arising from these reviews, the Central Bank has highlighted that it wants to see that complex investment products are designed with real investment needs in mind; that they are targeted only at investors with those investment needs, and that risks are properly explained. Alignment with consumers’ needs and risk appetite is critical. Firms must ensure these protections are reflected in the design and sale of all complex products.”

• Most structured products offering are not suitable for retail customers.

• If we look at other jurisdictions like the UK they are no longer commonly used for retail customers.

• Retired actuaries Brian Woods and Colm Fagan have written a paper for the Society of Actuaries highlighting their concerns with structured product disclosures and have highlighted these to the Central Bank of Ireland in recent months.
https://web.actuaries.ie/sites/default/files/Structured%20Retail%20Products%20Final.pdf

Q.17 How can firms better support consumers’ understanding – can technology play a role?

Q.18 Does the way in which firms approach disclosure in respect of mortgage products need enhancing? If so, how? - taking account of the wide variety of features of mortgage products, and borrowers’ different circumstances and needs.

Theme 6 – Vulnerability

Q.19 Given that vulnerability should be considered more as a spectrum of risk than a binary distinction, how should firms' duty to act in their customers' best interests reflect this?

Q.20 What other specific measures might be adopted to protect consumers in vulnerable circumstances while respecting their privacy and autonomy?

Theme 7 – Financial Literacy

Q.21 What can the responsible authorities do to improve financial education?

Q.22 How can consumers be empowered to better protect their own interests when dealing with financial matters?

Theme 8 – Climate Matters

Q.23 How should the financial system best fulfil its role in supporting the transition to a climate neutral economy?

Q.24 How will climate change impact on availability, choice and pricing for financial products and services?

Q.25 Does the impact of climate change require additional specific consumer protections?

T: +353 (0)1 224 5800
E: publications@centralbank.ie
www.centralbank.ie

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