



# Intermediary Times

2020 Issue

## Welcome to the Intermediary Times

Welcome to the 2020 bumper edition of the Intermediary Times.

The purpose of this newsletter is to highlight specific areas of interest, including potential risks to your business and to outline how you can further develop your business in a manner that puts consumers first. This edition contains information on many important and interesting topics, including:

- What's New? – Additions to the list of Pre-Approval Controlled Functions (PCFs) and Unity;
- Brexit;
- COVID- 19;
- New Authorisations Framework;
- Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) –impact of COVID-19;
- Retail Intermediary Annual Returns;
- Professional Indemnity Insurance;
- Financial Requirements;
- Consumer Protection Code – Commission Arrangements;
- Trends in the Retail Intermediaries Sector;
- Consumer Insurance Contracts Act 2019; and
- Complex Products

For queries on any of the topics outlined in this newsletter, or any other queries you may have, please see the main contact points on page 19. We hope that you find this newsletter useful and as always, we welcome your [feedback](#) on the content and frequency of this newsletter, as well as any suggested topics that could be covered in future editions.



Deirdre Walsh

*Head of Consumer Protection  
Supervision - MiFID, Retail  
Intermediaries and Insurance Division*

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## What's New?

### *Fitness and Probity – Additions to the list of PCFs*

Further to the [Notice of Intention](#) issued in February 2020, the Central Bank of Ireland (Central Bank) introduced three new PCFs on 5 October 2020:

1. PCF-49 - Chief Information Officer (under the 'General' category);
2. PCF-50 - Head of Material Business Line (under the 'Banking' category); and
3. PCF-51 - Head of Market Risk (under the 'Banking' category).

PCF-49 is applicable to all regulated firms, other than credit unions, and is the role that is applicable to retail intermediaries. It is not obligatory that firms must appoint someone to this position. It is a matter for each regulated firm to decide if it needs to appoint a PCF-49.

In considering the applicability of the PCF-49 role, firms should take account of the size and complexity of the firm, the nature of its activities and the types of services provided, including the corresponding Information and Communication Technology (ICT) and security risks related to its processes and services.

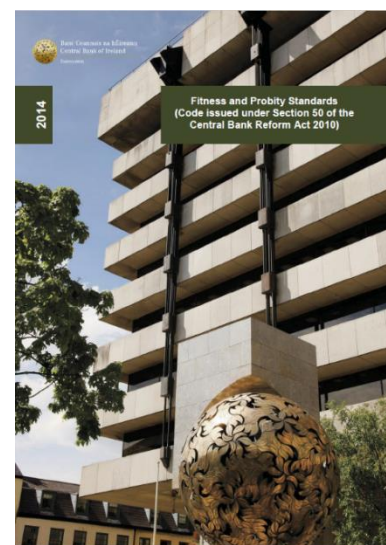
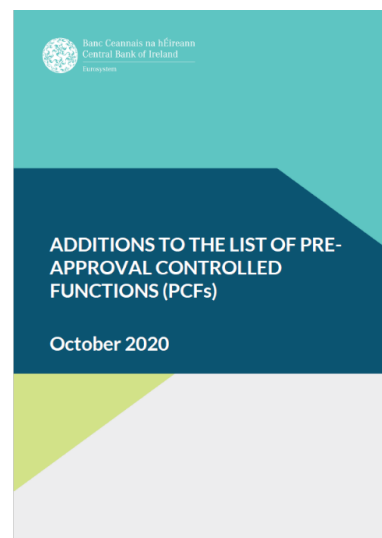
The Central Bank has published further [information](#), including 'Frequently Asked Questions', which set out criteria to assist when deciding whether a firm has these PCF roles.

As is the normal process, individuals newly proposed for these PCF roles, must submit an Individual Questionnaire. Further information can be found [here](#).

For individuals already performing these roles before 5 October 2020, there is an "In Situ" process available, whereby a PCF IQ is not required. These role holders became subject to the Fitness and Probity Standards on 5 October 2020.

To avail of the "In Situ" process, please submit an email to [brokers@centralbank.ie](mailto:brokers@centralbank.ie) by **20 November 2020** from either the Chairperson (PCF-3) or Chief Executive Officer (PCF-8) stating that the firm:

- has performed the necessary due diligence as detailed in the [Guidance](#) on Fitness and Probity in respect of persons set out in a list attached to the email;
- is satisfied on reasonable grounds that these persons are compliant with the Fitness and Probity [Standards](#); and
- has obtained each person's written agreement to abide by the Fitness and Probity Standards.



## Unity – the ‘Central Bank of Ireland Portal’

As part of the Central Bank’s commitment to simplifying how firms engage with us on a range of services, the ‘**Central Bank of Ireland Portal**’ (the **Portal**) launched in August 2020. The initial launch was specifically aimed at Insurance Undertakings and is due roll out, on a phased basis, to all other sectors from Q1 2021.

The Unity Portal will allow you to:

- View information relating to your firm;
- Notify the Central Bank of required changes to that information; and
- Communicate with the Central Bank regarding such changes via Portal Messages.

Over time, the Portal’s offering will be expanded to include additional regulatory and statistical services, including Industry Levy Management, Online Returns, and Fitness & Probity applications amongst other services.

The Central Bank will be issuing correspondence to your firm over the coming months, providing you with further details, instructions and support documentation on the purpose and functionality of the Portal. Your firm will receive at least four weeks advance notice before the Portal registration commences.

You will find relevant updates posted on the Central Bank’s website [here](#), where there is also a [Contact Us](#) form should you have any queries or concerns.

## Recent Publications

- On 14 September, Governor Gabriel Makhlouf gave a speech at the Institute of International and European Affairs in relation to [COVID-19 and the future of monetary policy](#);
- On 30 September, Derville Rowland, Director General Financial Conduct gave a speech at the MABS Autumn Seminar in relation to [The Central Bank’s Role in the National Consumer Protection Framework](#);
- On 4 November, Ed Sibley, Deputy Governor, gave a speech to the Small Firms Association in relation to how [Small and medium-sized enterprises play a vital role in the Irish economy and will be central to Ireland’s economic recovery](#).

WHAT’S NEW?



*Governor Gabriel Makhlouf*



*Derville Rowland, Director General,  
Financial Conduct*



*Ed Sibley, Deputy Governor*

## Brexit

### Contingency Planning

Retail intermediaries must ensure that they have carefully assessed their obligations to existing and prospective consumers, and take any necessary actions to mitigate any potential risks that may arise in the event of a no deal Brexit. Firms must ensure that they continue to provide clear information to consumers whose contracts or services may be affected, as soon as that information becomes available to them. We urge all firms to continue to consider the implications of a no-deal Brexit and to finalise their preparations.

After the end of the transition period (currently 31 December 2020), UK and Gibraltar insurance intermediaries will lose their right to passport, i.e. to pursue business in EU Member States on a Freedom of Establishment and Freedom of Services basis under a no deal scenario. Firms which intend to continue or commence distribution activities to EU27 policyholders and for EU27 risks should be established and registered in an EU27 Member State, in line with the relevant provisions of the Insurance Distribution Directive (IDD).

### Temporary Run-Off Regime

On 9 September 2020, the Irish Government published the General Scheme of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2020 (the Bill). The Bill provides for a temporary run-off regime, which, subject to a number of conditions, will enable registered UK and Gibraltar intermediaries which have carried on business in Ireland via passporting rights, to continue to administer insurance contracts entered into before the end of the transition period.

Firms subject to the temporary run-off regime will no longer be able to continue insurance distribution in respect of new insurance contracts in Ireland, until they obtain a registration under the IDD. Details on the notification process for the temporary run-off regime will be made available once the relevant legislation has been enacted.

### Irish Retail Intermediaries

EU law will continue to apply in the UK until the end of the transition period. Firms currently passporting into the UK may continue to do so until that date. The UK Temporary Permissions Regime will take effect at the end of the transition period and will enable relevant firms currently passporting into the UK to continue operating in the UK. EEA firms should notify the FCA if they wish to enter the Temporary Permissions Regime before 31 December 2020. Further details are available on the [FCA's website](#).



The Central Bank reminds firms which are undertaking cross-border insurance distribution business, to continue to take the necessary steps to ensure they are sufficiently prepared for a no deal Brexit scenario.



Firms must ensure that they notify the FCA if they wish to enter the UK Temporary Permissions Regime. Further details are available on the [FCA's website](#).

## COVID-19

COVID-19 has triggered a severe economic shock that is fundamentally different in nature and scope from types of shocks previously witnessed. For the Irish economy, this has resulted in the widespread shutdown of businesses, with sectors, such as retail trade, food and beverage activities, accommodation, tourism and travel particularly affected. The Central Bank recognises that this is a challenging and troubling time for consumers, families and businesses, including retail intermediaries and their employees.

### *The role of the Central Bank*

The Central Bank has been working with financial services providers to support them in providing breathing space for consumers who find themselves in financial difficulties due to the exceptional circumstances of COVID-19. For example in the banking sector, banks and other financial firms introduced payment breaks on mortgages, and personal and business loans for some business and personal consumers affected by COVID-19.

The Central Bank wrote to the Chairs and CEOs of both life and general insurance firms in March, requiring them to take account of the challenging situation in which many of their consumers find themselves and to put forward consumer-focused solutions for insurance payment breaks and claims in light of the COVID-19 emergency. The Central Bank also set out its view that, where a claim can be made because a business has closed as a result of a Government direction due to contagious or infectious disease, the recent Government advice to close a business in the context of COVID-19 should be treated as a direction.



### *Did you know?*

*The Central Bank launched a COVID-19 information hub which can be accessed on our website [here](#).*



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### Central Bank Expectations of Retail Intermediaries

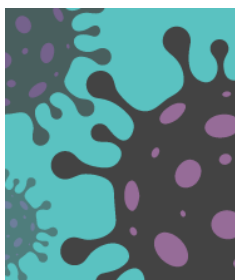
At the onset of COVID-19, the Central Bank issued correspondence to all retail intermediaries requiring them to take account of the difficult and challenging situation in which many consumers find themselves, through no fault of their own and to take steps to support them. This letter also set out expectations in relation to the provision of insurance distribution services.

The Central Bank issued further correspondence to all retail intermediaries in June, which emphasised key messages on compliance, operational resilience and the management of risk, including cybersecurity. It also set out expectations in respect of firms providing investment business activities and distributing insurance-based investment products.

All firms are required to continue to comply fully with the relevant legislation under which they are authorised and all applicable supervisory requirements on an on-going basis.

The requirement to continue with remote working and access arrangements requires the maintenance of business continuity practices, which may also create opportunities for cyber threats to compromise IT systems. As such, it is important that firms and their employees remain aware of potential cyber threats they face while working within this exceptional environment.

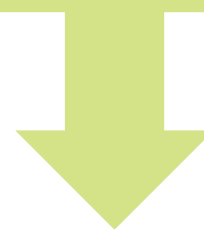
The Central Bank expects all firms to consider the consumer impact when making decisions and to engage with consumers in an open, fair and transparent manner. This is of increased importance for the duration of the COVID-19 pandemic.



#### COVID-19 Information Hub

For more information, check out the COVID-19 information hub which can be accessed on our website [here](#).

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The Central Bank also wrote to all retail intermediaries requiring them to take account of the difficult and challenging situation in which many consumers find themselves and to take steps to support them.



All firms are required to continue to comply fully with the relevant legislation under which they are authorised and all applicable supervisory requirements on an on-going basis.

## New Authorisation Framework

The Central Bank is the competent authority in Ireland for the authorisation or registration of retail intermediaries<sup>1</sup>. The Central Bank is committed to providing a clear, open and transparent authorisation process while ensuring a rigorous assessment of the applicable regulatory standards.

Each applicant seeking authorisation must demonstrate to the Central Bank that it can meet the authorisation standards set out in the relevant legislation. In fulfilling its statutory role, the Central Bank adopts a robust, structured and risk-based application process that seeks to ensure that only those applicants that demonstrate compliance with the relevant authorisation requirements are authorised.

### Application Forms

On 1 July 2020, the Central Bank published two new application forms to be utilised by applicants seeking authorisation or registration as a retail intermediary. Depending on the nature, scale and complexity of their proposed activities, applicants will be required to complete either:

- [A Form](#) or
- [B Form](#).

The relevant criteria to be used to determine which application form should be completed are set out in Part 1 of each application form and on the retail intermediary authorisation process webpage [here](#).

Guidance notes are also available to provide further support to applicants:

- [Guidance Note](#) – A Form and
- [Guidance Note](#) – B Form.

These documents contain important information that will assist applicants in completing the relevant application form and will avoid potential delays in processing an application.

Completed application forms should be submitted with all relevant accompanying material, in [electronic format](#) to the Central Bank via our secure file transfer system. Applicants can request access by sending an email to [RIAuthorisations@centralbank.ie](mailto:RIAuthorisations@centralbank.ie).

*On 1 July 2020 the Central Bank published two new application forms to be used by applicants seeking authorisation or registration as a retail intermediary.*

Depending on the nature, scale and complexity of their proposed activities, applicants will be required to complete the A Form or the B Form.

Applicants should make sure that they read the Guidance notes before completing the relevant application form, provide responses to all relevant application form questions and submit all relevant documentation with the completed application. This will avoid potential delays in processing an application.

<sup>1</sup> European Communities (Insurance Distribution) Regulations 2018 (IDR) (insurance intermediaries, reinsurance intermediaries and ancillary insurance intermediaries); Investment Intermediaries Act 1995 (IIA) (investment intermediaries); European Union (Consumer Mortgage Credit Agreements) Regulations 2016 (CMCAR) (mortgage credit intermediaries); and Consumer Credit Act 1995 (CCA) (mortgage intermediaries).

### Common Issues observed with applications

#### 1. Sole Trader changing to Limited Company:

- Including information or completing sections of the application form relevant to the sole trader rather than the applicant firm;
- Projected clients and/or income from existing business not included;
- Delays in registering trading name(s) of company.
- Transfer of Professional Indemnity Insurance from the sole trader to the limited company in advance of the revocation of the authorisation of the sole trader, leaving the sole trader in breach of its regulatory requirements.

#### 2. Mortgage Credit Intermediary application for renewal of licence:

- Applying for other authorisations already held by the applicant;
- Letter of Appointment for CCA only in place of the CMCAR;
- Submitting the application close to the expiry date of the existing licence.

#### 3. General:

- Answering 'N/A' to questions that either require a 'Yes'/'No' answer or that apply to all applicants;
- Listing insurance companies as product providers under the IIA;
- Submission of financial projections which do not realistically reflect the timing of income and expenditure;
- Incomplete profit and loss projections presented in a format which is difficult to review;
- Projecting income that does not correlate realistically with the number of projected consumers;
- Insufficient capital to demonstrate the applicant can meet its projected expenditure in its first few months of trading, or capital not included in projected balance sheet as at authorisation date;
- Failing to ensure that PII policies meet the relevant requirements;
- Responding to Central Bank comments in respect of an application but not updating the relevant application documentation to reflect the changes;
- PCF titles or numbers not correct and not corresponding with those applied for in the relevant IQ.

*A number of common issues have been observed when considering applications.*

It is the firm's responsibility to ensure that a Mortgage Credit Intermediary renewal application is submitted in sufficient time to allow the Central Bank to complete the application process in line with its published authorisation service standards and in advance of the expiry date of the existing licence.

Ensuring that applications for authorisation are fully and correctly completed with all required supporting documentation attached helps to ensure the overall efficiency of the application process.



## Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) – impact of COVID-19

COVID-19 has set firms new challenges in relation to the way they carry out their business and in the ways others may seek to utilise these businesses for nefarious means. Therefore, it is more important than ever that firms ensure that their systems and controls for preventing money laundering and terrorist financing continue to protect the financial system and consumers at large.

Consequently, while recognising the challenges that firms face, the Central Bank expects firms to continue to meet their AML/CFT compliance obligations and that senior leadership take an active role in instilling the right culture as their firm deals with the ongoing challenges presented by the pandemic.

### *Expectations of firms*

In upholding high AML/CFT standards, the Central Bank expects firms to:

- Continue to be effective in identifying suspicious or potentially suspicious transactions.
- Review their AML/CFT risk assessments in light of the current situation and where required make any necessary adjustments to reflect the changed risk landscape.
- Adjust their AML/CFT systems and controls as necessary to reflect any new risks or potential new risks arising from the disruption caused to the financial system and more widely e.g. transaction monitoring levels may need to be recalibrated to reflect the stalled nature of the economy and changes to patterns of consumer behaviour brought about by the pandemic.

The Central Bank requires that where firms take a decision, under the risk-based approach, to apply a lower but still Criminal Justice Act (CJA) compliant level of control or oversight to an aspect of its AML/CFT framework, that the rationale for this decision is documented, approved by senior management and made available for review by the Central Bank in the future.

Where firms apply temporary measures to adjust their AML/CFT framework, they should reinstate the original measures when it is safe and feasible to do so. For further information, please refer to the AML/CFT section in the COVID-19 section of our website [here](#).

*It is more important than ever that firms ensure that their systems and controls for preventing money laundering and terrorist financing continue to protect the financial system and consumers.*



From From 7 September 2020, Reporting Entities and Money Laundering Reporting Officers are required to submit all Suspicious Transaction Reports (STRs) to Revenue using Revenue's Online Services (ROS) only - Revenue will no longer accept hard copy.

Reporting Entities will continue to submit STRs to both Revenue and An Garda Síochána's Financial Intelligence Unit as dual reporting remains a requirement.

For further information, please refer to the

[Revenue website](#).

## Retail Intermediary Annual Return

All retail intermediaries are required to submit an annual return to the Central Bank electronically via the Online Reporting System (ONR).

The annual return should be based on the firm's financial position at the end of its financial year (the reporting date) and must be submitted no later than 6 months following the reporting date (the submission due date).

Where a firm prepares audited accounts, it should base the information submitted in its annual return on these accounts. Where a firm does not prepare audited accounts, it should base figures on its financial year-end management accounts.

Further information, including a Guidance Manual, a template of the annual return and FAQ's, can be found on the Central Bank's website [here](#).

Any queries in relation to the completion of the Annual Return can be submitted using the Submit a Request function on the ONR or via email to [onlinereturns@centralbank.ie](mailto:onlinereturns@centralbank.ie).

### Thematic Review

The Central Bank recently conducted a [thematic review](#) in relation to firms' compliance with annual return reporting requirements. While the review highlighted an overall improvement in compliance with reporting requirements, it also identified instances of:

- Incorrect reporting;
- Authorised firms not actively trading; and
- Some investment intermediaries not preparing audited accounts on an annual basis.

The annual return is an important supervision tool used by the Central Bank to assess key risk indicators at both the firm and sectoral level. In particular, the Central Bank uses the annual return to monitor firms' compliance with key obligations, such as holding adequate professional indemnity insurance, and in the case of investment intermediaries, maintaining a net positive asset position. It is vital, therefore, that all firms submit complete and accurate annual returns in a timely manner.



*The most recent update to the Annual Return is known as the 'Annual Return V3' and includes the new PII levels required for insurance and investment Intermediaries.*

A recent thematic review of firms' compliance with annual return reporting requirements noted instances of:

1. Incorrect reporting;
2. Authorised firms not actively trading; and
3. Instances of investment intermediaries not preparing audited accounts.

The Central Bank has taken the impact of COVID-19 into consideration when engaging with retail intermediaries who are experiencing challenges in submitting their annual return by the due relevant due date.

Should your firm experience such difficulties, please contact [brokers@centralbank.ie](mailto:brokers@centralbank.ie). Supervisory flexibility will be considered on a case-by-case basis.

## Professional Indemnity Insurance

### Insurance Distribution Directive

With effect from 12 June 2020, the IDD was amended by the Commission Delegated Regulation (EU) 2019/1935 with regard to the base amounts for professional indemnity insurance (PII) to be held by insurance, reinsurance and ancillary intermediaries. Article 1 of this Regulation increased the PII levels from:

- €1,250,000 to €1,300,380 applying to each claim; and
- €1,850,000 to €1,924,560 per year for all claims.

Arising from this amendment, the [European Union \(Insurance Distribution\) \(Amendment\) Regulations 2020](#) have now amended Regulation 21(1) of the IDR to reflect this change by substituting:

- “for not less than €1,300,380 applying to each claim and in aggregate €1,924,560 per year” for
- “for not less than €1,250,000 applying to each claim and in aggregate €1,850,000 per year”.

### The Handbook of Prudential Requirements for Investment Intermediaries

PII levels for investment intermediaries were amended from 12 June 2020, to align with the PII levels for insurance intermediaries, as was previously the case. Part 4 of The [Handbook of Prudential Requirements for Investment Intermediaries](#) was updated to reflect this change. Part 4 of the Handbook requires an investment intermediary to put in place and maintain a policy of PII covering the investment intermediary’s activities.

### What this means for your Firm

From 12 June 2020, all insurance, reinsurance and ancillary intermediaries and all investment intermediaries are required to hold PII at the new levels in line with the new PII requirements. The amount insured shall, at a minimum, provide cover of:

- €1,300,380 per claim and
- €1,924,560 in aggregate.

Where an aggregate limit applies to a policy, firms are required to hold separate, ring-fenced cover in relation to **each** authorised activity that requires the firm to hold PII cover.

### Did you know?

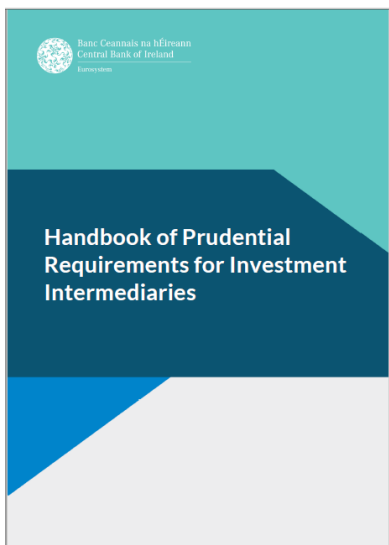
*The PII levels for insurance, reinsurance and ancillary intermediaries and investment intermediaries were amended from 12 June 2020.*

The new PII levels for insurance, reinsurance and ancillary intermediaries and investment intermediaries are:

- €1,300,380 applying to each claim; and
- €1,924,560 in aggregate per year.

Firms are required to hold separate, ring-fenced cover in relation to each authorised activity that requires the Firm to hold PII cover.

# Financial Requirements



As set out in the [Handbook of Prudential Requirements for Investment Intermediaries](#), an investment intermediary authorised under the IIA must:

- be in a position to meet their financial obligations in full as they fall due; and
- maintain a positive net asset position at all times.

Goodwill and other intangible assets are excluded from the calculation of the firm’s balance sheet assets for regulatory reporting purposes.

An investment intermediary that acts as a product producer must have minimum shareholders’ funds, or a positive capital account of at least €50,000.

### Breaches of financial requirements

Investment intermediaries in breach of their regulatory requirement, as a consequence of its financial position, will be directed by the Central Bank to prepare and implement a credible capital plan to resolve its financial position in a timely manner. Failure to do so may lead to the revocation of the firm’s authorisation.

### Transitional Arrangements for qualifying Goodwill

The Central Bank would like to remind investment intermediaries that the transitional arrangement for firms who held qualifying goodwill, as referred to in Part 3.2 of the Handbook of Prudential Requirements for Investment Intermediaries, came to an end in October 2020. As such, goodwill must now be excluded from the calculation of the firm’s balance sheet assets for regulatory reporting purposes.

**Did you know?**  
 Goodwill must now be excluded from the calculation of the firm’s balance sheet assets for regulatory reporting purposes.



Investment intermediaries are required to maintain a positive net asset position at all times.



Investment intermediaries who breach their financial requirements must prepare and implement a credible capital plan to resolve its financial position in a timely manner.

## Consumer Protection Code – Commission Arrangements

In September 2019, the Central Bank published changes to the Consumer Protection Code 2012 (the Consumer Protection Code) which aim to ensure transparency of commission arrangements between retail intermediaries (such as brokers and financial advisers), and product producers (such as banks and insurance firms), and to minimise the risk of conflicts of interest relating to commissions arising when consumers are getting financial advice from a retail intermediary firm. These changes took effect on 31 March 2020.

### Key Requirements

- Any fee, commission, other reward or remuneration arrangements must be designed in such a way that they avoid conflicts of interest;
- Firms cannot describe themselves and their regulated activities as 'independent' where they accept and retain commission in circumstances where advice is provided; and
- Firms must make available in their public offices or on their websites, in a manner that is easily accessible to consumers, a summary of the details of all arrangements for any fee, commission, other reward or remuneration paid or provided to the firm, which it has agreed with product producers. Where a retail intermediary operates a website, it must publish the summary on its website.

### Provision 4.58A

In order to ensure transparency, firms must ensure that their commission arrangements are disclosed in accordance with provision 4.58A of the Code. In this regard, please note the following:

- The commission (fee, commission, other reward or remuneration) information that must be made available to consumers - at a minimum - is contained in points a) to c) of this provision;
- It is described as a "summary" of the details of all arrangements because the Central Bank has prescribed the minimum amount of information that must be included;
- In order to fulfil the requirements of the provision, a firm must make this information available to the consumer in manner that is accessible, e.g. on a website;
- If a firm operates a website, the information must be made available on the website;

### Did you know?

*In September 2019, the Central Bank published changes to the Consumer Protection Code which aim to ensure transparency of commission arrangements.*

### Key requirements include:

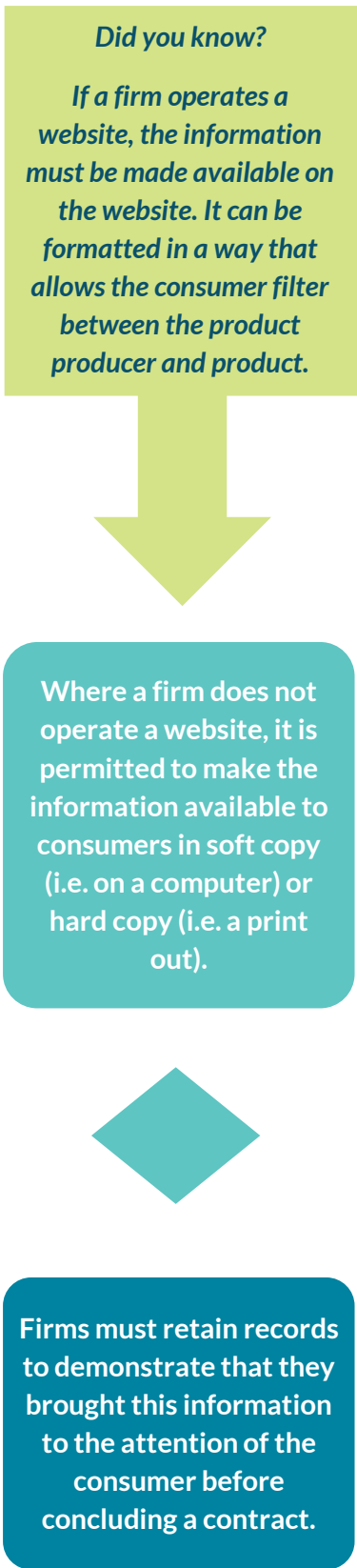
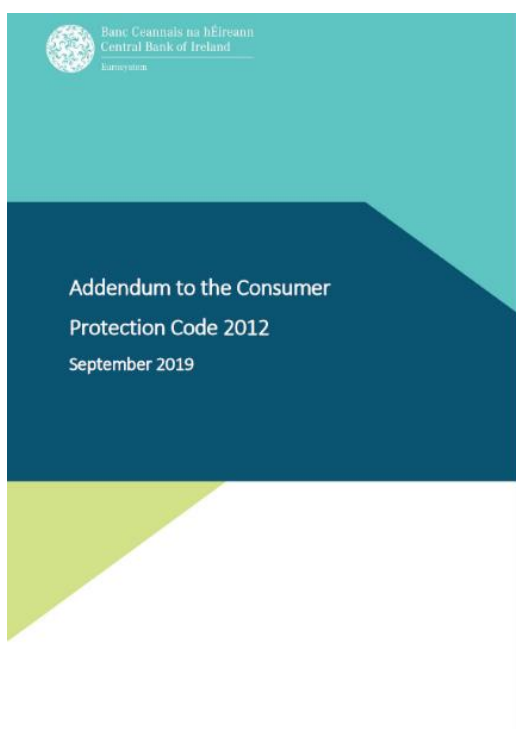
1. Commission arrangements must not lead to conflicts of interest.
2. Firms cannot describe themselves as 'independent' if commission is received after providing advice.
3. Details of all commission arrangements agreed with product providers must be available to consumers and must be easily accessible.

**Retail intermediaries must ensure that their commission arrangements are disclosed in accordance with provision 4.58A of the Code.**



- The commission arrangements summary may be presented in a format that allows the information to be filtered by product producer and product. This could be achieved by using drop down fields on the webpage so that consumers can access the information they require;
- In circumstances where a firm does not operate a website, the firm is permitted to make the information available to the consumer in either soft copy form (i.e. on a desktop computer or laptop in its public office) or hard copy form (i.e. a print out of all commission arrangements available); and
- A firm is also required to bring this information to the attention of the consumer before concluding the contract and retain records that demonstrate compliance with this requirement.

Please be advised that the above examples are illustrative **only** and not intended to prescribe exactly how to meet the requirements of Provision 4.58A as this is a matter for each individual retail intermediary.



## Trends in the Retail Intermediaries Sector

The Central Bank has identified a number of trends as part of our ongoing supervision of the retail intermediary sector. We would like to highlight these trends and to remind firms of their obligations in relation to these issues.

### Cold-calling

The Central Bank has received a number of reports of firms cold calling consumers. Provisions 3.37 to 3.45 of the Consumer Protection Code set out specific requirements in relation to personal visits and telephone contact with consumers. Firms are reminded that cold calling is prohibited and that unsolicited calls are only permitted in limited circumstances.

### Minimum Competency

Breaches of the Minimum Competency Requirements (MCR) have also been noted. It is the responsibility of firms to ensure that all relevant staff members comply with the MCR, including the Minimum Competency Code 2017 (MCC).

Firms must ensure that they retain written records of qualified and grandfathered persons' compliance with the Continuing Professional Development (CPD) requirements of the MCC, in addition to written records of the Firm's ongoing monitoring of CPD.

The Fitness and Probity Standards also provide that applicants for Pre-Approval Control Functions (PCFs) or Control Function positions must comply with the MCR.

### Self-employed Agents

The Central Bank has noted a number of instances where a firm had appointed self-employed agents to provide regulated financial services on its behalf. Provision 3.25 of the Consumer Protection Code states that "a regulated entity may pay a fee, commission, other reward or remuneration in respect of the provision of regulated activities only to a person that is a regulated entity".

As such, firms are required to carry out appropriate due diligence prior to the appointment of any person, other than employees, providing a regulated financial service on its behalf to ensure that they hold the relevant authorisation/registration required in their own right to provide those services and are listed on the relevant Central Bank [registers](#).

*A number of trends have been identified as part of the ongoing supervision of the retail intermediary sector.*

Firms are reminded of their obligations specifically in relation to cold-calling, minimum competency and the appointment of self-employed agents.

Firms must ensure that they are aware of, and are complying with, all relevant regulatory requirements.

## Consumer Insurance Contracts Act 2019

The Consumer Insurance Contracts Act 2019 (the Act) was signed into law by the President of Ireland on 26 December 2019. On 17 July 2020, the Minister for Finance, announced that the Act would be commenced in two stages, with the bulk of the provisions taking effect from 1 September 2020 and the remaining provisions taking effect from 1 September 2021. This is to allow insurers sufficient time to update their systems and processes in order to comply with them.

The Act seeks to provide increased protection to consumers entering into insurance contracts. The legislation introduces a wide range of legislative reforms in the area of insurance contracts for consumers, including reform of insurance law principles such as utmost good faith, insurable interest and subrogation, as well as a number of specific reforms in areas such as renewal and cancellation of insurance contracts, proportionate remedies for misrepresentation and claims handling.

For the purpose of the Act, the term “consumer” is defined to include not only individuals, but also unincorporated bodies, such as sole traders, partnerships and charities; and incorporated bodies with a turnover of less than €3 million (provided such business are not members of a group having a combined turnover greater than €3 million).

### *Provisions effective from 1 September 2020*

The Central Bank has responsibility for certain sections of the Act, which are highlighted in bold below for ease of reference.

- Section 7 prevents insurers rejecting a claim on the basis that the consumer does not have an “insurable interest” in the subject matter of the policy.
- **Section 10 provides for the provision of information relevant to the contract of insurance as well as the interpretation of certain terms.**
- **Section 11 provides that a consumer may cancel a contract of insurance within 14 days of being notified of the conclusion of the contract. This right only applies to contracts that are not covered by the cancellation rights set out in the Solvency II Regulations or in the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004.**
- **Section 13 deals with the refunding by the insurer of the balance of the premium in the case of a contract being cancelled.**
- **Section 14(6) requires the insurer to notify the consumer in plain language of any alteration to the terms and conditions of their policy in a reasonable time before renewal (and, in any event, no later than 20 working days before renewal).**

### *Did you know?*

*The Consumer Insurance Contracts Act 2019 introduces a wide range of legislative reforms in the area of insurance contracts for consumers, including reform of insurance law principles such as utmost good faith, insurable interest and subrogation.*



The Act seeks to provide increased protection to consumers entering into insurance contracts. The term “consumer” includes not only individuals but also unincorporated bodies, such as sole traders, partnerships and charities; and incorporated bodies with a turnover of less than €3 million.



The majority of the provisions came into effect on 1 September of 2020.

- Section 15 deals with the post-contractual duties of consumers and insurers, replacing the existing principle of utmost good faith
- **Section 16 deals with the issue of claims handling and the duties of both the consumer and insurer with regards to same.**
- Section 17 deals with the limitations on deferring payment of claim until completion of works etc., in cases of property contracts.
- Section 18 (excluding Section 18(4)) deals with proportionate remedies and claims handling. [The commencement order does not yet indicate when Section 18(4) will be commenced]
- Section 19 deals with the replacement of insurance warranties.
- Sections 21 and 22 outline the rights of a third party to a contract to claim against an insurer and
- Sections 23 to 25 deal with the subrogation rights under insurance contracts.

### **Provisions due to take effect from 1 September 2021**

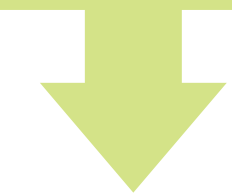
Similarly to the previous summary, the sections that the Central Bank has responsibility for are highlighted in bold for ease of reference.

- Section 8 abolishes the duty of utmost good faith at the pre-contractual stage. The consumer will instead be required to answer, honestly and with reasonable care, specific questions asked by the insurer.
- Section 9 provides proportionate remedies for misrepresentation by a consumer. The applicable remedy will depend on whether the misrepresentation was innocent (insurer is required to pay the claim), fraudulent (insurer may void the contract) or negligent (the insurer must do what it would have done had it been aware of the full facts).
- **In the case of a non-life insurance contract, Section 12 requires the insurer to provide a consumer with a schedule detailing their premiums paid and claims (other than claims under a health insurance contract) made over the previous five years.**
- **Section 14 (1) - (5) alters the consumers duty of disclosure at renewal stage. Under the Act, a consumer will only be required to provide updated or additional information at renewal where the insurer specifically requests this information.**

There are a number of fundamental changes introduced by the Act which will impact both insurers and consumers. The changes introduced by the Act mean that Insurance companies must immediately ensure that they have revised all of their consumer insurance documents, systems and processes to comply with the sections of the Act which came into effect on 1 September 2020.

#### *Did you know?*

*There are a number of fundamental changes introduced by the Act which will impact both insurers and consumers.*



#### Duty of disclosure

The longstanding “duty of good faith” will be replaced by a duty on the policyholder to answer specific questions honestly and with reasonable care.



The commencement of certain sections has been deferred until September of 2021 to allow insurers sufficient time to update their systems and processes in order to comply with them.

## Complex Products

The IDD was transposed into Irish law by means of the IDR. Regulation 42 of the IDR prescribes requirements to assess the suitability or appropriateness of products or services for customers. Regulation 42(4) provides for an exemption from this requirement in respect of insurance-based investment products, where no advice is given, provided certain conditions are met, including:

- a) the activity relates to insurance-based investment products that are deemed to be non-complex;
- b) the activity is carried out at the initiative of the customer;
- c) the customer has been clearly informed that he/she does not benefit from the protection of the relevant conduct of business rules;
- d) the firm complies with its conflicts of interest obligations under Regulation 39.

### *EIOPA Guidelines on assessing the complexity of IBIPs*

In October 2017, the European Insurance and Occupational Pensions Authority (EIOPA) published [Guidelines under the IDD on IBIPs that incorporate a structure which makes it difficult for the customer to understand the risks involved](#) (the Guidelines). The Guidelines set out a process for the assessment of complexity of insurance-based investment products to ensure the appropriate use of the above-mentioned exemption.

These Guidelines are divided in two sections:

- The first section sets out requirements that apply to contracts which only provide investment exposure to financial instruments deemed non-complex under MiFID II (Article 30(3)(a)(i) of the IDD, which has been transposed into Irish law by Regulation 42(4)(a)(i) of the IDR).
- The second section sets out requirements that apply to 'other non-complex insurance-based investment products (Article 30(3)(a)(ii) of the IDD, which has been transposed into Irish law by Regulation 42(4)(a)(ii) of the IDR).

### *What does it mean for retail intermediaries?*

Firms within scope must ensure that they consider and comply with the Guidelines when availing of the exemption set out in Regulation 42(4), i.e. when carrying out execution-only sales of insurance-based investment products.

*Regulation 42(4) of the IDR provides for an exemption from the requirement to assess the suitability or appropriateness of products or services for customers in respect of insurance-based investment products, where no advice is given, provided certain conditions are met i.e. when carrying out execution-only sales of insurance-based investment products.*

**In October 2017, EIOPA published guidelines to set out a process for the assessment of complexity of insurance-based investment products to ensure the appropriate use of the above-mentioned exemption.**

**Firms must ensure that they consider and comply with the Guidelines when availing of the exemption.**



## Reminders

We hope that you have found this newsletter useful. To sum up, remember to:

- avail of the “In situ” process for PCF-49, if applicable to your firm;
- keep an eye out for further communications the Unity Portal;
- get ready for Brexit;
- check out the COVID-19 information hub which can be accessed on our website [here](#);
- familiarise yourself with the new Authorisation Framework if applying for a new Retail Intermediary authorisation;
- take action on AML requirements;
- submit your annual return on time;
- ensure that your PII is in line with the new PII levels for insurance and investment intermediaries;
- exclude goodwill and other intangible assets from the calculation of the firm’s balance sheet assets for regulatory reporting purposes; and
- review the requirements of the Consumer Protection Code for any actions you need to take.

As always, we welcome your [feedback](#) on the content and frequency of this newsletter, as well as any suggested topics that could be covered in future editions.

### *We all have a role to play*

One of our key priorities in consumer protection over the past number of years has been to influence a positive cultural change in regulated firms, while also continuing to monitor compliance with rules and standards and then intervening to enforce those rules and standards where necessary.

Retail Intermediaries also have an important role to play. As the sellers of financial products and services – it is you who is responsible, first and foremost, for protecting the consumers you deal with.



We welcome your feedback on the content and frequency of this newsletter, as well as any suggested topics that could be covered in future editions.



We all have a role to play when it comes to protecting consumers.



Central Bank Query	Central Bank Contact
<p><b>Consumer Protection – Retail Intermediaries:</b></p> <ul style="list-style-type: none"> <li>Authorisation queries</li> <li>Supervision queries</li> <li>Revocation queries</li> <li>Post Authorisation queries</li> <li>Brexit related queries</li> <li>Roadshow queries</li> <li>Statutory Duty Confirmation Reports</li> </ul>	<ul style="list-style-type: none"> <li><a href="mailto:RIAuthorisations@centralbank.ie">RIAuthorisations@centralbank.ie</a></li> <li><a href="mailto:brokers@centralbank.ie">brokers@centralbank.ie</a></li> <li><a href="mailto:revoke@centralbank.ie">revoke@centralbank.ie</a></li> <li><a href="mailto:postauthorisations@centralbank.ie">postauthorisations@centralbank.ie</a></li> <li><a href="mailto:ribrexitcontingency@centralbank.ie">ribrexitcontingency@centralbank.ie</a></li> <li><a href="mailto:riroadshows@centralbank.ie">riroadshows@centralbank.ie</a></li> <li><a href="mailto:statutoryduty@centralbank.ie">statutoryduty@centralbank.ie</a></li> </ul> <p>Postal Address:                      Retail Intermediaries Supervision                      Consumer Protection Supervision                      Central Bank of Ireland                      PO Box 559                      New Wapping Street                      North Wall Quay                      Dublin 1                      D01 F7X3</p>
<p><b>Consumer Protection: Policy</b></p> <ul style="list-style-type: none"> <li>Policy queries</li> <li>Minimum Competency Code</li> </ul>	<ul style="list-style-type: none"> <li><a href="mailto:code@centralbank.ie">code@centralbank.ie</a></li> <li><a href="mailto:competency@centralbank.ie">competency@centralbank.ie</a></li> </ul>
<p><b>Queries for other Central Bank Divisions:</b></p>	<p><a href="#">Central Bank website</a></p>
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<p><b>Fitness and Probity:</b></p> <ul style="list-style-type: none"> <li>Individual Questionnaire queries</li> </ul>	<p><a href="mailto:fitnessandprobity@centralbank.ie">fitnessandprobity@centralbank.ie</a></p>
<p>Funding Levy</p>	<p><a href="mailto:billing@centralbank.ie">billing@centralbank.ie</a></p>
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