



March 2020

Changes to the Consumer Protection Code to come into effect

Background

This briefing considers certain forthcoming changes to the Central Bank of Ireland's (CBI) Consumer Protection Code (CPC) relevant to insurance brokers and other intermediaries.

In November 2017, the CBI published a consultation paper entitled 'Intermediary Inducements – Enhanced Consumer Protection Measures' seeking the views of industry and other stakeholders on a series of proposed consumer protection measures. Having considered the responses received, in September 2019, the CBI published an addendum to the CPC to give effect to the new consumer protection measures. The addendum amends certain provisions of the CPC in relation; to conflicts of interest; an intermediary's use of the term '*independent*' in describing itself or the services it provide; and the provision of information about commission arrangements. The changes will come into effect on 31 March 2020.

Conflicts of Interest

The imminent changes will impose a number of significant restrictions on all regulated entities which pay or receive any fee, commission or other reward in connection with the provision of a regulated activity to a "*consumer*" (which term includes partnerships, other unincorporated bodies and companies with turnover of up to €3m). Each regulated entity must ensure that the fee or commission does not impair compliance with the duty to act in the best interests of the consumer or cause the entity to breach

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its obligations under the conflicts of interest requirements in the CPC.

The conflict of interest requirements in the CPC are amended to provide that all regulated entities must avoid conflicts of interest relating to fees, commissions and other payments linked to the achievement of targets that do not consider the consumer's best interests, e.g. targets relating to volume and bonus payments linked to business retention. Regulated entities must also avoid conflicts of interest relating to agreements under which the entity receives a fee, commission or other reward for directing business in the way of another person. These types of conflicts of interest are excluded from the provisions of the CPC allowing for conflicts to be managed provided that the consumer has agreed in writing to proceed. In other words, they are prohibited regardless of whether or not the consumer agrees to them.

Use of the term “Independent”

The CPC restricts the right of an intermediary to use the term “*independent*” in its legal name, trading name or any other description of the firm or its regulated activities. As the CPC currently stands, the term “*independent*” can only be used by an intermediary: (i) where the services are provided on the basis of a “*fair analysis of the market*” and (ii) the consumer is given the option to pay in full for the service by means of a fee. The definition of fair analysis of the market is set out in the CPC and will not change when the revised CPC comes into effect.

The changes coming into effect are the deletion of condition (ii) above and the introduction of a new condition where advice is provided to the effect that the term “*independent*” may only be used where the intermediary does not accept and retain any fee, commission or other reward other than “*minor non-monetary benefits*” or a fee paid by the consumer to whom advice is provided.

A similar restriction applies to firms providing “*MiFID Article 3 services*”. These are services which are explicitly excluded from the scope of MiFID, namely investment advice and receipt and transmission to certain regulated/listed entities. The only difference with firms providing “*MiFID Article 3 services*” is that the criteria set out in Article 53(1)(d) of Commission Delegated Regulation (EU) 2017/565 must be taken into account in conducting the firm's fair analysis of the market. This requirement is not changing. What is changing is the introduction of a new requirement on firms providing “*MiFID Article 3 services*” to comply with provision 14.5 of the CPC, which essentially applies the same restriction on accepting fees or commissions as described above.

Provision of information about commission arrangements

The revised CPC also imposes detailed disclosure requirements on intermediaries in relation to fees, commissions and other rewards paid or provided to it.

Where an intermediary operates a website, it must publish a summary of all fees and commissions on its website. The summary must include, at a minimum, the following:

a) an indication of the agreed amount or percentage of any fee, commission, other reward or remuneration where the payment is made to the intermediary on this basis;

b) an explanation of the arrangement including details on the type of fee, commission, other reward or remuneration paid or provided to the intermediary, for example, sales commission or trail commission, and details affecting the fee, commission, other reward or remuneration paid or provided to the intermediary, for example, clawback provisions;

c) details of any other agreed fees, administrative costs, or non-monetary benefits under such arrangements, including any benefits, which are not related to the intermediary's individual sales.

An intermediary must bring this information to the attention of the consumer, before concluding a contract for a financial product or service.

Next Steps

Firms impacted by the changes should take immediate steps to ensure that they are in compliance with the revised Consumer Protection Code by 31 March 2020.

If you have any queries in relation to the content of this briefing, or if you require advice or assistance in relation to compliance with the Consumer Protection Code, then please contact the writer or your usual contact at Dillon Eustace.

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