

# COMPLIANCE AND ADVICE

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CIP-02

**V3**

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## Technical contributors

Since it was first published, a number of technical contributors have updated, reviewed and verified specific and specialised sections of this textbook. Their work has been invaluable in producing such a comprehensive textbook and is much appreciated.

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Version 3 of CIP-02, published in April 2023, is current at the time of its publication. Any changes (legislative, regulatory, taxation, etc.) thereafter are not included in this textbook.

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**Case studies:** These illustrate the application of the theory to more detailed real-life or practical workplace scenarios.



**Extracts:** Throughout this textbook you will see extracts from various relevant sources, such as reports, industry codes, speeches and legislation. In some cases, these extracts are summaries or abbreviations of the original source material. If necessary, the original source material should be accessed for the exact wording.



**Just thinks:** These offer you an opportunity to interact with the textbook content by applying your learning.



**Key terms:** These appear in the margins and at the end of the textbook and explain the meaning and context of insurance terms you may not have come across before.



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**Sample multiple-choice questions:** These can be found at the end of each chapter and are examples of the type of questions that may appear on your exam paper. These questions and their answers are provided to help you to focus your study and prepare for your exam.



**Index:** At the end of the textbook, there is an index of websites, legal cases, legislation, acronyms, and a glossary of key terms that provide a quick and easy reference to the material featured in the textbook.

**Any questions?** Contact our Member Services team on 01 645 6670 or [memberservices@iii.ie](mailto:memberservices@iii.ie), who will be happy to help.

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## Chapter

## 1

# Why and how we regulate

## What to expect in this chapter

This chapter provides:

- An overview of the need for, and main types of, regulation
- An introduction to the influence of the European Union (EU) and the role of the Central Bank of Ireland (the Central Bank) in regulating Irish insurers and intermediaries.

The Irish insurance industry has a high level of external regulation, whereby firms (and their employees) must follow rules and meet standards in their day-to-day business.

Regulatory bodies enforce these rules and standards, with serious consequences for firms that do not comply. This chapter introduces the concepts of regulation and supervision in insurance and considers their main features. It aims to familiarise students with key themes to be further developed throughout this textbook, e.g. types of regulatory supervision, the impact of European regulation and the role of the Central Bank.

## Learning outcomes for this chapter

Section	Title	At the end of each section you should be able to:
<b>A</b>	<b>The need for regulation</b>	Identify why government and society seek to regulate financial services providers and distinguish between structural, systemic, prudential and conduct of business regulation.
<b>B</b>	<b>Regulation and supervision</b>	
<b>C</b>	<b>Impact of European regulation</b>	Explain the impact of the European Union and its legislation on the regulation and operation of the Irish insurance market.
<b>D</b>	<b>European Union Insurance Directives</b>	Demonstrate the European Union developments that have influenced the provision of advice in relation to general insurance products.
<b>E</b>	<b>Insurance distribution</b>	
<b>F</b>	<b>Role of the Central Bank</b>	Outline the main role of the Central Bank.

**Note:** in this textbook, our approach is to consider matters mainly from the perspective of an adviser who is providing advice across the market. If you take on a more limited role, either as a tied insurance intermediary or as an insurer employee, many of the principles still apply but some in a more limited context.

# A The need for regulation

In the past, some members of the industry argued in favour of a self-regulating insurance market with little external control. The justification was that it is always in a firm's interest to treat its customers fairly. If customers do not receive satisfactory service, they will move their business to another **firm**. In this way, the market would automatically regulate itself.

However, this theory has many flaws. A number of difficulties may arise, including:

- Potential for serious financial loss – An insurance product is tested at the point of a claim, typically for loss, damage or liability. It follows that, unless the insured is fully aware of the product's scope, its limitations may lead to the refusal of a claim, with potentially devastating effects.
- Competence of **advice** – Insurance products are generally complex legal documents, so the consumer must rely on the adviser to guide them through the sales or claims process. This creates information asymmetry, whereby the adviser has more, or superior, knowledge about the product than the consumer, who may have only a basic knowledge. The consumer is not in a position to assess the adviser's level of competence.
- Conflicts of interest – Consumers are entitled to expect the best advice and recommendations available. Although the insurance adviser must always act in the best interests of the consumer, situations sometimes arise where the adviser may be tempted to place other interests (e.g. pressure to increase their firm's commission earnings) above those of the consumer.
- Financial failure of an insurance provider – Though an extreme situation, the failure of one or more insurance providers could harm the stability of the wider economy, as was seen in the previous collapse of the worldwide banking sector.
- Lack of competition – competition provides better value for consumers, stimulates business and enhances the economy. A lack of competition in a self-regulated market could have negative consequences for consumers.

The Insurance Supervision Directorate of the Central Bank is responsible for the prudential supervision of insurance and reinsurance undertakings authorised in Ireland. As in other areas of the financial services industry, **regulation** of the Irish insurance sector continues to be significantly strengthened. The government's justification is that regulation:

- Sustains confidence in and protects the integrity of the financial system
- Maintains the safety and soundness of financial institutions
- Protects the consumer.

At this stage, it is useful to clarify a few terms that we will use in this chapter. (More precise definitions of these terms appear in the glossary of key terms at the end of the textbook).



## firm

a regulated entity (used throughout this textbook to refer to regulated entities that provide financial services, including insurers, reinsurers and intermediaries)



## advice

a personal recommendation to a person, whether at their request or at the initiative of the firm, in the course of performing a relevant (controlled) function



## regulation

a principle, rule or law designed to control or govern conduct



### insurance intermediary

any person or firm, other than an insurer/reinsurer or their employees but including an ancillary insurance intermediary, which, for remuneration, takes up or pursues the activity of insurance distribution and is subject to the **Insurance Distribution Regulations 2018**



### insurer

a risk-carrying regulated entity/firm (product producer)

### intermediary

a person or firm that acts between a provider and customer in the provision of services (e.g. see 'insurance intermediary')



### Quick question 1

Why does the Central Bank place such strong emphasis on consumer protection?

The answer is at the end of this chapter.

### adviser (advisor)

An individual involved in the advising process. This may be an employee of an insurer or an intermediary. Advisers may perform a number of tasks, e.g. help a client decide on insurance products and services or provide assistance throughout a claim.

### broker

A type of **insurance intermediary**. At this stage, it is sufficient to note that the main role of a broker is to assist their client in arranging insurance. We will look at this term (and the role of the broker) in more detail in Chapter 3.

### client

A buyer of financial services/products. Client can include, for example, individuals, firms, organisations or clubs. The terms 'client' and 'customer' are interchangeable.

We use the term 'client' extensively in this textbook, especially when examining the activities of insurance intermediaries (and advisers working in intermediary firms).

### consumer

As defined by the Central Bank:

- A person or group of persons, but not an incorporated body with an annual turnover in excess of €3 million in the previous financial year (includes partnerships and other unincorporated bodies such as clubs, charities and trusts)
- Incorporated bodies with an annual turnover of €3 million or less in the previous financial year (provided the body is not part of a group with a combined turnover of more than €3 million)

and includes a potential 'consumer'.<sup>1</sup>

### customer

A broader term than 'consumer', referring to:

- Any person, firm or organisation (regardless of size/turnover) to whom a regulated firm provides or offers to provide an insurance product or service
- Any person, firm or organisation that requests such a product or service.

### regulated entity/firm

A financial service provider (FSP), e.g. an **insurer** or insurance intermediary, authorised, regulated or supervised by the Central Bank (or other European Union/European Economic Area member state). We sometimes use 'firm' but the context will indicate whether this relates to insurer, **intermediary** or both.

<sup>1</sup> Note: the term 'consumer' is defined differently in various pieces of legislation e.g. the **Consumer Credit Act 1995** defines 'consumer' as 'a natural person acting outside his trade, business or profession'. In this textbook, the definition of 'consumer' as set out in the Central Bank's CPC is used unless specifically stated otherwise.



# B Regulation and supervision

Regulation and **supervision** are carried out in a number of ways. Some measures apply to the market as a whole, while others apply only to individual persons or firms. These types of regulation are:

- Structural regulation
- Systemic regulation
- Prudential regulation
- Conduct of business rules.



## supervision

the act or function of overseeing something or someone



## Microlearning resources

In the Member Area of [www.iii.ie](http://www.iii.ie), via the Connect logo and in Your Learning Centre, select the microlearning section of this chapter to access a resource specifically developed to help you better understand these types of regulation.

As we briefly consider each of these types of regulation in the following sections, you may notice that certain regulatory measures are used in the application of more than one type of regulation. For example, the oversight and monitoring of competition and competitive practices is a regulatory measure used in structural, systemic and conduct of business regulation.

## B1 Structural regulation

Structural regulation focuses on authorisation. Its aim is to ensure that only appropriately structured firms and persons of sufficient financial standing, integrity, competence, and experience are authorised to provide financial services. It acts as a barrier to entry into the financial services industry and because of this it is sometimes referred to as a regulator's 'gatekeeper function'.

The Central Bank's role in structural regulation in terms of the authorisation of insurers, reinsurers and intermediaries is outlined in Chapter 2A.

## B1a Structural regulation and competition

The regulation of competition is of vital importance to the structure and balance of the financial services industry. As noted previously, competition provides better value for consumers, stimulates business and enhances the economy. Competition law ensures that individual firms do not achieve a dominant or controlling market position or market share that would distort competition within the sector.

The Competition and Consumer Protection Commission (CCPC) is the statutory body responsible for promoting compliance with, and enforcing competition and consumer protection law in Ireland. Its *Strategy Statement 2021-2023* states that its goals are to:

- Deliver effective enforcement and compliance outcomes
- Empower consumers to make informed decisions
- Represent the interests of consumers and promote competition.<sup>2</sup>

Example 1.1 illustrates the CCPC's role in practice and in particular, its role in structural regulation.



### Example 1.1

#### InsuranceLink

In July 2017 CCPC representatives carried out inspections of motor insurers and in May 2019 the European Commission (EC) undertook a formal antitrust investigation. The purpose of both interventions was to determine whether restricting access to Insurance Ireland's data pooling system (InsuranceLink) solely to members, left other insurers at a competitive disadvantage. The findings of these investigations led the EC to note that:

Lack of access to Insurance Link has the effect of placing companies at a competitive disadvantage on the Irish motor vehicle insurance market in comparison to companies that have access to the database. This affects negatively costs, quality of service and pricing. It also acts as a barrier to entry and thus reduces the possibility of more competitive prices and choice of suppliers.<sup>3</sup>

#### Price signalling

In September 2020, the CPC issued preliminary findings which alleged that anti-competitive behaviour in the Irish private motor insurance market during 2015 and 2016 included **price signalling** and other contacts between competitors, all of which reduced levels of competition. In August 2021, the CCPC secured legally binding commitments from six parties that were under investigation - AIG Europe, Allianz, AXA, Aviva Insurance Ireland, FBD and AA Ireland - to reform their internal competition law compliance programmes.



#### price signalling

when businesses alert their competitors to their intention to increase prices, causing further price increases across the sector. This signalling can be public (through announcements or comments on prices) or private (through direct contacts between businesses).

<sup>2</sup> The Competition and Consumer Protection Authority, 2021. *Strategy Statement 2021-2023*. Available on [www.ccpc.ie](http://www.ccpc.ie)

<sup>3</sup> Charlie Taylor, 'Irish motor insurers 'restricted competition', European Commission says', *The Irish Times*, 18 June 2021.



### Example 1.1

Brian McHugh (CCPC member with responsibility for Competition Enforcement and Mergers) said:

Businesses are required to set their prices independently. Any form of pricing statements and suspected coordination that could manipulate future pricing raise serious concerns under competition law, as this can impact on competition and ultimately the price consumers pay.

The CCPC has invested considerable time and resources over the years in the insurance market, investigating business practices and advocating on behalf of consumers. Whilst this particular investigation may have come to an end, the CCPC is in no way giving the industry a clean bill of health.<sup>4</sup>

The Irish Government's *Action Plan for Insurance Reform (2020)* aims to remove the impediment that high insurance costs have on the Irish economy.<sup>5</sup> The Action Plan's third implementation report indicates that approximately 90% of its actions have been completed or are ongoing, with the remaining initiated.<sup>6</sup> Example 1.2 outlines some of the principal actions that have been completed to date.



### Example 1.2

- The Personal Injuries Guidelines have been given effect.
- Legislation to strengthen the laws on perjury has been enacted.
- The Office to Promote Competition in the Insurance Market has been established.
- The Insurance Fraud Coordination Office has been established.
- Reform of occupiers' liability (duty of care) legislation.
- Reform of the Personal Injuries Assessment Board.

## B2 Systemic regulation

The objective of systemic regulation is to minimise risks to and sustain public and institutional confidence in the stability of the financial system as a whole. In practice, this means implementing regulation which aims to protect the stability of the entire financial system but in doing so also protect consumers.

The failure of one financial institution could cause other interconnected institutions to fail and consequently harm the economy. The social and economic consequences, especially in banking, are obvious. Compared to banks, the systemic (or interconnected) risk in the insurance sector is relatively low because insurers hold greater amounts of capital in relation to liabilities. Consequently, shocks and setbacks within the sector are less likely to threaten the wider economy. However, the industry is susceptible to systemic risks from other parts of the financial system. Although it took place in the US in 2008, the collapse of insurance giant AIG remains a relevant example of systemic risk and the importance of systemic regulation (see Example 1.3).

<sup>4</sup> Competition and Consumer Protection Commission, 2021. 'Motor insurers set to introduce new compliance measures following CCPC investigation', 20 August, [www.ccpc.ie](http://www.ccpc.ie)

<sup>5</sup> The Department of Finance, *Action Plan for Insurance Reform*, December 2020, [www.gov.ie](http://www.gov.ie)

<sup>6</sup> The Department of Enterprise, Trade and Employment, *Action Plan for Insurance Reform – Implementation Report*, November 2022, [www.gov.ie](http://www.gov.ie)



### Example 1.3

AIG's main difficulties stemmed from its London office, which dealt with complex insurance transactions on previously low-risk securities (e.g. mortgage-related assets) that had become overinflated by the property boom. When the real estate market collapsed and these securities declined in value, the insurer was rescued by the US government.

According to former AIG chief executive, Edward Liddy:

Quite simply, the government believes and we do also, that AIG is a systemically important financial institution. There are just too many institutions and people in the world that depend on the promise represented by an AIG commitment.<sup>7</sup>

Section B1a outlined that structural regulation relies in part on competition law. It is important to note that systemic regulation also relies on competition-related regulatory measures. These measures are concerned with ensuring that anti-competitive behaviour does not interfere with the goals of systemic regulation as noted in this section.



#### capital adequacy

the appropriate amount of capital required to support the insurer's operations

#### solvency capital requirement

a level of eligible own funds that Solvency II legislation requires insurers/reinsurers to hold in order to meet liabilities and absorb significant losses

#### technical provisions

reserves held so that assets are matched with known and estimated future claims liabilities and associated expenses; made up of three components: the claims provisions, the premium provisions and the risk margin

## B3 Prudential regulation

'Prudential', in this context, means taking all prudent (or sensible) steps necessary to properly and conscientiously regulate. Prudential regulation is closely connected with systemic regulation. While systemic regulation could be considered to have a macro (industry-wide) focus, prudential regulation has a micro (firm or entity) focus. Prudential regulation focuses on the financial stability and soundness of individual firms with a regulatory approach tailored to the type and risks of each firm.

Prudential regulation sets standards to identify and minimise risk. It also aims to avoid excessive concentration of risk by an individual firm. Prudential regulation includes requirements about a firm's corporate governance, risk management and internal controls. For insurers, there is a particular focus on **capital adequacy**, **solvency capital requirement** (SCR) and **technical provisions**.

<sup>7</sup> Andrew Clark, 'AIG's \$61.7bn crash sends markets plunging', *The Guardian*, 3 March 2009.

## B4 Conduct of business rules

Systemic (macro) and prudential (micro) regulation have much in common with **conduct of business rules**.

While clearly different, they are largely interdependent. Their implementation benefits the consumer in preventing/limiting the failure of the financial system and of individual firms. Conduct of business rules provides additional measures of protection.

These rules focus on a firm's interaction with its clients (including the advising process) and the provision of competent customer service.

The Central Bank protects the interests of firms' consumers. Its conduct of business rules aim to:

- Provide consumers with clear, relevant and accurate information during the sales process, especially regarding costs
- Recommend products/services appropriate to consumers' needs
- Provide a high standard of follow-up services, e.g. when making a claim or complaint, or when renewing a policy.

The Central Bank's statutory (legal) codes of conduct oblige firms to act fairly and transparently when dealing with consumers. Examples include:

- The **Consumer Protection Code 2012** (CPC) (see Chapter 4)
- The **Minimum Competency Code 2017** (MCC) and **Minimum Competency Regulations 2017** (MCR 2017) (see Chapter 7)
- Individual accountability regime (see Section F2b).



### Banc Ceannais na hÉireann Central Bank of Ireland

Eurosystem



#### conduct of business rules

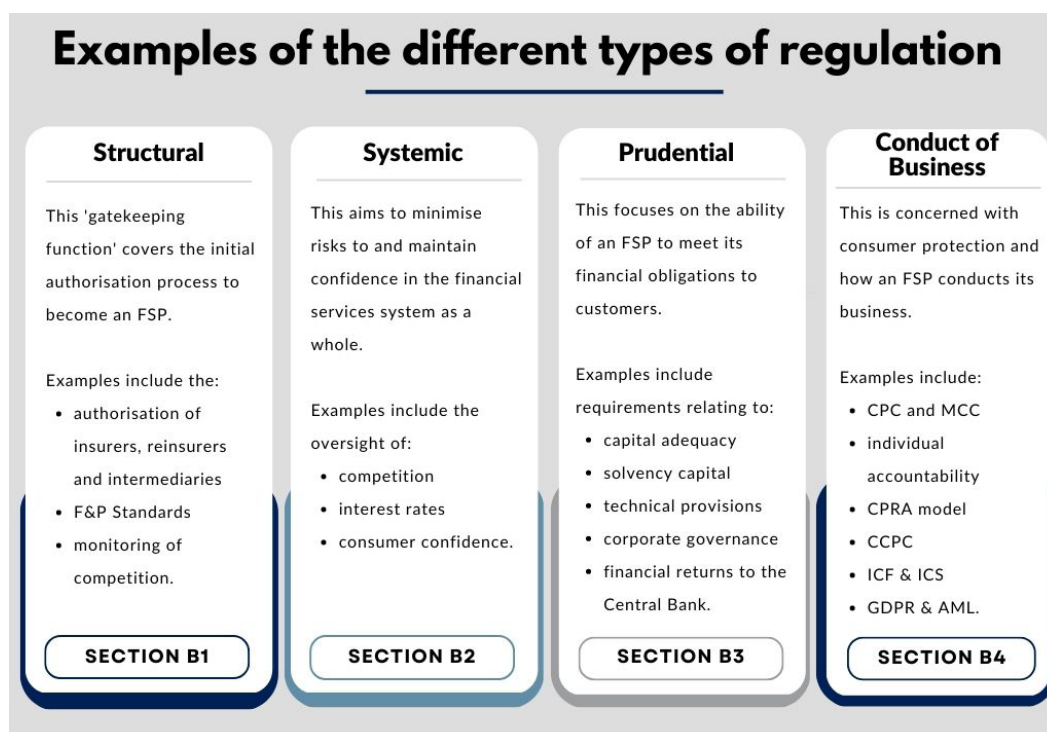
rules relating to the fair and honest treatment of customers by financial service providers

## B5 Summary

The regulation of firms and the financial system is a complex and critical activity from both a supervisory and consumer protection perspective. The different types of regulation should not be viewed in isolation but rather as a combination of regulatory approaches and measures that collectively ensure the protection of both consumers and the wider economy from any adverse effects caused by the activities of firms.

Figure 1.1 provides examples of these different types of regulation to illustrate how they combine to create an effective regulatory environment.

**Figure 1.1 Examples of the different types of regulation**



## C

# Impact of European regulation

To begin our study of regulation and compliance in the Irish financial services industry, we will first consider a significant influence on the Irish regulatory framework – Ireland's membership of the EU. This has been the key driver of insurance regulation and the development of Ireland's cross-border industry since 1973.

The Irish Constitution is the principal source of law in Ireland and all laws must conform to its provisions. Only the people of Ireland can alter the Constitution, by voting directly in a referendum. However, when Ireland joined the European Economic Community (EEC, now the EU) on 1 January 1973, it was a condition of entry that the Constitution be amended to reflect the supremacy of European law over all domestic law, including the Constitution. Ireland changed its Constitution by referendum, so that European law now holds supremacy.



## Treaty of Rome 1957

basis of the European Economic Community (EEC), later the European Union (EU), in order to broaden its scope and give recognition to the fact that it was more than simply an economic community

## four freedoms

foundational principles of the EU: freedom of movement of goods, persons, services and capital

## C1 Background to European regulation

In 1957, the **Treaty of Rome** laid down the principles that continue to underpin the 'Single Market' in insurance. The original EEC was built on what are known as the '**four freedoms**'. Within this framework, the most significant to insurance is the freedom of services, which includes:

- Freedom of establishment – This is the freedom for any business (or person) in the EU to establish a subsidiary, agency or branch in another member state, with the same rights as a domestic business.
- Freedom to provide services – This is the right of a business (or person) in one member state to provide 'cross-border services' in another member state without establishing a permanent presence in that member state.



European regulation of the insurance market has two overall aims:

1. Insurers and intermediaries will face the same rules and regulatory requirements across the Single European Market, i.e. a level playing field.
2. Consumers should be protected in their dealings with insurers and intermediaries in a consistent way across the EU (and benefit from access to wider markets).





## EU Regulation

legislation that is of general application, binding in its entirety and directly applicable in all EU member states without the need for member states to transpose it into domestic legislation

## EU Directive

legislation that allows EU member states the choice of form and methods of implementation under national law, but is binding in the results to be achieved, i.e. must be transposed into domestic legislation

## EU Decision

a decision that is binding in its entirety, but only on those EU member states to whom it is addressed, usually used in competition law; may be addressed to member states or individuals

## EU Recommendation/ EU Opinion

a non-binding instrument of EU law, though without any legal force, having political weight and persuasive value

## Statutory instrument

a form of delegated legislation providing detailed rules that implement the more general provisions of particular European Directives or Acts of the Oireachtas



## Quick question 2

Why not simply rely on EU law and avoid the need to create specific legislation in Ireland?

## C2 Legal framework

There are three sources of EU law – primary, secondary and supplementary:

1. Primary law refers mainly to the Treaties (e.g. the Treaty of Rome 1957, the Treaty of Lisbon 2007) that create the basis for the EU and how it operates.
2. Secondary law is derived from the principles and objectives set out in the Treaties. For the purposes of this textbook, there are three key types of binding EU legislation:
  - **EU Regulations**
  - **EU Directives**
  - **EU Decisions.**
3. Supplementary law includes the case law of the European Court of Justice (ECJ), international law and general principles of law. It enables the ECJ to bridge the gaps left by primary and/or secondary law.

Member states are responsible for the correct and timely implementation of EU Treaties and law. The European Commission monitors the application of EU law and may take action if a member state:

- Fails to incorporate EU Directives into its national law and to report/communicate to the EC what measures it has taken
- Is suspected of breaching EU law.

If no solution can be found at an early stage, the EC can open formal infringement proceedings and eventually refer the member state to the ECJ.<sup>8</sup>

EU institutions and committees may also issue an **EU Recommendation/Opinion**, which are not legally binding but play an important role in the decision-making process. The institution or committee can make its views known and suggest a line of action without imposing any legal obligation.

## C3 Implementation of EU law

European legislation is implemented in Ireland in one of two ways:

- A full Act of the Oireachtas – a Bill voted through the Dáil and Seanad (the Oireachtas Houses) and signed into law by the President, e.g. the **Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021** which transposed the **Fifth Anti-Money Laundering Directive 2018** into Irish law
- A **Statutory instrument** (SI) – a form of delegated legislation. There are many types of SIs: orders, regulations, rules, bye-laws, schemes and statutory codes.



<sup>8</sup> Further information on European law and its implementation may be found at the European Union website, [ec.europa.eu](http://ec.europa.eu).





### European System of Financial Supervision

the framework for financial supervision in the EU since 2011

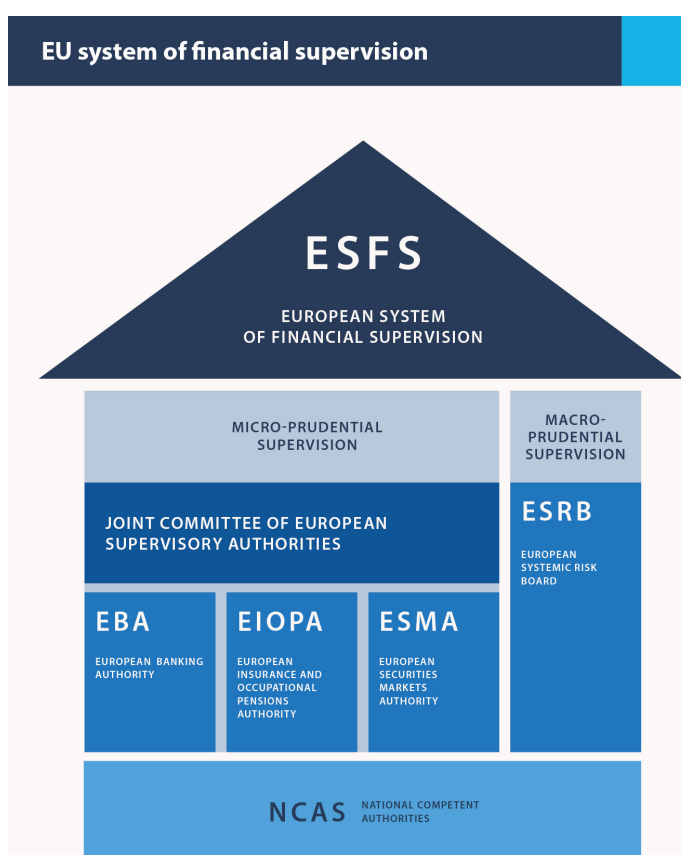
## C4 European regulatory bodies

The **European System of Financial Supervision (ESFS)** is an integrated network of national and European regulators. It consists of the:

- European Supervisory Authorities (ESAs)
  - o European Banking Authority (EBA)
  - o European Securities and Markets Authority (ESMA)
  - o European Insurance and Occupational Pensions Authority (EIOPA)<sup>9</sup>
- European Systemic Risk Board (ESRB)
- National competent authorities (national regulators).

Figure 1.2 illustrates the ESFS structure.

**Figure 1.2 Structure of the ESFS**



<sup>9</sup> Further information on the authorities and board making up the ESFS is available at: [www.esma.europa.eu](http://www.esma.europa.eu), [www.eba.europa.eu](http://www.eba.europa.eu), [www.eiopa.europa.eu](http://www.eiopa.europa.eu) and [www.esrb.europa.eu](http://www.esrb.europa.eu).



### European Systemic Risk Board

an independent EU body responsible for the macro-prudential oversight of the EU financial system.



### Quick question 3

How is the Central Bank represented at the European System of Financial Supervision level?

## C4a European supervisory authorities

The aim of the ESAs is to create a European Single Rulebook by developing draft technical standards to be adopted by the EC as EU law. The key functions and powers of the ESAs in relation to their respective sectors are as follows:

- Rule-making powers
- Emergency powers
- Supervision
- Coordination of national regulators
- Investigation powers.

The Deputy Governor of the Central Bank is the Irish representative member of the Board of Supervisors of all three ESAs. In addition, Central Bank staff actively participate with the ESAs through their membership on the ESA Committees.

## C4b European Systemic Risk Board

The **European Systemic Risk Board** seeks to prevent or mitigate systemic risks and contribute to the smooth functioning of the internal market.

The Governor of the Central Bank is a member of the General Board of the ESRB.

## C4c Co-ordinating bodies

Increasingly, pan-EU regulatory and co-ordinating bodies are being established to streamline the development and implementation of European regulations e.g. the European Supervisory Authorities and the proposed Anti-Money Laundering Authority.

## D

# European Union Insurance Directives

The First, Second and Third Non-Life Insurance Directives set out the provisions for writing non-life insurance business in the EU. Section D1 briefly outlines some of the key provisions of these Directives, while Section D2 outlines the scope and impact of the **Solvency II Directive 2009**.

## D1 Non-Life Insurance Directives

The important principle of freedom of establishment underpinned and provided a legal basis for the **First Non-Life Insurance Directive 1973**. This Directive concerns the business carried on by insurance **undertakings** (e.g. insurers, reinsurers, intermediaries) that are established, or wishing to become established, in a member state. The Directive states that the regulatory authorities of the home member state require the insurer to establish and maintain adequate technical provisions (reserves).

The Directive also established standard classes of non-life business in which insurers could be authorised. Authorisation was subject to certain restrictions, e.g. the legal form of the company, a declaration of any close links with non-insurance companies and the submission of a scheme of operations (i.e. a business plan).

The **Second Non-Life Insurance Directive 1988** laid down rules for cross-border non-life insurance business, which balance the freedom to provide services with the need to ensure consumer protection.

The **Third Non-Life Insurance Directive 1992** introduced a single authorisation system for insurers. An insurer whose head office is in an EU member state may open branches and carry on business on a cross-border basis across the EU. This created an EU-wide **passporting** system, allowing insurance undertakings to conduct business across the EU. The passporting system arose out of the 'freedoms' on which the EU is founded (see Section C1).

The **Solvency II Directive 2009** (Solvency II) was transposed into Irish law by the **EU Insurance and Reinsurance Regulations 2015** and entered into force in January 2016. This Directive repealed and replaced the First, Second and Third Non-Life Insurance Directives and the 2015 Regulations now set out the procedures for passporting.



### undertaking

regulated entity/firm (e.g. insurer, reinsurer, intermediary) holding an authorisation via the Central Bank



### passporting

EU system whereby an insurer established and authorised in one member state can sell to residents of another member state by either establishing a branch there or by way of cross-border services

## D1a Passporting

Example 1.4 outlines the case of passported insurer, Liberty Insurance.



### Example 1.4

Liberty Seguros, Compania de Seguros Y Reaseguros, S.A., trades in Ireland as Liberty Insurance. Liberty Seguros is authorised and prudentially regulated by the General Directorate of Insurance and Pension Funds in Spain. It is regulated by the Central Bank of Ireland for the conduct of business rules. Liberty Insurance sell a range of general insurance products, including motor and home insurance, commercial liability, property damage, commercial vehicles and fleet cover.<sup>10</sup>



### Just think

What does 'passporting' permit? For example, who would regulate an insurer with head offices in one EU member state, wanting to trade in a different EU member state?

An insurance undertaking (e.g. a regulated insurer/reinsurer) established and authorised in one EU member state (the home country) can sell to residents of another member state (the host country) by either establishing a branch there (freedom of establishment) or through cross-border services (freedom of services).

The home country regulator authorises undertakings and remains responsible for their prudential supervision.

The host country regulator retains control in certain areas, mainly those relating to conduct of business (e.g. consumer protection), and is entitled to impose certain obligations, restrictions and requirements (e.g. marketing, advertising, complaints handling) according to the '**general good requirements**'. These may include professional codes of conduct or minimum insurance conditions, e.g. protecting a weaker party in a contract relationship. These requirements vary from member state to member state. As noted in Section B4, examples of Central Bank requirements in this area include the CPC, MCC and MCR.

The ECJ states that the rules cannot be justified by the general good unless they:

- Are objectively necessary
- Are applied without discrimination
- Are proportionate to their objective
- Do not duplicate the rules of the home country/member state.

A good way to think about the interaction between the home and host country regulators is that it works in a similar way to driving licences. Your driving licence is issued by the local authority where you reside (i.e. the home country) and once issued, it enables you to drive in the country of issue (home country) or in any EU member state (host country) without needing a new licence. But when you drive in another member state (host country), you must follow the rules of the road that apply there.



#### general good requirements

the right of a host country to apply its own laws on the operations of a foreign insurer in its territory, but only if it is deemed beneficial to the population of the host country

<sup>10</sup> [www.libertyinsurance.ie](http://www.libertyinsurance.ie)

## D1b Brexit and passporting

Post-Brexit, the UK (including Gibraltar) no longer has the right to passport within EU member states. It is regarded as a 'third country'. A UK firm may use the option of setting up a third-country branch in a European Economic Area (EEA) member state. The Solvency II regime facilitates a non-EEA insurer in establishing a branch operation in an EEA member state, subject to meeting specific regulatory requirements. However, this does not permit passporting into other jurisdictions, i.e. the insurer must set up a separate branch in every EEA member state in which it wishes to transact business.<sup>11</sup>

In preparation for Brexit, the Central Bank delivered 'a proportionate, robust, efficient and effective authorisation process in line with European regulatory norms, for all firms seeking authorisation in Ireland as a result of Brexit'.<sup>12</sup> While it seems that the Irish market has adapted well to the disruption, students are encouraged to keep up to date with Brexit-related developments.



### Quick question 4

Explain what the term 'general good requirements' means.

## D2 Solvency II

The **Solvency II Directive 2009** (in force since January 2016) also deals with EU insurance and **reinsurance** undertakings' capital requirements, valuation techniques, corporate governance and reporting standards.

As noted in Section B2, the failure of a financial institution may disrupt the efficient operation of the market. Solvency II is predominantly a protection measure that aims to reduce the possibility of insurer/reinsurer failure by ensuring accurate and timely intervention by regulators. It was designed to:

- Produce a more consistent and harmonised solvency standard across the EU
- Promote the international competitiveness of the EU insurance market
- Increase confidence in the financial stability of the insurance sector
- Secure an adequate level of consumer protection by reducing the risk of an insurer/reinsurer being unable to meet claims in full.

Solvency II requires that all insurers and reinsurers keep adequate capital/cash reserves to pay for future losses. It adopted a more risk-based review of their overall financial position. Insurers and reinsurers must define their own risk profile and show that they have sufficient capital and reserves in place. It demands higher levels of corporate governance and oversight by boards of management and internal risk management (e.g. by requiring firms to establish risk management, internal audit function and compliance functions).

Students are encouraged to keep up to date with Solvency II-related development and information. The European Insurance and Occupational Pensions Authority publishes statistics based on Solvency II reporting from insurers and groups in the EU and EEA.<sup>13</sup>



### reinsurance

a form of insurance for an insurer whereby all or part of the risk underwritten by an insurer is transferred to a reinsurer

<sup>11</sup> John Larkin, 'Central Bank publishes consultation paper in relation to Third Country Insurance Branches in Ireland', ©William Fry, 24 November 2017, [www.williamfry.com](http://www.williamfry.com).

<sup>12</sup> Central Bank of Ireland (News & Media – Press Releases), 'Safety and soundness – Strategic priorities for the next three years' (speech), 17 January 2019, [www.centralbank.ie](http://www.centralbank.ie).

<sup>13</sup> EIOPA (Financial stability – Financial stability, Statistics, EU/EEA (re)insurance statistics), [eiopa.europa.eu](http://eiopa.europa.eu).



#### insurance distributor

any insurance intermediary, ancillary insurance intermediary or insurance undertaking



#### insurance distribution

any activity involved in advising on, proposing, or carrying out other work in preparation for or conclusion of contracts of insurance, or of assisting in the administration and performance of such contracts

# E Insurance distribution

The **Insurance Distribution Directive 2016** (IDD) was transposed into Irish law by the **Insurance Distribution Regulations 2018** (IDR).

IDD aims to enhance protection for insurance consumers and to support competition between **insurance distributors** by creating a level playing field.

The IDD is a minimum harmonisation directive. This means that each member state was free to introduce more stringent provisions provided they are consistent with the Directive. This poses a challenge for cross-border firms as there may be multiple regulatory requirements in different jurisdictions where individual regulators chose to expand on the IDD's requirements.

## E1 Scope

The IDR cover authorisation, passporting arrangements and regulatory requirements and are relevant for those selling, developing and/or distributing insurance products.

A person (or firm) cannot undertake **insurance distribution** in Ireland (whether carried out directly by an insurer/reinsurer or through an intermediary) unless authorised as an:

- Insurance intermediary – those who pursue the activity of insurance distribution for remuneration and who are not ancillary insurance intermediaries
- Ancillary insurance intermediary – those whose principal professional activity is not insurance distribution but who provide particular insurance products that are complementary to their goods or services e.g. car rental firms offering insurance as part of a car rental package, garages or retailers offering payment protection insurance as part of a finance package or travel agents and airlines offering travel insurance. However, ancillary insurance intermediaries are exempt from the IDR if the insurance involved covers breakdown, loss of or damage to the goods, or damage to or loss of baggage and other risks linked to travel booked with that intermediary and where the annual premium payable does not exceed €600 or, where the duration of the service is 3 months or less, the premium payable per person does not exceed €200.<sup>14</sup>
- Insurer.

<sup>14</sup> The purpose of this exemption is to exclude low-value insurance transactions occurring in the context of retail sales from the scope of regulated insurance distribution activity.

Example 1.5 illustrates some insurance distributors that fall within the scope of the IDR.



### Example 1.5

- Credit institutions, credit unions and stockbrokers, when acting as insurance intermediaries
- Call centres providing services to/operating on behalf of insurers
- **Loss assessors** retained by the insured (and not the insurer providing the cover)
- **Captive** insurance managers
- **Reinsurance intermediaries**
- Retail outlets offering insurance products e.g. Supervalu car insurance
- Ancillary insurance intermediaries (where not exempt)
- Comparison information websites (or other media) that enable clients to directly or indirectly conclude an insurance contract.

However, there are specific exemptions in the IDR for the following activities:

- The management of claims of a (re)insurer on a professional basis
- Loss adjusting or expert appraisal of claims for reinsurers
- (Re)Insurance distribution activities in relation to risks arising outside the EEA
- The mere provision of data and information only, if the firm does not take any additional steps to assist the client in concluding an insurance contract.

## E2 Main provisions

The IDR:

- Apply to the distribution of all insurance products (but more prescriptive rules apply to insurance products that have an investment element, e.g. unit-linked life insurance)
- Ensure that clients will receive a simple, standardised Insurance Product Information Document (IPID) (see Chapter 4D4)
- Require all marketing communications to clients or potential clients to be identifiable as fair, clear and not misleading
- Require that **key information** be clearly disclosed in good time before the conclusion of any contract, giving details of, for example:
  - the intermediary or insurer
  - the **complaints** procedure
  - the basis of advice, e.g. fair and personal, limited or tied analysis (see Chapter 3D1)



#### loss assessor

an expert in dealing with insurance claims, appointed by the insured to prepare and negotiate a claim on their behalf

#### captive

an authorised insurer that has been formed as a subsidiary of a non-insurance parent company

#### reinsurance intermediary/broker

any person, other than a reinsurer or its employees, who for remuneration takes up or pursues the activity of reinsurance distribution



#### key information

any information that is likely to influence a consumer's actions with regard to a product or service

#### complaints

expression of grievance or dissatisfaction by a consumer, either orally or in writing, in connection with:

- the provision or offer of the provision of a product or service to a consumer by a regulated entity
- the failure or refusal of a regulated entity to provide a product or service to a consumer





### professional indemnity (liability) insurance

insurance that covers claims arising from the professional activities (including negligent or inadequate advice given) of advisers

### tiered insurance intermediary

any intermediary who:

- a. undertakes insurance or reinsurance distribution for and on behalf of one or more insurer/reinsurer(s) or other intermediaries in the case of insurance products that are not in competition;
- b. acts under the responsibility of those insurers/reinsurers or other intermediaries, and
- c. is subject to oversight of compliance with conditions for registration by the insurer/reinsurer or other intermediary on whose behalf it is acting.



### Quick question 5

State the principal aim of the IDD.

- Require, in cross-selling situations (where an insurance distributor offers an insurance product along with a non-insurance product), that the distributor tell the client that they can buy the components separately
- Require product oversight and governance, whereby all those that manufacture insurance products must have in place internal systems to approve the product before it is launched.

The IDR's requirement that (re)insurers' employees and (re)insurance intermediaries possess appropriate knowledge to perform their duties is consistent with the Central Bank's minimum competency requirements (see Chapter 7C).

The IDR's requirement that individuals distributing products must be of good repute and not have a criminal record is consistent with the Central Bank's Fitness and Probity Standards (see Chapter 7A).

The IDR's specification to establish controls over the custody of customer premiums and for member states to establish appropriate complaints mechanisms is consistent with the Central Bank's CPC (see Chapter 4).

As a result of IDR, the key amendment to the **Investment Intermediaries Act 1995 (IIA)** is the removal of insurance policies from the IIA's definition of 'investment instruments'. If an insurance intermediary holds both IDR and IIA authorisation and only offers insurance policies (including insurance-based life and pension products), then it should revoke its IIA authorisation.

## E3 Professional indemnity insurance

Every insurance and reinsurance intermediary must hold **professional indemnity insurance (PII)**, unless it is already provided by the intermediary's insurer/reinsurer, or if the insurer/reinsurer has taken full responsibility for the intermediary's actions (as is the case with a **tiered insurance intermediary**, see Chapter 3D1). The current minimum levels of cover in Ireland are €1,300,380 per individual claim, and €1,924,560 aggregate for claims arising in any one year.<sup>15</sup> In practice, intermediaries may hold a significantly higher limit than the minimum imposed.

Note that in relation to each authorised activity, where there is a requirement to hold PII cover, intermediaries must hold separate, ring-fenced cover (see Example 1.6).



### Example 1.6

Insurance Solve is registered as an insurance intermediary (under the IDR) and is also authorised as an investment intermediary (under the IIA). Insurance Solve is required to hold separate ring-fenced PII cover of:

- €1,300,380 per individual claim, and €1,924,560 aggregate per year for its insurance activities and
- €1,300,380 per individual claim, and €1,924,560 aggregate per year for its investment activities.

Under the IDR, an insurance intermediary's PII (or other comparable guarantee against professional negligence liability) must cover the whole territory of the member states.

<sup>15</sup> These amounts were increased from those originally provided for in the IDD by Commission Delegated Regulation (EU) 2019/1935.



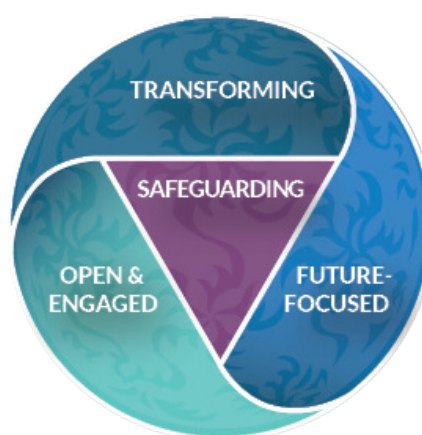
## F

# Role of the Central Bank

The Central Bank is responsible for financial services regulation. As we will see in Chapter 2, the Central Bank authorises, regulates and supervises firms, including insurers, reinsurers and intermediaries, as part of its wider role in ensuring the stability of the financial system and protecting consumers.

The Central Bank's current Strategy '*Our Strategy*' is designed to ensure it can meet the challenges of a changing world and deliver on its mission and vision. It centres around four strategic themes:

- **Future-focused:** this strategic theme will enable the Central Bank to better understand, anticipate and adapt to the far-reaching changes taking place within the financial services industry, with a particular emphasis on technological innovation, climate transition, geo-political change, and developments arising in the context of the Covid-19 pandemic.
- **Open and engaged:** this strategic theme emphasises the Central Bank's priority of listening to, learning from and staying connected to its stakeholders, so that it can build trust in the financial system and foster a wider understanding of the Central Bank's role.
- **Transforming:** this strategic theme relates to the Central Bank's reimagining of how it operates, with an emphasis on effectiveness and increased agility, in a new hybrid-working model. Essential to this is the role of data and technology in driving effective and efficient processes and supporting Central Bank staff to deliver on their roles.
- **Safeguarding:** this strategic theme reflects the Central Bank's commitment to strengthening the design, implementation and operation of its core policy and supervisory frameworks.<sup>16</sup>



The Central Bank's supervisory responsibilities as a home country regulator cover:

- Irish-authorised firms with a head office in Ireland
- Overseas branches of Irish-authorised firms.

The Central Bank has a different role in relation to insurers/reinsurers and intermediaries that have established a branch in Ireland or conduct cross-border services but are established and authorised in other EU member states. In these cases, the Central Bank acts as a host country regulator (see Section D1a). This role includes ensuring compliance with **financial crime** regulations and conduct of business rules. As noted, a host country may impose obligations and requirements on EU-authorised firms on the basis of the 'general good requirements'.



## financial crime

a wide term embracing money laundering, proceeds of crime, fraud, bribery and corruption

<sup>16</sup> Central Bank of Ireland, *Our Strategy*, September 2021, [www.centralbank.ie](http://www.centralbank.ie). *Our Strategy* is effective for 5 years from January 2022.



### Quick question 6

State the four strategic themes of the Central Bank's current Strategy 'Our Strategy'.

## F1 Approaches to regulation

In common with other regulators across the EU, the Central Bank has had to identify the most appropriate and effective means of regulation for the Irish market. Its options were either to provide rules requiring strict adherence (rules-based regulation) or principles requiring interpretation by individual firms (principles-based regulation).

A principles-based regulation system comprises core principles that firms must apply to their business activities. It focuses on the outcomes that firms must achieve, rather than on prescriptive rules. For principles-based regulation to be effective, senior management must ensure that the principles are applied to all aspects of the business.

The Central Bank decided on a combination of principles- and rules-based regulation as being the most effective – using assertive, risk-based supervision, underpinned by a credible threat of enforcement.

The Central Bank supports the rules by providing general principles of behaviour. For example, the CPC contains both principles and rules (which we will consider in more detail in Chapter 4). While many of the general principles in the CPC are supported by detailed prescribed rules, insurers and intermediaries must nevertheless ensure that they achieve the outcomes described in the principles.

Table 1.1 highlights the advantages and disadvantages of principles-based regulation from the perspective of the firm. Clearly the advantages/disadvantages of principles-based regulation are the disadvantages/advantages of rules-based regulation.

**Table 1.1 Principles-based regulation**

Advantages	Disadvantages
<p>Firms can more easily assess new situations, products and services against principles.</p> <p>Firms differ in their <b>client</b> profiles, so each firm can apply principles appropriately. They can expand or tailor their compliance rules only to those situations that actually apply to the firm.</p>	<p>Firms may lack certainty about compliance, i.e. whether they have done enough to comply or whether the regulator will find fault in hindsight.</p> <p>Firms may experience difficulty in interpreting the principles. If principles need to be expanded by guidance notes, these may become rules in themselves.</p> <p>Management needs to allocate time to expand the principles into specific rules for the firm.</p>

A firm's failure to adhere to a prescriptive rule or a general principle can result in sanctions.



### Microlearning resources

In the Member Area of [www.iii.ie](http://www.iii.ie), via the Connect logo and in Your Learning Centre, select the microlearning section of this chapter to access a resource specifically developed to help you better understand this topic.



### client

a person, firm or organisation that deals directly with an insurance provider or has appointed a regulated entity/firm to act on their behalf for insurance purposes

## F2 Organisational culture and individual accountability

### F2a Organisational culture

In all of its codes and communications, the Central Bank emphasises the role of culture as being essential in compliance and regulation. Extract 1.1 highlights that a firm will need to do more than simply 'obey the rules' in order to demonstrate that it acts in the best interests of its customers.

#### 1.1 **Extract** Regulatory imperative, CPC Chapter 2, General Principles

A **regulated entity** must ensure that in all its dealing with customers and within the context of its authorisation it acts with due skill, care and diligence in the best interests of its customers.

In recent years, there has been an increased focus nationally and internationally on strengthening organisational culture, driving positive behaviour and increasing individual accountability to mitigate conduct risk. In a 2021 speech, Derville Rowland, Central Bank Director General, Financial Conduct, noted the Central Bank's ongoing focus on organisational culture (see Extract 1.2).

#### 1.2 **Extract** Effective culture is about people. And people are at the heart of the Fitness and Probity Regime

Culture is, by its nature, a matter for each individual firm in the first instance.

However, those organisations with effective culture have something in common nonetheless: a commitment to high standards and practices together with values and a mindset that drive their behaviours around decision-making, leadership and so forth. These driving forces and resulting behaviours ultimately culminate in the outcomes that both we and the public experience and see.

Effective organisational culture builds on shared purpose and standards such as professionalism, honesty, integrity and accountability to deliver fair outcomes that have the interests of consumers and investors at heart.

The Central Bank expects to see such standards and values embedded in all the firms we regulate. The importance of tone from the top, and the critical role of directors, cannot be overstated. For example, the manner in which a board handles deviations from good practices, breaches of policy or procedure, or lack of respect for control functions, sets the standard within a firm ... The directors have a role in setting the culture, living by it themselves and calling out and addressing poor behaviours when observed.

Culture is developed and evolves within individual firms. As regulators, we cannot prescribe or mandate a culture for firms. We can, however, monitor, assess and seek to influence culture within firms in order to guard against conduct risk and drive better outcomes for consumers and investors. This is an area of increased focus for us in recent years and in that respect, we expect firms to understand the risks faced by their consumers and investors and develop and embed comprehensive risk management frameworks to manage such risks effectively.<sup>17</sup>



#### regulated entity/firm

a financial service provider authorised, regulated or supervised by the Central Bank or other EU or EEA member state, that is providing regulated activities in the State

<sup>17</sup> Central Bank of Ireland (News & Media – Press Releases), 'Effective culture is about people. And people are at the heart of the Fitness and Probity Regime' (speech to the Institute of Directors), 10 June 2021, [www.centralbank.ie](http://www.centralbank.ie).

## F2b Individual accountability

The **Central Bank (Individual Accountability Framework) Act 2023** was signed into law in March 2023. It captures both the Central Bank's own thinking and the experience of other regulators that have implemented accountability regimes e.g. the UK's Senior Managers and Certification Regime.

The key components of the Individual Accountability Framework (IAF) are the:

- **Senior Executive Accountability Regime** (SEAR) which requires firms to set out clearly and comprehensively where responsibility and decision-making lie in order to achieve transparency as to who is accountable for what within firms.
- enforceable **Conduct Standards** which set out the behaviour expected of firms and their staff, including obligations to conduct themselves with honesty and integrity, to act with due skill, care and diligence, and in the best interest of consumers.
- **Fitness & Probity Regime** which places an onus on firms to proactively certify that certain staff are fit and proper and capable of performing their roles with integrity and competence (see Chapter 7).
- **Administrative Sanctions Procedure** which ensures that individuals can be pursued directly for their misconduct rather than only where they have participated in a firm's wrongdoing (see Chapter 2C).

Using these components, the IAF aims to incentivise positive behaviours by individuals and promote an improved organisational culture within firms while strengthening the Central Bank's enforcement toolkit.

The role of the Central Bank is considered in more detail in Chapter 2 and the role of ethics is dealt with in more detail in Chapter 7.



# Summary

In this chapter, we considered the nature of regulation and the main methods of regulation and supervision. We also looked at the impact of the EU and the ways in which European regulation operates in Ireland.

## G1 What's next?

This introduction to the role of the Central Bank marks the beginning of our study of regulation and compliance in the Irish insurance market. We will continue this theme in Chapter 2, where we look at the Central Bank's regulation of insurers, reinsurers intermediaries and the private health insurance market.

## G2 Study tips

It is important to remember that this textbook is the primary information source for this module. All the questions in your exam will relate directly to information featured in the textbook. Use the 'End of chapter questions', 'Quick questions' and the 'Sample multiple-choice questions' to quickly test what you've learned so far. Make a note of any topics/areas you need to improve in and keep it to hand so you can refer to it when you revise this chapter again before your exam.

In addition to the textbook, your Member Area has many online learning supports that can help you as you study this module.

## G3 Online learning supports

Your Member Area includes a Guide to Success, an automated study planner, an exam countdown timer and study tips guide. These learning supports are invaluable in reinforcing what you have learned from the textbook so far. The webinars, chapter-by-chapter key points and other supports will help you to break down the chapter content when revising.

Completing online mock exams and reviewing the personalised feedback that follows is a great way of testing your knowledge and preparing for exam day.

To access these online learning supports, just log into the Member Area of [www.iii.ie](http://www.iii.ie) and click on the Connect logo.





# End of chapter questions

Use these questions to test your understanding of what we've covered in Chapter 1.

1. Identify the difficulties with self-regulation that suggest a need for external regulation for insurance/financial services.

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2. Outline what is meant by the term 'structural regulation'.

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3. Differentiate between systemic and prudential regulation.

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4. In an EU context, explain the term 'freedom of establishment'.

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5. In an EU context, explain the term 'freedom to provide services'.

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6. Briefly explain the status and authority of an EU Directive.

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7. Explain the purpose of a statutory instrument.

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8. State what the European System of Financial Supervision is.

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9. State the function of the European Systemic Risk Board.

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10. Outline the objective of the **Solvency II Directive 2009**.

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11. Define 'insurance distribution'.

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12. Outline the main provisions of the **Insurance Distribution Regulations 2018**.

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13. Identify the levels of professional indemnity cover an insurance intermediary must hold in Ireland for its insurance distribution activities.

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14. List the advantages of principles-based regulation.

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15. List the key components of the Individual Accountability Framework.

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# Answers to end of chapter questions

Check your answers against those below and make a note of any points you left out. This will highlight some sections you may need to look at more closely during your revision.

1. The five key areas are:
  - Potential for serious financial loss
  - Competence of advice
  - Conflicts of interest
  - Financial failure of an insurance provider
  - Lack of competition.
2. Structural regulation is designed to ensure that only appropriately structured firms and persons of sufficient financial standing, integrity and experience are authorised to provide financial services.
3. Systemic and prudential regulation are closely connected. Systemic regulation could be considered to have a macro (industry-wide) focus, while prudential regulation has a micro (firm or entity) focus.
4. Freedom of establishment refers to the freedom for any business (or person) in the EU to establish a subsidiary, agency or branch in another member state, with the same rights as a domestic business.
5. Freedom to provide services is the right of a business (or person) in one member state to provide 'cross-border services' in another member state without establishing a permanent presence in that member state.
6. An EU Directive allows member states to choose the form and methods of implementation under national law but is binding in the results to be achieved. This means that the rules contained in the Directive must be transposed into domestic legislation.
7. The purpose of a statutory instrument is to provide detailed rules that implement the more general provisions of particular European Directives or Acts of the Oireachtas.
8. The European System of Financial Supervision is an integrated network of national and European regulators.
9. The European Systemic Risk Board seeks to prevent or mitigate systemic risks and contribute to the smooth functioning of the internal market.
10. The **Solvency II Directive 2009** was designed to:
  - Produce a more consistent and harmonised solvency standard across the EU
  - Promote the international competitiveness of the EU insurance market
  - Increase confidence in the financial stability of the insurance sector
  - Secure an adequate level of consumer protection by reducing the chance of an insurer/reinsurer being unable to meet claims in full.

11. Insurance distribution refers to the activities of advising on, proposing, or carrying out other work in preparation for or conclusion of contracts of insurance, or of assisting in the administration and performance of such contracts.
12. The main provisions of the **Insurance Distribution Regulations 2018** are that they:
  - Apply to the distribution of all insurance products
  - Ensure that clients will receive a simple, standardised Insurance Product Information Document
  - Require all marketing communications to clients or potential clients to be identifiable as fair, clear and not misleading
  - Require that key information be clearly disclosed in good time before the conclusion of any contract, giving details of, for example: the intermediary or insurer, the complaints procedure and the basis of advice, e.g. fair and personal, limited or tied analysis
  - Require, in cross-selling situations, that the distributor tell the client that they can buy the components separately
  - Require product oversight and governance, whereby all those that manufacture insurance products must have in place internal systems to approve the product before it is launched.
13. Intermediaries must hold professional indemnity insurance with a minimum indemnity limit of €1,300,380 per individual claim and €1,924,560 in aggregate for claims arising in any one year (for each authorised activity).
14. Advantages of principles-based regulation:
  - New situations, products and services can be more easily assessed against principles
  - Each firm can apply principles appropriately to their own client base.
15. The key components of the Individual Accountability Framework are the:
  - Senior Executive Accountability Regime
  - enforceable Conduct Standards
  - Fitness & Probity Regime
  - Administrative Sanctions Procedure.

## Answers to quick questions

1. The Central Bank focuses on consumer protection because private individuals and small businesses are particularly reliant on the professional advice provided by insurers or intermediaries. In an insurance transaction, the bargaining power and knowledge of the parties are usually very different and this could be to the detriment of the consumer.
2. Not all EU 'law' is legally binding (e.g. EU Recommendations and Opinions). Certain Directives require a local interpretation when introduced to take the existing political and regulatory framework into account.
3. The Governor of the Central Bank of Ireland is a member of the General Board of the ESRB. The Deputy Governor of the Central Bank is the Irish representative member of the Board of Supervisors of all three ESAs. Furthermore, Central Bank staff actively participate with the ESAs through their membership on the ESA Committees.
4. The term 'general good requirements' refers to the right of a host country to apply its own laws on the operations of a foreign insurer in its territory, but only if it is deemed to be beneficial to the population of the host country.
5. The principal aim of the IDD is to enhance protection for insurance consumers and to support competition between insurance distributors by creating a level playing field.
6. The four strategic themes of the Central Bank's current Strategy '*Our Strategy*' are:
  - Future-focused
  - Open and engaged
  - Transforming
  - Safeguarding.



# Sample multiple-choice questions

Note: In your exam you will be awarded +3 marks for every question answered correctly, –1 mark for every question answered incorrectly, and 0 marks for every question you choose not to attempt. On the answer form you complete in the exam, you will be required to choose from options A, B, C, D or E. Options A-D correspond with a possible answer to the question, while selecting Option E confirms that you are choosing not to attempt the question. When you attempt the mini-mock and full mock exam papers available on Connect (in the Member Area of [www.iii.ie](http://www.iii.ie)), this marking system is applied to allow you to prepare for your exam.

1. Market issues that relate to how financial markets work, such as authorisation, fall under which type of regulation?

- A. Structural regulation.
- B. Prudential regulation.
- C. Conduct of business rules.
- D. Systemic regulation.

Your answer:

☐

2. An EU Regulation is legislation that is binding:

- A. on all member states, but requires the enactment of local legislation
- B. only on the member states to which it is addressed and requires the enactment of local legislation
- C. on all member states, without the need for any local action
- D. only on the member states to which it is addressed, without the need for any local action

Your answer:

☐

3. An Irish insurance intermediary has professional indemnity insurance with an indemnity limit of €974,560 in the aggregate for claims arising in any one year. To meet the current minimum regulatory requirement, the intermediary would need to increase this cover by:

- A. €100,000
- B. €350,000
- C. €600,000
- D. €950,000

Your answer:

☐

# Answers to sample multiple-choice questions

## Question 1

**Chapter reference:** Chapter 1B1

**Question type:** U

**Correct response:** A

**Learning outcome:** Identify why government and society seek to regulate financial services providers and distinguish between structural, systemic, prudential and conduct of business regulation.

## Question 2

**Chapter reference:** Chapter 1C2

**Question type:** K

**Correct response:** C

**Learning outcome:** Explain the impact of the European Union and its legislation on the regulation and operation of the Irish insurance market.

## Question 3

**Chapter reference:** Chapter 1E3

**Question type:** A

**Correct response:** D

**Learning outcome:** Demonstrate the European Union developments that have influenced the provision of advice in relation to general insurance products.

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# Impact of regulation

## What to expect in this chapter

This chapter looks at how the Central Bank of Ireland authorises and supervises insurers, reinsurers, intermediaries and the private health insurance market in Ireland. However, as this area is necessarily complex, we will concentrate only on those aspects that give us the most helpful understanding, particularly in relation to the private health insurance market.

For the purposes of this textbook, 'authorisation' refers to the process of applying to the Central Bank for permission to conduct insurance business; and 'supervision' refers to how the Central Bank ensures that the firm (insurer, reinsurer or intermediary) continues to meet its regulatory obligations.

## Learning outcomes for this chapter

Section	Title	At the end of each section you should be able to:
<b>A</b>	<b>Authorisation of insurers, reinsurers and intermediaries</b>	State the requirements for the authorisation of insurers, reinsurers and intermediaries and demonstrate the main supervisory methods used by the Central Bank.
<b>B</b>	<b>Regulatory supervision of insurers and intermediaries</b>	
<b>C</b>	<b>Enforcement by the Central Bank</b>	Describe the powers of the Central Bank and demonstrate its enforcement options.
<b>D</b>	<b>Regulation of the private health insurance market</b>	Identify the system of regulation that applies to the private health insurance market and the regulatory role of the Health Insurance Authority.

## A

# Authorisation of insurers, reinsurers and intermediaries

In Chapter 1, we learned that the Central Bank is responsible for authorising (and supervising) insurers, reinsurers and intermediaries in Ireland. This is **structural regulation** in practice.

The authorisation process differs for insurers/reinsurers and intermediaries and is guided mainly by the EU Directives that we considered in Chapter 1. We will now look at how the authorisation process applies to each.



## structural regulation

regulation designed to ensure that only appropriately structured firms and persons of sufficient financial standing, integrity and experience are authorised to provide financial services

## A1 Authorisation of insurers and reinsurers

Of particular relevance to the authorisation of Irish non-life insurance and reinsurance business are the **Insurance Acts 1909–2009** and the **EU Insurance and Reinsurance Regulations 2015**.

An insurer/reinsurer cannot carry out business in Ireland without authorisation from the Central Bank or from the recognised regulatory authority of another EU or EEA member state.

A firm seeking authorisation as an insurer/reinsurer with its head office in Ireland must:

- Have its head office and registered office in Ireland and be a company registered under the **Companies Act 2014**
- Submit details of its directors, managers and authorised agents for approval of their **fitness** and **probity**
- Provide detailed information of areas of management responsibilities in the insurer's operation
- Submit a detailed scheme of operations, essentially a business plan (including a summary of the type of risks it proposes to cover)
- Hold the relevant solvency capital requirement (SCR)
- Provide a plan setting out three years' financial estimates for insurance and reinsurance business
- Submit a forecast balance sheet and estimates for the cover of its **underwriting** liabilities and SCR
- Hold the required minimum paid-up share capital.



## fitness

the qualifications, experience, competence and capacity appropriate to the relevant function

## probity

a person's honesty, fairness and ethical attitude

## underwriting

process of risk pooling, evaluation, selection and pricing



### retail intermediary

a regulated entity/firm that receives and supplies orders for certain financial products and/or gives advice about those products



### ancillary insurance intermediary

a person, other than a credit institution or an investment firm who, for remuneration, takes up or pursues the activity of insurance distribution on an ancillary basis, provided that all the following conditions are met:

- a. the principal professional activity of that person is other than insurance distribution;
- b. the person only distributes certain insurance products that are complementary to a good or service;
- c. the insurance products concerned do not cover life assurance or liability risks, unless that cover complements the good or service which the intermediary provides as its principal professional activity

The process involves completion of a detailed application form, in which the insurer/reinsurer must demonstrate that it meets all the minimum conditions for authorisation. The Central Bank will typically issue a series of follow-up queries and may then confirm 'authorisation in principle'. A list of conditions is attached, and the applicant must satisfy these conditions before final authorisation is given. However, the applicant may not write any business before receiving the final Certificate of Authorisation. The application process usually takes about 6 months from initial completed application form through to final authorisation; however, it can take longer. The final decision on applications rests with the Central Bank Commission.

## A2 Authorisation of insurance intermediaries

Before we consider the authorisation process for intermediaries<sup>18</sup>, it is worth noting that **retail intermediaries** fall into the following regulatory categories:

- Insurance/reinsurance intermediaries and ancillary intermediaries – under the **Insurance Distribution Regulations 2018 (IDR)**<sup>19</sup>
- Investment intermediaries – under the **Investment Intermediaries Act 1995** (as amended) (IIA)
- Mortgage credit intermediaries – under the **EU Consumer Mortgage Credit Agreements Regulations 2016** (CMCAR)
- Mortgage intermediaries – under the **Consumer Credit Act 1995** (as amended).



In the non-life (general) insurance industry, an intermediary regulated by the Central Bank can be:

- An insurance intermediary
- An **ancillary insurance intermediary**
- A reinsurance intermediary.

<sup>18</sup> For the avoidance of doubt, the IDR refer to 'registration' rather than 'authorisation' of insurance intermediaries, but the effect and process is the same in practice.

<sup>19</sup> Adapted from Central Bank of Ireland (Regulation – Industry & Market Sectors, Brokers/Retail Intermediaries), [www.centralbank.ie](http://www.centralbank.ie).

To apply for authorisation, an intermediary must submit an application form, which can be downloaded from the Central Bank website. The Central Bank will require details of the firm as follows:

- Its ownership, nature of business and agency appointments held
- How it is being run, i.e. staff experience and qualifications, cash flow projections and group organisational charts
- Details of procedures, practices and protocols to protect consumers
- Confirmation that it holds the required amount of professional indemnity insurance (see Chapter 1E3)
- How it will comply with its legal obligations and the Central Bank's handbooks and codes, as well as details of the person responsible for compliance
- Completed 'Individual Questionnaire' from (or on behalf of) each director, qualifying shareholder and senior manager, to comply with the Central Bank Fitness and Probity Standards.

Once the authorisation process is complete, the firm receives a Statement of Authorised Status and/or a Certificate of Registration. However, this may be subject to conditions.



### prudential regulation

a type of financial regulation that requires firms to control risks and hold adequate capital as defined by capital requirements



### PRISM

**Probability Risk and Impact System:** a formal risk-based framework designed by the Central Bank to provide a structured approach to assessing financial service providers, based on impact and probability

# B Regulatory supervision of insurers and intermediaries

We saw in Section A that insurers, reinsurers and intermediaries must undergo a rigorous application process before the Central Bank grants authorisation. However, this does not mark the end of its involvement. The Central Bank will continue to engage with the firm to make sure they continue to meet all aspects of their regulatory obligations. This is **prudential regulation** in practice.

The Central Bank uses a number of different tools to supervise insurers, reinsurers and intermediaries. Some of these tools are used for both, but others are specific to either insurers, reinsurers or intermediaries, reflecting the different risks posed. For example, as insurers are responsible for paying claims, the rules regarding an insurer's financial soundness are more complex than for intermediaries. This means that the Central Bank must have a very robust method of monitoring an insurer's financial position.

In Section B1, we will discuss the supervisory tools that apply to both types of firm. In Sections B2 and B3 we will consider the tools used to supervise insurers and intermediaries respectively.

## B1 Supervisory tools

### B1a Risk rating

The Central Bank's supervision framework is called **PRISM** – Probability Risk and Impact System.<sup>20</sup> PRISM focuses on the most significant firms, the risks they pose (the probability risk) and the level of damage they could cause to the financial system, the economy and consumers if they were to fail (the impact).

PRISM recognises that the Central Bank does not have infinite resources and selectively deploys supervisors according to a firm's potential impact and probability for failure. Under PRISM, firms are divided into four categories: high-impact (including ultra-high), medium-high, medium-low or low.

Although relatively few, high-impact firms are key to ensuring financial and economic stability and are therefore subject to a higher level of supervision, engagement and industry levies. The high-impact firms have dedicated supervision teams and structured plans to keep the Central Bank informed of their strategy and business models, with a particular focus on capital adequacy (reserves) and sound management. By contrast, the assessment for medium-low impact firms will be done on a sample basis.

<sup>20</sup> Central Bank of Ireland, *PRISM Explained*, February 2016, [www.centralbank.ie](http://www.centralbank.ie).



### Just think

Under PRISM, in which impact category would you expect to find a small insurance intermediary?

Small insurance intermediaries are among the many low-impact firms. Despite their low-impact PRISM rating, the Central Bank has specifically allocated resources for supervision and enforcement actions against low-impact firms where breaches are discovered.

Complementary to high-to-low impact categorisation, Solvency II developed a risk assessment framework specifically for the insurance sector. This framework applies a risk score to each firm: basic, standard, enhanced and intensive. The risk score drives the Central Bank's level of engagement.



### Microlearning resources

In the Member Area of [www.iii.ie](http://www.iii.ie), via the Connect logo and in Your Learning Centre, select the microlearning section of this chapter to access a resource specifically developed to help you better understand this topic.

#### B1b Themed inspections

The Central Bank conducts themed inspections, which focus on a particular area of compliance or regulation. These inspections may be driven by market intelligence, internal sources, the media or other external sources, e.g. members of the public, competitors, other regulators, employees or ex-employees, consumers, or An Garda Síochána. Details of previous Central Bank themed inspections can be found on the Central Bank's website.<sup>21</sup>

Prior to undertaking such inspections, the Central Bank issues a letter to certain firms indicating the nature or theme of a proposed inspection. On completion of the inspections, the Central Bank presents specific findings to each individual firm involved and also issues a summary of its general findings to all firms by means of an industry letter. For example, in September 2022, the Central Bank wrote to an industry letter to home insurers outlining findings from a review of the risk posed to consumers of not having sufficient home insurance cover. A number of areas were identified where further action was needed by insurers to lessen this risk and make consumers aware of the implications of underinsurance.

#### B1c Consumer protection risk assessments

Strengthening consumer protection is a key focus of the Central Bank. The Central Bank aims to protect the best interests of consumers and to enhance confidence and trust in the financial system through effective regulation of firms and markets.<sup>22</sup>

<sup>21</sup> Central Bank of Ireland (Regulation – Consumer Protection, Compliance Monitoring, Themed Inspections), [www.centralbank.ie](http://www.centralbank.ie).

<sup>22</sup> Central Bank of Ireland, *Strategic Plan 2019–2021*, [www.centralbank.ie](http://www.centralbank.ie), p. 5.

Extracts 2.1 and 2.2 clarify these priorities.

2.1

### **Extract** Central Bank of Ireland *Consumer Protection Outlook Report 2023*

To guide the firms we regulate, we structured our expectations of firms under what we saw as the five primary drivers of risk for consumers of financial services in Ireland today across all the sectors we regulate.

- Poor business practices and weak business processes
- Ineffective disclosures to consumers
- The changing operational landscape
- Technology-driven risks to consumer protection
- The impact of shifting business models.

These are the things we see as the primary drivers of risk for consumers of financial services in Ireland today, looking across all the types of financial service we use in our daily lives, and all the types of firms that can provide those services. In other words, these are the fundamental themes we see running through the consumer protection issues we encounter as supervisors of regulated financial service providers.<sup>23</sup>

2.2

### **Extract** Dear CEO letter 'Protecting consumers in a changing economic landscape'

In November 2022, the Central Bank wrote to all regulated firms to reiterate its expectations on how they treat customers.

On March 14 this year, the Central Bank published the Consumer Protection Outlook Report detailing five key cross sectoral risks on which financial service firms should take action to avoid consumer harm. These risks were framed against the backdrop of a rapidly changing financial services landscape and the responsibility of firms to navigate this change in a manner that places the best interests of consumers at the heart of their commercial decision-making.

Since the publication of that Report, we have seen the materialisation of a more challenging economic outlook characterised by energy-driven inflation and uncertainty. The purpose of this letter is to emphasise the importance of firms meeting the expectations set out in the Outlook Report in this rapidly evolving context and to highlight a number of areas for particular attention.

<sup>23</sup> Central Bank of Ireland, *Consumer Protection Outlook Report 2023*, Introduction, p.5-6, [www.centralbank.ie](http://www.centralbank.ie).



## 2.2

**Extract** Dear CEO letter 'Protecting consumers in a changing economic landscape' (*Contd*)

In particular, firms are reminded of the specific actions the Outlook Report required of firms to address potential risks arising from the Changing Operational Landscape, namely:

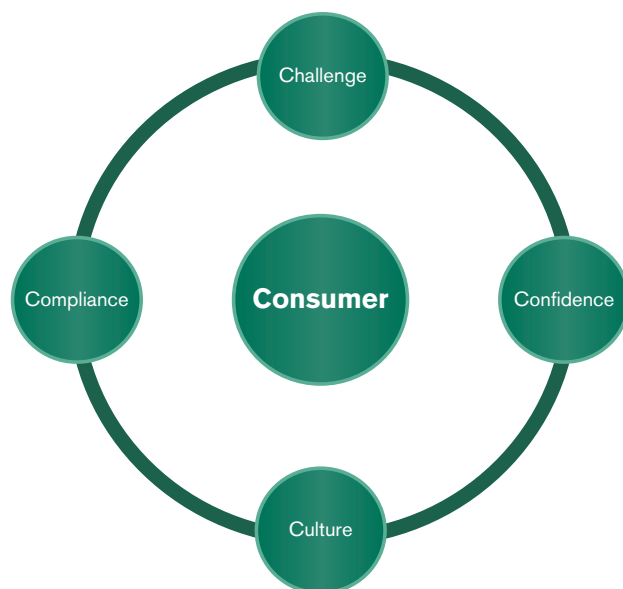
- Actively identify and address risks to consumers that may potentially emerge from changes in the landscape within which the firm and/or its consumers are operating.
- Have sufficient operational resilience to manage change without creating risks to consumers.
- Proactively assess the risks and consumer impact a commercial decision may pose to new and existing customers, and develop comprehensive action plans to mitigate these risks whilst ensuring that customers understand what changes mean for them.
- Have the customer service capacity and structures in place to meet expected service levels to provide a timely and customer focused service through all channels.
- Consider the impact of their decisions on vulnerable customers and provide the assistance necessary. This should include specific and effective processes and communication plans to support vulnerable customers.
- Only design and bring to market products with features, charges, and risks that meet the needs of consumers identified for the product.<sup>24</sup>

The Central Bank Consumer Protection Framework (illustrated in Figure 2.1):

puts the **Consumer** at its centre, where the focus of firms must be on delivering positive consumer outcomes within a regulatory framework that is fit for purpose. This can only be achieved where firms have a consumer-focused **Culture** which enables consumers to have **Confidence** in both the financial decisions they are making and the firms they are dealing with. The Central Bank will continue to **Challenge** firms, where their focus is not on those consumer outcomes. This includes our gatekeeper role, where applicant firms can expect rigorous and challenging application of the published requirements and standards (including those derived from EU law). There is a need and appetite for appropriate regulatory action where **Compliance** standards are not being met.<sup>25</sup>

<sup>24</sup> Central Bank of Ireland, Dear CEO letter 'Protecting consumers in a changing economic landscape', 17 November 2022, [www.centralbank.ie](http://www.centralbank.ie).

<sup>25</sup> Central Bank of Ireland, *Introduction to Consumer Protection*, [www.centralbank.ie](http://www.centralbank.ie).

**Figure 2.1 Central Bank Consumer Protection Framework<sup>26</sup>**

The Central Bank's **Consumer Protection Risk Assessment (CPRA)** model assists its supervisors in carrying out an assessment of how insurers and large intermediaries manage consumer protection risk. These assessments form a key element of the Central Bank's promotion of a more positive consumer-focused culture in regulated firms. CPRAs consist of an onsite assessment by a supervisor (a design review and an effectiveness review), followed by formal feedback. The Central Bank mostly conducts targeted CPRAs, selecting specific modules focusing on priority risks. CPRAs are in addition to and support the regular program of thematic inspections.<sup>27</sup>

### B1d Other supervisory tools

Reviews, correspondence, mystery shopping and day-to-day routine inspections are also carried out with individual firms, as and when required. There is a higher level of involvement with firms that have been identified as high-impact or medium-high impact (see Section B1a).

## B2 Supervision of insurers

The Central Bank supervises insurers to ensure that they comply with strict solvency rules that require them to maintain adequate technical provisions (reserves) and to meet the solvency capital requirements (SCR).

We learned in Section B1a that the Central Bank adopts a risk-based approach to supervision. In order to make sure the approach remains informed and credible, the Central Bank requires each insurer to submit relevant key information via a secure online portal. The Central Bank closely examines these returns, as they provide the key information needed to monitor the insurer's financial position and general adherence to other relevant regulatory requirements. These returns are the main means by which the Central Bank supervises the financial soundness of individual insurers. The primary requirement is to maintain adequate technical provisions (reserves) and meet SCR.

<sup>26</sup> Central Bank of Ireland, *Introduction to Consumer Protection*, [www.centralbank.ie](http://www.centralbank.ie).

<sup>27</sup> Central Bank of Ireland, *A Guide to Consumer Protection Risk Assessment*, March 2017, [www.centralbank.ie](http://www.centralbank.ie).



### Consumer Protection Risk Assessment (CPRA) model

Central Bank model comprising five modules: governance and controls; people and culture; product development; sales/transactions process; and post-sales handling

Insurers' technical provisions (reserves) must match assets with known and estimated future claims liabilities and associated expenses. In addition, an insurer must ensure that its underwriting liabilities (i.e. what it will have to pay out in claims) in a particular currency are matched by assets held in that currency. This avoids exposure to currency fluctuation risks.

An insurer's regulatory SCR is one of the key measures of its financial soundness. It covers all the material risks including **underwriting risk**, **market risk**, **liquidity risk**, **operational risk** and **credit risk**, allowing the insurer to withstand significant losses and ensure a prudent level of protection for policyholders and beneficiaries. Under Solvency II, the insurer needs to set its solvency capital requirement based on its own assessment of these risks by using either the standard formula or its own 'internal model' (which the Central Bank must approve) to identify what it considers to be an appropriate level of capital.

## B3 Supervision of intermediaries

The Central Bank's supervision approach aims for all regulated insurance and reinsurance intermediaries to meet their responsibilities to have strong management, internal control and compliance procedures in place, and to place people of integrity and **competence** at all levels in their organisations.

The Central Bank's approach to the supervision of this sector involves a combination of desk-based supervision and inspections. Considering the size of the intermediary sector, increased use of technology allows Central Bank supervisory teams to use desk-based supervision to:

- ensure that minimum standards of compliance are met (e.g. PII, F&P, financial returns)
- investigate risks
- manage enforcement cases
- conduct market research and
- engage with stakeholders.

In conjunction with this, the Central Bank undertakes inspections (i.e. thematic reviews, firm-specific inspections and unannounced onsite inspections). For example, dedicated supervision teams are automatically alerted when an intermediary fails key financial health checks, which facilitates appropriate targeted supervisory action to resolve the issue.

All retail intermediaries are required to submit a Retail Intermediary Annual Return (RIAR) to the Central Bank's secure online portal. The RIAR is based on the retail intermediary's financial position at the end of its financial year and must be submitted no later than 6 months following the reporting date (the submission due date).<sup>28</sup>

The RIAR covers four key areas within the firm:

- General information – trading name, legal status, contact details, membership of representative bodies, compliance officer and auditors
- Financial information – assets, liabilities, turnover, fees, commission and other key areas of financial reporting
- Ownership information – details of the owners, qualifying shareholders and partners
- Conduct of business information – scope of business activities, professional indemnity insurance and key information showing compliance with the MCC and CPC.



### underwriting risk

the risk of uncontrollable factors or an inaccurate assessment of risks when writing an insurance policy/a class of insurance business

### market risk

the risk of losses arising from adverse movements in market prices, e.g. foreign exchange risk

### liquidity risk

the inability of a financial service provider to meet on- and off-balance sheet obligations in a timely fashion, without incurring excessive cost, while continuing to fund its assets and growth

### operational risk

the risk of loss resulting from inadequate or failed internal processes, systems and individual behaviours, or from external events, e.g. legal action

### credit risk

the risk that a party to a contract will not fulfil its financial obligation under that contract e.g. the risk of a borrower defaulting on a debt



### competence

a defined level of knowledge and ability necessary for the performance of a job

<sup>28</sup> Central Bank of Ireland (Regulation – Industry & Market Sectors, Brokers/Retail Intermediaries, Annual Online Returns), [www.centralbank.ie](http://www.centralbank.ie).

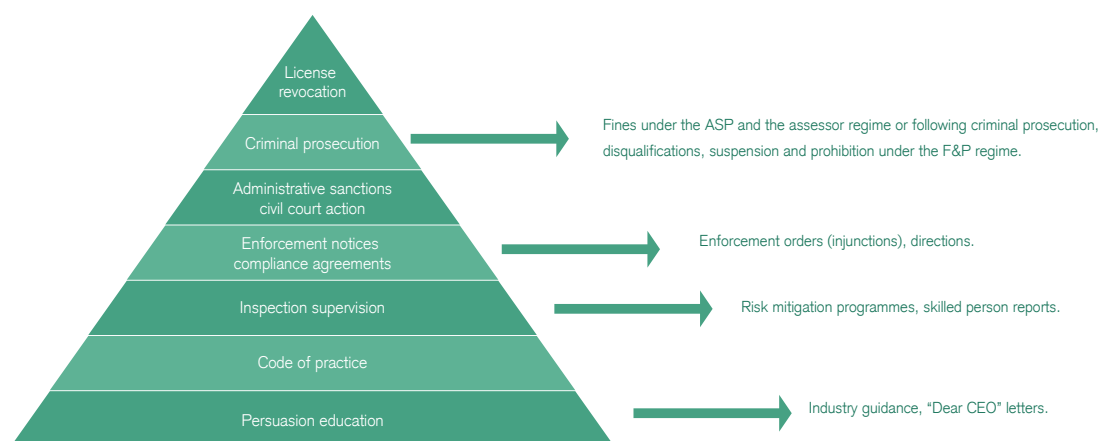


## Enforcement by the Central Bank

Enforcement is an important tool to achieve regulatory compliance and promote expected behaviours. The Central Bank uses its enforcement powers to remind all firms – irrespective of their nature, scale or complexity – that they must comply with the legal and regulatory requirements. This approach promotes compliance through deterrence and complements the PRISM framework.

Central Bank publications frequently refer to the escalation pyramid (see Figure 2.2) which is a useful representation of the hierarchy of a regulator's powers.

**Figure 2.2 The Escalation Pyramid<sup>29</sup>**



At the base of the pyramid are the most frequently used measures – the so-called 'soft powers' of education, persuasion, and other ways of seeking voluntary compliance. At the middle level are powers typically used to correct errors and to bring defaulters back into compliance. Further up are less frequently used 'hard' powers which involve increasing degrees of intrusion into firms' business and coercion of their actions. At the peak are the most coercive measures, such as administrative sanctions, criminal punishment including fines, and licence revocations.

Extract 2.3, from Dervile Rowland's speech, highlights the Central Bank's preference for co-operative rather than adversarial relationships with firms.

<sup>29</sup> Central Bank of Ireland, *Retail Intermediary Roadshow 2021*, pdf, p.42, [www.centralbank.ie](http://www.centralbank.ie)

## 2.3

### Extract 'The Central Bank's evolution of enforcement: building on a decade of credible deterrence and promoting effective culture and good governance'

Whilst enforcement sits near the top of this escalation pyramid of measures available, there are other measures that the Central Bank can and does use in addressing issues that arise. So, while robust enforcement action will continue to underpin our powers, we would far rather that firms focus on preventing, identifying, and acting upon misconduct in the first place than on us punishing them after the fact.<sup>30</sup>

If the Central Bank is concerned that a firm has contravened (breached) a legal or regulatory requirement, a multi-disciplinary team (e.g. lawyers, accountants and investigative experts) gather information using interviews, documentation and on-site inspections. During this time, the management of the firm, or person concerned, is given reasonable opportunity to respond and may enter into a settlement agreement which binds both the firm and the Central Bank. Following the investigation, if agreement cannot be reached, the Central Bank may impose sanctions (see Section C1) or may refer the contravention to a full inquiry. The detailed inquiry process is beyond the scope of this textbook but can be found on the Central Bank website.<sup>31</sup>



#### Quick question 1

List any three of the seven steps in the Central Bank's Escalation Pyramid.

The answer is at the end of this chapter.

## C1 Nature of administrative sanctions

In circumstances where the Central Bank determines that a firm or individual have committed a contravention, it may administer a range of sanctions.

Section 33ARA of the **Central Bank (Individual Accountability Framework) Act 2023** (see Chapter 1F2b), inserted into the **Central Bank Act 1942**, outlines the factors to be considered when administering sanctions against individuals. The factors to be considered include:

- The seriousness of the contravention e.g.
  - o the seniority, level of responsibility and nature of role of the person involved
  - o the standards to which the person was subject
  - o whether the conduct was intentional, dishonest or negligent
  - o whether the person's conduct facilitated the commission of an offence
  - o the length of time over which the contravention was committed
  - o any benefit gained or loss avoided by the person as a result of the contravention.
- The effect of the contravention:
  - o on the financial markets
  - o on another firm or on customers
  - o on a vulnerable person(s).

<sup>30</sup> Central Bank of Ireland, (News & Media – Press Releases), 'The Central Bank's evolution of enforcement: building on a decade of credible deterrence and promoting effective culture and good governance', 13 October 2021, online article, [www.centralbank.ie](http://www.centralbank.ie).

<sup>31</sup> Central Bank of Ireland, *Inquiry Guidelines prescribed pursuant to Section 33BD of the Central Bank Act 1942*, 2014, [www.centralbank.ie](http://www.centralbank.ie).

- The conduct of the person including:
  - o how quickly the contravention was brought to the attention of the Central Bank or other relevant regulatory agency
  - o the degree of cooperation by the person.
- The previous record of the person including any previous:
  - o sanctions
  - o convictions for offences relating to the performance of a CF.
- Pending or possible criminal proceedings.
- Any matters relevant to the financial position of the person.

These same considerations would apply more generally when determining the sanctions against a firm as they generally reflect the factors set out in the Central Bank's Administrative Sanctions Guidelines.

The Central Bank may administer the following sanctions, either individually or in combination:

- A caution or reprimand
- A direction to refund any charge or sum paid for the provision of a financial service
- A fine payable of up to either €10 million or 10% of turnover for firms (whichever is greater), and €1 million for individuals or sole traders, but not if it causes the firm/individual to cease business
- A direction to stop the contravention if it is found to be continuing
- An order to pay part or all of the costs of the inquiry and investigation
- Suspension or revocation of (i.e. taking away) the firm's authorisation
- An order disqualifying a person from being involved in its management for a specified period.<sup>32</sup>

In the fifteen-year period up to December 2022, approximately 160 cases were concluded through the Administrative Sanctions Procedure, resulting in approximately €470 million in fines being imposed on regulated firms and individuals. In 2022 the Central Bank imposed approximately €214 million in fines with the largest being a fine for €100.52 million imposed on the Bank of Ireland in connection with tracker mortgages. All penalties imposed on firms for failure to comply with the relevant code(s) are published on the Central Bank website.<sup>33</sup>

The Irish Financial Services Appeals Tribunal (IFSAT) is an independent, statutory body that deals with appeals from firms about certain Central Bank decisions and sanctions. In such situations, IFSAT provides an accessible, efficient and effective method of appeal.



<sup>32</sup> Central Bank of Ireland, *Outline of the Administrative Sanctions Procedure*, 2018, [www.centralbank.ie](http://www.centralbank.ie), pp. 34–5.

<sup>33</sup> Central Bank of Ireland (News and Media – Legal Notices, Enforcement Actions), [www.centralbank.ie](http://www.centralbank.ie).

To illustrate the administrative sanctions imposed by the Central Bank and to demonstrate how seriously it views the failure to implement the requirements of its codes, consider Case studies 2.1, 2.2 and 7.1 and Example 7.3.

## Case study 2.1

### Keystone Insurance Limited

In 2021, the Central Bank imposed a fine of €41,358 on Keystone Insurance Ltd (a retail insurance intermediary) for breaches of the Consumer Protection Code which occurred between 2012 and 2017. The breaches related to the overcharging of customers and the provision of unclear communication on fees to customers. Keystone was also found to have had insufficient controls and not to have employed the necessary resources, control checks or staff training.

The Central Bank noted that while Keystone admitted to the breaches, they were not self-reported and would not have been identified were it not for a Central Bank inspection in 2017.

Seána Cunningham, Central Bank Director of Enforcement and Anti-Money Laundering, said:

The purchase of everyday financial products by consumers can be a complex and daunting process. Many consumers rely on professionals, in this case an insurance intermediary, to assist them. Insurance intermediaries are required to recommend the most suitable product(s) to meet their customers' needs and to always act in their best interests.

The Central Bank expects that all regulated firms should have adequate processes, systems and controls in place to ensure compliance with the Code, ensure staff are trained on the Code's provisions, regularly check that they are in compliance with the Code and ensure that any failures that may occur are identified and rectified early. In this case, as a result of not having the adequate processes, systems and controls, Keystone overcharged 62 customers and 190 of their customers were sent unclear communications on what fees they were being charged.

In addition, the Central Bank expects that all firms engage proactively with enforcement investigations and provide accurate and comprehensive information in response to Central Bank requests. This is the minimum level of cooperation that the Central Bank expects during the course of an investigation. Failure to do so, as in this case, will be reflected in the level of fine imposed.<sup>34</sup>

<sup>34</sup> Central Bank of Ireland (News and Media – Legal Notices, Enforcement Actions), [www.centralbank.ie](http://www.centralbank.ie).





### Quick question 2

State the failing of Keystone Insurance Limited and RSAll that led to their large fines

## Case study 2.2

### RSA Insurance Ireland

In December 2018, the Central Bank imposed a fine of €3.5 million on RSA Insurance Ireland (RSAll) DAC for failing to:

- establish and maintain technical reserves in respect of all its assumed underwriting liabilities
- maintain sound, adequate administrative and accounting procedures and internal control mechanisms
- ensure robust governance arrangements.

The breaches arose from serious shortcomings in the firm's internal controls and corporate governance frameworks, which allowed certain individuals to manipulate claim reserve estimates by under-reserving multiple large loss claims between 2009 and late 2013.

The Central Bank's investigation also:

- identified weaknesses in the firm's accounting procedures and internal financial control mechanisms
- found that failures in the firm's Corporate Governance framework, particularly in its internal reporting structures, allowed the under-reserving of large loss claims to go undiscovered and unchecked for several years.<sup>35</sup>

In June 2020, Rory O'Connor (former Executive Director and Chief Financial Officer of RSAll) was separately disqualified for 8 years 4 months and fined €70,000 by the Central Bank as a result of his participation in the breaches. The Central Bank found that Mr O'Connor had:

- participated, along with certain other individuals, in undocumented meetings during which certain large loss claim reserve estimates were deliberately and wrongfully under reserved;
- given instructions and transmitted information relating to those claims within RSAll knowing them to be under reserved; and
- concealed the under-reserving by knowingly providing inaccurate and misleading financial information to the Central Bank during his role as Chief Financial Officer.<sup>36</sup>

## C2 Other powers

The **Insurance Act 1989** gives the Central Bank extensive powers. It may request a wide range of information from insurers and carry out investigations of an insurer's business and that of persons connected to the insurer. Where it considers an insurer is, or may be, unable to meet its liabilities or solvency capital requirement, the Central Bank may intervene to direct the insurer to take appropriate measures.

In addition, the **EU Insurance and Reinsurance Regulations 2015** provide that the Central Bank may prohibit the free disposal of assets located within the State. This enables the State to comply with a request from the supervisory authority of another member state to designate assets of an insurer or reinsurer for the purposes of Solvency II.

<sup>35</sup> Central Bank of Ireland (News and Media – Legal Notices, Enforcement Actions), [www.centralbank.ie](http://www.centralbank.ie).

<sup>36</sup> Central Bank of Ireland (News and Media – Press Releases), 'Enforcement Action: Rory O' Connor fined €70,000, disqualified for 8 years and 4 months', 18 June 2020, [www.centralbank.ie](http://www.centralbank.ie)



The Central Bank also has significant powers under the **Insurance Act 1983** to appoint an administrator to act for the insurer. Upon court appointment, the administrator has the power to take over the management of the insurer's business with a view to putting it back on a sound commercial footing. The administrator is also granted power to dispose of all or any part of the business concerned.

The Central Bank may petition to wind up an insurer on the grounds that it is unable to pay its debts under the **Insurance Act 1936**. The legislation provides, however, that at any time up to the conclusion of an inquiry, the Central Bank may enter into a binding settlement agreement with the insurer to resolve the matter.

Insolvency management is clearly an important aspect of the Central Bank's role as can be seen in Example 2.1.



### Example 2.1

#### CBL Insurance Europe DAC

In March 2020, in the face of a deteriorating financial position and to protect policyholders, the Central Bank-appointed administrator was replaced by liquidators and an Order was made for the winding up of CBL Insurance Europe DAC.<sup>37</sup>

#### Quinn Insurance

In April 2011, the Quinn Insurance administrators agreed to sell the company to US insurance giant Liberty Mutual and Anglo Irish Bank (Quinn Group's main creditor).<sup>38</sup>

<sup>37</sup> Central Bank of Ireland, (News & Media – Press Releases), 'Update: Statement of CBL Insurance Europe DAC', (Entries from 12 March 2018 and 12 March 2020), [www.centralbank.ie](http://www.centralbank.ie).

<sup>38</sup> Note: QUINN-Healthcare was not part of this sale but, following a management buy-out, backed by ElipsLife, the health insurance arm has been rebranded as laya healthcare.

# D Regulation of the private health insurance market

So far, we have looked at the whole non-life general insurance market. However, private health insurance is one specific sector that must be considered separately. This is because its marketplace functions differently and has a distinct character, with unique legal and regulatory principles governing underwriting and risk acceptance.

The **Health Insurance Acts 1994–2022** are the source of regulation for the private health insurance market. These enacted into law the four principles on which the market operate:

- **Community rating** – An insurer offering a health insurance contract for a specific level of benefit must charge the same premium to all **policyholders** regardless of their age, gender, claims experience or current or prospective health status. There are a number of variations or modifications to the principle of community rating. For example:
  - reduced premiums may be offered to children and young adults (aged 18–25)
  - a group discount of up to 10% can be applied at the insurer's discretion (normally to selected corporate clients or group schemes) and
  - the **Health Insurance (Amendment) Act 2014** introduced a **Lifetime Community Rating (LCR)** system.
- **Open enrolment** – An insurer must accept all individuals regardless of the risk they pose, their age or gender.
- **Lifetime cover** – Once an individual has a health insurance policy, an insurer may not cancel or refuse to renew such cover regardless of that individual's claims experience. Exceptions are non-payment of premium, fraud, or if the insurer ceases to write health insurance business in the State.
- **Minimum benefits** – All private health insurers must provide cover for a statutory minimum schedule of benefits as laid down in the **Health Insurance Act 1994 (Minimum Benefit) Regulations 1996** (as amended).

In recognition of the constraints imposed by health insurance principles, insurers are permitted to impose certain waiting periods. The criteria, circumstances and maximum time limits are set out in regulations made under the Health Insurance Acts.

These principles are considered in more detail in the Personal General Insurance and Health Insurance and Associated Insurances modules.



## policyholder

a person/firm that is insured under an insurance policy

## lifetime community rating

the older a person is when they initially take out private health insurance, the higher the premium they will pay (however, the premium may not subsequently be increased to reflect the person's advancing age)



## Quick question 3

List the principles on which the private health insurance market is based. Taken together, how do these principles impact on pricing (excluding Lifetime Community Rating)?



## Microlearning resources

In the Member Area of [www.iii.ie](http://www.iii.ie), via the Connect logo and in Your Learning Centre, select the microlearning section of this chapter to access a resource specifically developed to help you better understand this topic.

## D1 Regulation and supervision of private health insurers

As financial service providers, all private health insurers must be authorised and regulated by the Central Bank. In addition, health insurers' compliance with the **Health Insurance Acts 1994-2022** is overseen by the Health Insurance Authority (HIA).

The **Health Insurance Act 1994** provided for the establishment of an independent regulator of the private health insurance market – the HIA. It was established in 2001 and its main objective is to uphold the principle of community rating.

## D2 Functions and powers of the Health Insurance Authority

The HIA maintains the Register of Health Benefits Undertakings. Under the **Health Insurance Acts 1994-2022**, any health insurer conducting health insurance in Ireland (including those with headquarters outside Ireland) must register with, and obtain a certificate from, the HIA. The health insurer must re-register with the HIA on an annual basis. A health insurer that is not on the Register is prohibited from conducting health insurance business in Ireland.

There are two categories of health insurer included on the Register of Health Benefits undertakings:<sup>39</sup>

- **Open membership undertakings** – Examples include Vhi Healthcare, Irish Life Health and Iaya Healthcare. HSF Health Plan is also an open membership undertaking but provides cash benefit plans only.
- **Restricted membership undertakings** – These provide in-patient health insurance to the employees (current and retired) of a particular organisation and their dependants. Examples include St Paul's Garda Medical Aid Society and the Prison Officers' Medical Aid Society.

The main functions of the HIA are to:

- Monitor the health insurance market and advise the Minister (either at their request or on its own initiative) on matters relating to health insurance
- Monitor the operation of the Health Insurance Acts and, where appropriate, issue enforcement notices to enforce compliance
- Carry out certain functions in relation to health insurance stamp duty, **risk equalisation** credits and the Risk Equalisation Scheme<sup>40</sup>
- Take appropriate action to increase public awareness of the rights of health insurance consumers, as well as the services available to them
- Maintain the Register of Health Benefits Undertakings and Register of Health Insurance Contracts.



### open membership undertakings

undertakings that provide in-patient health insurance cover and must accept (subject to certain limited terms and conditions) all persons who wish to purchase private health insurance; may also provide cash benefit plans

### restricted membership undertakings

health schemes restricted to a particular class of membership, usually established as 'friendly societies'

### risk equalisation

a process that aims to impartially neutralise differences in insurers' costs that arise from differences in the age profile of the persons they insure

<sup>39</sup> Health Insurance Authority (Regulation – Register of Health Benefit Undertakings), [www.hia.ie](http://www.hia.ie).

<sup>40</sup> Note: community rating ensures that the same premium will be charged for a certain level of benefits irrespective of the customer's age, gender, claims experience or current or prospective health status. Risk equalisation involves the transfer of payments between health insurers to equitably even out differences in their claims' costs arising from variations in the age profile of their insureds (i.e. number of older or less healthy insureds).

The HIA is responsible for making sure that private health insurers comply with all the provisions of the Health Insurance Acts. Under the **Health Insurance (Miscellaneous Provisions) Act 2009**, if the HIA believes that a registered health insurer is contravening a provision of the Health Insurance Acts, the HIA may serve an enforcement notice. The notice must state:

- the provision that has been contravened and the steps to be taken to rectify the contravention
- the timeframe to do this (not less than 45 calendar days). If the health insurer receiving the notice does not accept that it is in breach, it has 45 calendar days to appeal to the High Court and request the court to cancel the notice. The High Court may cancel or confirm the HIA's direction.

If a health insurer does not comply with the enforcement notice within the timeframe (and does not make a High Court appeal), the HIA may apply to the High Court to order the health insurer to take the steps required to correct the breach. If this happens, the health insurer will be subject to a court order. Failure to comply would have serious consequences, including removal from the Register of Health Benefits Undertakings and therefore being prohibited from selling health insurance in Ireland.

The **Health Insurance (Amendment) Act 2012** gave the HIA further powers regarding contraventions of the Health Insurance Acts. These include revised penalties for offences under the Acts and the power to appoint authorised officers to investigate suspected contraventions.

**E**

# Summary

This chapter examined the specific areas of authorisation and regulatory supervision of insurers, reinsurers and intermediaries. We also considered the legal and regulatory environment for private health insurance.

This is a complex area and it can sometimes be difficult to see how it relates to your everyday work environment. However, taking the time to study and consider this material (and the topics covered in Chapter 1) will provide a very good basis for approaching the next few chapters.

## E1 What's next?

In Chapter 3, we will consider the principles of agency and their application to insurance.

## E2 Study tips

It is important to remember that this textbook is the primary information source for this module. All the questions in your exam will relate directly to information featured in the textbook. Use the 'End of chapter questions', 'Quick questions' and the 'Sample multiple-choice questions' to quickly test what you've learned so far. Make a note of any topics/areas you need to improve in and keep it to hand so you can refer to it when you revise this chapter again before your exam.

In addition to the textbook, your Member Area has many online learning supports that can help you as you study this module.

## E3 Online learning supports

Your Member Area includes a Guide to Success, an automated study planner, an exam countdown timer and study tips guide. These learning supports are invaluable in reinforcing what you have learned from the textbook so far. The webinars, chapter-by-chapter key points and other supports will help you to break down the chapter content when revising.

Completing online mock exams and reviewing the personalised feedback that follows is a great way of testing your knowledge and preparing for exam day.

To access these online learning supports, just log into the Member Area of [www.iii.ie](http://www.iii.ie) and click on the Connect logo.





# End of chapter questions

Use these questions to test your understanding of what we've covered in Chapter 2.

1. List the main requirements a firm must meet when applying for authorisation as an insurer.  

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2. State what the term 'solvency capital requirement' means.  

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3. List the three categories of general insurance intermediary regulated by the Central Bank.  

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4. List the four categories of firms under the PRISM supervision framework.  

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5. State what must occur before an insurer can set its solvency requirement using an 'internal model'.  

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6. State what a retail intermediary's Retail Intermediary Annual Return is based on and the four key areas it covers.  

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7. Where the Central Bank decides that an insurer or intermediary has committed a contravention, list three sanctions the Central Bank may administer.  

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8. State the function of the Irish Financial Services Appeals Tribunal.  

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9. State the main objective of the Health Insurance Authority.  

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10. The Health Insurance Authority maintains the Register of Health Benefits Undertakings. State the two categories of health insurer listed in this register.  

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# Answers to end of chapter questions

Check your answers against those below and make a note of any points you left out. This will highlight some sections you may need to look at more closely during your revision.

1. A firm seeking authorisation as an insurer/reinsurer with its head office in Ireland must:
  - Have its head office and registered office in Ireland and be a company registered under the **Companies Act 2014**
  - Submit details of its directors, managers and authorised agents for approval of their fitness and probity
  - Provide detailed information of areas of management responsibilities in the firm's operation
  - Submit a detailed scheme of operations, essentially a business plan (including a summary of the type of risks it proposes to cover)
  - Hold the relevant solvency capital requirement
  - Provide a plan setting out three years' financial estimates for insurance and reinsurance business
  - Submit a forecast balance sheet and estimates for the cover of its underwriting liabilities and SCR
  - Hold the required minimum paid-up share capital.
2. The level of eligible own funds that Solvency II legislation requires insurers/reinsurers to hold to meet liabilities and absorb significant losses.
3. In the non-life (general) insurance industry, an intermediary regulated by the Central Bank can be:
  - An insurance intermediary
  - An ancillary insurance intermediary
  - A reinsurance intermediary.
4. Under PRISM, all firms are divided into four categories, i.e. high-impact (including ultra-high), medium-high, medium-low or low.
5. If an insurer chooses to set its solvency requirement using an 'internal model', the model chosen must be approved by the Central Bank.
6. A retail intermediary's RIAR is based on the intermediary's financial position at the end of its financial year. The key areas covered are general information about the firm, financial, ownership and conduct of business information.



7. Any three of the following administrative sanctions:
  - A caution or reprimand
  - A direction to refund any charge or sum paid for the provision of a financial service
  - A fine of up to either €10 million or 10% of turnover for firms (whichever is greater), and €1 million for sole traders or an individual (but not if it causes the firm/individual to cease business)
  - A direction to stop the contravention if it is found to be continuing
  - An order to pay part or all of the costs of the inquiry and investigation
  - Suspension or revocation of the firm's authorisation
  - An order disqualifying a person from being involved in the firm's management for a specified period.
8. The Irish Financial Services Appeals Tribunal is an independent, statutory body that deals with appeals from firms about certain Central Bank decisions and sanctions.
9. The main objective of the Health Insurance Authority is to uphold the principle of community rating.
10. The two categories of health insurer listed in the Register of Health Benefits Undertakings are:
  - Open membership undertakings
  - Restricted membership undertakings.

## Answers to quick questions

1. The steps in the Central Bank's Escalation Pyramid are (any three of the following):
  - Persuasion education
  - Code of Practice
  - Inspection supervision
  - Enforcement notices and Compliance agreements
  - Administrative sanctions and Civil court action
  - Criminal prosecution
  - Licence revocation.
2. In the case of RSAll, its €3.5 million fine was as a result of having insufficient processes to identify and report the risks it was exposed to in respect of its solvency capital requirements. In the case of Keystone Insurance Ltd., the breaches involved overcharging, unclear customer communications, and a lack of systems and control. Keystone's fine was comparatively small as the Central Bank is required to take into account the scale of the firm being fined (Keystone was an insurance intermediary) and may not impose a fine at a level which would cause a regulated firm to become insolvent.
3. The four principles on which the private health insurance market is based are: community rating, open enrolment, lifetime cover and minimum benefits. In terms of pricing, insurers cannot distinguish their prices on grounds of age, gender, claims experience or current or prospective health status. They must offer the same product at the same price to everyone who wishes to become a member of their scheme.

# Sample multiple-choice questions

1. An insurer with its head office in an EU member state other than Ireland **cannot** carry on insurance business in Ireland without authorisation from the:

A. Central Bank of Ireland  
B. European Central Bank  
C. recognised regulatory authority of the EU member state  
D. Central Bank Commission

Your answer:

☐

2. A firm is applying to the Central Bank for authorisation as an insurance intermediary. As part of the application process, which of the following documents must the firm submit for each of its directors?

A. An individual questionnaire demonstrating the director's fitness and probity to manage the firm  
B. A statement confirming the director has an active directors and officers insurance policy in place  
C. An individual questionnaire demonstrating the director's personal financial assets  
D. A statement confirming the director will not work for any other firm in the future

Your answer:

☐

3. Jenny is an insurance intermediary and is registered as a sole trader. She has committed a serious contravention and the Central Bank has issued her with a fine for €250,000. What, if any, is the maximum additional amount Jenny could have been fined?

A. Nil  
B. €100,000  
C. €250,000  
D. €750,000

Your answer:

☐

# Answers to sample multiple-choice questions

## Question 1

**Chapter reference:** Chapter 2A1

**Question type:** K

**Correct response:** C

**Learning outcome:** State the requirements for the authorisation of insurers, reinsurers and intermediaries and demonstrate the main supervisory methods used by the Central Bank.

## Question 2

**Chapter reference:** Chapter 2A2

**Question type:** U

**Correct response:** A

**Learning outcome:** State the requirements for the authorisation of insurers, reinsurers and intermediaries and demonstrate the main supervisory methods used by the Central Bank.

## Question 3

**Chapter reference:** Chapter 2C1

**Question type:** A

**Correct response:** D

**Learning outcome:** Describe the powers of the Central Bank and demonstrate its enforcement options.





# Agency and relationship management

## What to expect in this chapter

Many insurance contracts are arranged by an intermediary on behalf of a client. This chapter explores:

- The relationships between the different parties to an insurance contract – insurance agents, principals and third parties
- The legal principles underlying these relationships and the terminology used
- Some regulatory considerations that apply at different stages of the relationship.

We will also look at how agency operates in insurance and the documentation that supports the relationship between an insurance intermediary and a consumer.

## Learning outcomes for this chapter

Section	Title	At the end of each section you should be able to:
<b>A</b>	<b>Creation of agency</b>	Identify the concept of agency, the main duties of an agent to its principal and how an agency may be terminated.
<b>B</b>	<b>Duties of an agent and a principal</b>	
<b>C</b>	<b>Termination of an agency</b>	
<b>D</b>	<b>Agency and insurance</b>	Explain how agency operates in insurance.
<b>E</b>	<b>Terms of business</b>	Explain the scope of a Terms of Business Document between a regulated firm and a consumer and outline why regulated firms should conduct regular reviews of clients' general insurance needs.
<b>F</b>	<b>Review of insurances</b>	



## A

# Creation of agency

We considered the basis of a valid contract in the Nature of Insurance module and noted that a contract is formed when one party makes an offer, which the other party accepts unconditionally. In practice, many insurance contracts are not created directly between an individual (or organisation or company) and an insurer but through an insurance intermediary such as a **broker**. In this context, the intermediary acts as an **agent**. The creation of agency and the authority and restrictions placed on agents are extremely important issues for insurance contracts.

In law, an agent is one who is authorised by a **principal** to act on their behalf and assist them in entering into a binding contract with a third party. In general contract law, the agent will have no continuing duty once the contract is completed, although different rules and practices may apply.

Later in this chapter we will look at some of the documentation that supports the principal–agent relationship in insurance.




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**broker**


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an insurance intermediary that provides their principal regulated activities on the basis of a fair analysis of the market

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**agent**


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one who is authorised by a principal to bring that principal into a contractual relationship with a third party

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**principal**


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a person for whom another acts as agent

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B

# Duties of an agent and a principal

The duties of agents and principals are summarised in Tables 3.1 and 3.2. These legal duties apply to all agency arrangements, not just insurance. A principal has fewer duties than an agent, but these are no less significant. In insurance, many of these general duties are reinforced by legislation and Central Bank codes.



**fiduciary relationship**

a relationship recognised by the law as being based on trust and responsibility (which, in the insurance context, means that legal duties and obligations are placed on the agent for having undertaken to perform certain activities on behalf of the principal)

Table 3.1 Duties of an agent

<b>obedience</b>	An agent's prime duty to their principal is to obey instructions. If the agent fails to comply, the principal has the right to sue for any damages incurred.
<b>personal performance</b>	An agent must personally perform the duties imposed by the principal. However, in practice, this does not always apply. For example, an agent may delegate simple administrative tasks such as typing. It may delegate its duties to specialist employees, or may outsource some tasks with the client's knowledge and consent. Where any delegation or outsourcing occurs, the agent remains responsible to the principal for the performance of these tasks or duties.
<b>due care and skill</b>	An agent must exercise due care and skill, as appropriate to their qualifications, knowledge and experience, in the performance of all acts undertaken in the course of their duty as an agent.
<b>good faith</b>	An agent has a <b>fiduciary relationship</b> with their principal, i.e. they have a duty of good faith. The agent must not allow their own interests to conflict with their duties to the principal. For example, they must not accept bribes or secret commissions, or use confidential information from the principal without their knowledge or consent.
<b>accountability</b>	An agent must account to the principal for all monies received on their behalf, and must keep a proper record of all transactions.

**Table 3.2 Duties of a principal**

<b>remuneration</b>	The principal has a duty to pay the remuneration agreed or, if none has been fixed, to pay a reasonable remuneration as appropriate. For insurance transactions, the remuneration usually consists of commission paid on the agent's completion of the transaction (i.e. when an insurance contract has been agreed).
<b>indemnity</b>	Subject to any express terms in the agency agreement, the principal has a duty to provide an indemnity (payment) to the agent for all expenses or losses incurred in acting on the principal's behalf.

## C

## Termination of an agency

An agency may be terminated in any of the following four ways:

- Mutual agreement by the principal and agent
- According to the terms of cancellation in the agency agreement
- Withdrawal by the principal, or revocation (giving up) by the agent, other than according to the agreed terms
- Automatically on death, bankruptcy or insanity of either party.

In the case of bankruptcy, the agency can only be terminated if the agent's bankruptcy prevents them from carrying out their duties. Surprisingly, the agent's imprisonment is not grounds for termination.



### Quick question 1

Can you think of a reason why imprisonment of the agent does not automatically terminate an agency?

The answer is at the end of this chapter.

**proposer**

a person, firm or organisation applying for insurance (but not yet a policyholder/insured)

**principal regulated activity**

at least 75% of a regulated firm's total turnover on an annual basis that comes from regulated activities that are provided on the basis of a fair analysis of the market

**fair analysis (of the market)**

providing services on the basis of a sufficiently large number of contracts and product producers available on the market to enable the intermediary to make a recommendation in accordance with professional criteria, regarding which contract would be adequate to meet the consumer's needs

**fair and personal analysis (of the market)**

advice given on the basis of an analysis of a sufficiently large number of contracts available on the market, to enable the intermediary to make a recommendation, in accordance with professional criteria, as to which insurance contract adequately meets the customer's needs

# D Agency and insurance

In most transactions, apart from insurance, it is easy to identify the principal, agent and third party. This is because in most contracts an agent will only act on behalf of one of the contracting parties. The situation is different in insurance contracts, as an agent such as an intermediary/broker may act on behalf of either the insurer or their client at different times.

The following sections outline the different types of insurance intermediary and their duties towards their clients. We will also identify situations in which an insurance intermediary acts on behalf of the insurer and those situations where they act on behalf of their client (i.e. the **proposer** or insured).

## D1 Roles and responsibilities of insurance intermediaries

The definition of **insurance distribution** reminds us that insurance intermediaries may be involved in different activities at various stages of an insurance contract. However, the main duty of most intermediaries is to arrange insurance policies for the individuals, businesses or organisations that seek their services. For example, when a consumer approaches an insurance intermediary for advice about taking out a motor insurance policy, they expect the intermediary to help them choose the policy that best meets their needs. They probably also expect the intermediary to arrange the policy with an insurer and give reliable advice throughout all stages of the process. However, different types of intermediary have different roles and responsibilities.

Under IDR, insurance intermediaries are recognised as being involved in insurance distribution. It is useful at this stage to identify the main types of insurance intermediary and the nature of the advice and information they provide. The Central Bank's CPC contains important provisions in this area.

### D1a Insurance intermediaries and the nature of advice

Firstly, all brokers are intermediaries, but under CPC Provision 4.18, the term 'broker' may only be used where the intermediary's **principal regulated activities** are provided on the basis of a **fair analysis of the market** (or **fair and personal analysis** as defined under IDR).



### Just think

If an insurance broker uses only a small selection of insurers to obtain a representative market rate for private motor insurance, would it be acceptable for the broker to claim they had made a 'fair and personal analysis of the market'?

The term ‘sufficiently large’ (as contained in the definition for ‘fair and personal analysis’) is determined by the type of contract and number of providers in the market. For example, there are many more insurers offering motor insurance than, say, legal expenses insurance. It is therefore not permissible to only consider a very small selection of motor insurers when claiming a fair and personal analysis.

As we will see in Section E, firms must set out the basis on which they provide advice to consumers. This includes telling the consumer if the advice is based on a fair and personal, or limited, analysis of the market. The CPC states that a **limited analysis of the market** is based on a limited number of contracts and **product producers** available.<sup>41</sup> This means that, while the firm is not tied to just one product producer, it does not provide the services on the basis of a fair and personal analysis of the market. Where advice is given on the basis of a tied analysis, the intermediary must clearly disclose the names of the product producer(s) whose products or services it is considering.

Some intermediaries provide services on the basis of a fair and personal analysis of the market for some products and services, and a limited analysis of the market for other specific products or services. This must be stated clearly in the **Terms of Business Document** (TOB, see Section E).

Where an intermediary is tied to a single product producer for a particular product or service, it must disclose this fact in all communications with the consumer, including all advertisements and the TOB. A tied insurance intermediary may act under the direction of one or more insurers for products that are not in competition.

Secondly, an intermediary may only use the term ‘independent’ (or any other word that is similar to this term):

- In its legal/trading name if its regulated activities are all provided on the basis of a fair analysis of the market (or a ‘fair and personal analysis’ under IDR) or
- To describe its regulated activities if these activities are provided on the basis of a fair analysis of the market (or a ‘fair and personal analysis’ under IDR) and only
- Where the intermediary does not accept any remuneration in respect of advice relating to these regulated activities other than a fee paid by a consumer.<sup>42</sup>



#### limited analysis of the market

providing services on the basis of a limited number of contracts and product producers [insurers] available on the market

#### product producer

any regulated entity/firm that produces, manufactures or packages a product of a financial or investment nature, and is not limited to a product producer as defined in the **Investment Intermediaries Act 1995**

#### Terms of Business (Document)

document in which a regulated entity/firm sets out the basis on which it will conduct business with consumers

<sup>41</sup> Chapter 12 (Definitions), CPC.

<sup>42</sup> Central Bank of Ireland, *Addendum to the Consumer Protection Code 2012*, September 2019 (Updated May 2021), Provision 4.16.

## D2 Who is the principal of an insurance intermediary?

This is an important question. Except in the case of a tied insurance intermediary, an insurance intermediary is generally considered to be acting as an agent for their client. There are, however, some situations in which they are acting as an agent for the insurer.

There are also situations in which an insurance intermediary undertakes a task and, at different times during this task, is acting as an agent for the client or the insurer. For example, an insurance intermediary may survey a commercial premises in order to:

- present the information, together with other risk details, to the insurance market – in this situation the intermediary is acting as an agent for the client
- provide a description of the property to the insurer for the purposes of risk assessment – in this situation the intermediary is acting as an agent for the insurer.

However, we need to establish guidelines to determine at what stage, and for what activities, the intermediary acts on behalf of the insurer or on behalf of their client.



### Microlearning resources

In the Member Area of [www.iii.ie](http://www.iii.ie), via the Connect logo and in Your Learning Centre, select the microlearning section of this chapter to access a resource specifically developed to help you better understand this topic.

### D2a Agent of the client (insured)

The intermediary is an agent of their client (i.e. the client is their principal) when they:

- Give general advice to the client about the cover they require and the market to place their business
- Help the client to complete a proposal form (or add information to the form on their behalf)
- Give the client advice about how to formulate their claim.



### Just think

If an intermediary is in a rush and adds information to a proposal form in error, on whose behalf is the intermediary acting?

The answer is 'the client'. Only in very restricted circumstances would the insurer be considered the principal.

## D2b Agent of the insurer

The intermediary is an agent of the insurer (i.e. the insurer is their principal) when they:

- Have express authority from the insurer to receive and handle proposal forms
- Handle the forms according to a previous course of business with the insurer and within an implied authority that has arisen
- Act without express authority, and the insurer either subsequently ratifies this action or has ratified such actions in the past
- Collect a premium for an accepted proposal or renewal of an existing policy, in which case the premium is treated as having been paid to the insurer
- Have express authority to handle claims
- Have express authority from the insurer under the terms of a **delegated authority** scheme.

The implication is that, in placing any insurance, the intermediary (unless a tied insurance intermediary) may act on behalf of both parties. It is important to apply the rules given here to establish which of the parties, insurer or insured, is the principal at any point in the transaction.

It is important to note that an insurer is responsible for any act or omission by a tied insurance intermediary regarding the contract of insurance, as if they were an employee of the insurer.



### delegated authority

authority granted to the agent of an insurer, usually in the context of a scheme arrangement, to issue policy documentation and possibly carry out limited underwriting and claims functions

## D3 Agreements between agents and principals

The agreement between the insurer and the agent (broker/intermediary) is usually contained in a legally binding contract. In the insurance industry this is commonly known as a Terms of Business Agreement (TOBA). This should not be confused with the Terms of Business Document (TOB) described in Section E which is an agreement between the regulated firm (e.g. insurer or intermediary) and the consumer.



### Quick question 2

When an insurer delegates authority to an intermediary, the intermediary is the agent of the \_\_\_\_\_.

# E Terms of business

The CPC requires a firm to draw up its Terms of Business (TOB - also known as the Terms of Business Document) with consumers and present these terms in a stand-alone document. Extract 3.1 shows the minimum requirements for the TOB, but firms may include additional information if needed.

3.1

## Extract Regulatory imperative, CPC Provision 4.12

A regulated entity must draw up its Terms of Business and provide each consumer with a copy **before** providing the first service to that consumer.

The TOB must set out the basis on which the firm provides its regulated activities and must include at least the following:<sup>43</sup>

- The legal name, trading name(s), address and contact details of the firm and the name of the group to which it belongs (if any)
- Confirmation that the firm is authorised, licensed or registered, and the name of the competent authority (e.g. the Central Bank or another European regulatory authority)
- A statement that it is subject to the Central Bank Codes of Conduct, which offer protection to consumers and that the codes can be found on the Central Bank's website ([www.centralbank.ie](http://www.centralbank.ie))
- A description of the regulated activities carried out
- A statement that the advice given to the consumer is based on a fair/limited analysis of the market or, if the intermediary acts as a tied insurance intermediary for one or more insurance products, it must specify the name of each of the product(s) and/or service(s) for which it is tied and the name of the firm to which it is tied for those product(s) and/or service(s)
- A general statement of the charges imposed directly, e.g. charges for making changes to a policy, issuing duplicate documentation or for other services such as risk management or claims assistance
- A summary of the firm's policy on how it will use a consumer's personal data, in compliance with the obligations of the Data Protection Acts and the **EU General Data Protection Regulation 2016** (GDPR) (see Chapter 6B)
- A summary of the firm's policy on conflicts of interest, usually a statement of intent that the firm will seek to avoid any **conflict of interest** when providing business services and, if unavoidable, will advise the client of this in writing before providing a business service (see Chapter 7E2)



### conflict of interest

situation or circumstance that might lead a firm/individual to take a course of action that is not necessarily in the best interest of their client, but favours the firm/individual

<sup>43</sup> Adapted from Provision 4.13, CPC.



- An outline of what will happen in the event of default by the consumer, normally to state that any failure to pay premiums due will result in policy cancellation or incurring a late-payment charge
- A summary of the firm's complaints procedure (see Chapter 8A2a)
- If a member of a statutory **compensation scheme**, the nature of the scheme and the level of protection it provides (see Chapter 8C and D)
- The effective date of the TOB Document.

The Central Bank's 2019 *Addendum to the Consumer Protection Code 2012* requires intermediaries to provide consumers with a **Summary of Commissions** document. This contains a summary of the details of all arrangements for any fee, commission, other reward or remuneration agreed with product producers and paid or provided to the intermediary. This information must be made available in a manner that is easily accessible to consumers. Where an intermediary operates a website, it must publish the summary on its website. This information must be provided to the consumer before the contract is concluded and can form part of the intermediary's TOB (see Chapter 4C3b). The intermediary is required to retain records that demonstrate compliance with this requirement.<sup>44</sup>



#### compensation scheme

a statutory or voluntary scheme that makes payments to affected persons (subject to limits and eligibility criteria) following the failure of a financial services provider

#### Summary of Commissions

a summary of the details of all arrangements for any fee, commission, other reward or remuneration paid or provided to an intermediary as agreed with product producers



#### Quick question 3

When must a regulated entity/firm supply a Terms of Business Document to a consumer?

<sup>44</sup> Central Bank of Ireland, *Addendum to the Consumer Protection Code 2012*, September 2019 (Updated May 2021), Provision 4.58A.



### material changes

changes to the risk to the extent that it could be said that the risk is now something which the insurer did not agree to cover

### personal consumer

a consumer who is a natural person acting in their private capacity outside their business, trade or profession

### liability insurance

insurance that protects the policyholder against the consequences of being held financially responsible for a third party's injury, property damage or financial loss

### business interruption insurance

insurance that protects a commercial policyholder against loss of profits and other expenses following insured damage to their property

## F Review of insurances

So far, we have focused primarily on setting up an agency relationship and what is required to make sure it is both effective and compliant. However, unlike other contract arrangements, insurance contracts must be renewed each year. In addition, mid-term changes may be needed once the policy is effective.

The intermediary must determine whether, and to what extent, they should make contact with a client during the period of insurance. The nature of the after-sales service and any associated costs must be communicated and agreed. This information should be contained in the TOB.

Most intermediaries will assume that the client will notify them of any mid-term changes. The intermediary will emphasise that the client is responsible for notifying the intermediary of any **material changes** that occur mid-term. This may be described in an 'alteration of risk' clause in the policy.

When dealing with mid-term changes, the adviser must take a holistic approach and recognise the potential impact of the changes on other policies or risk areas. For example:

- A **personal consumer** may notify their intermediary of an impending house move. The adviser will need to ask further questions about the new property, the removal arrangements and the date when the current home will be vacated. The change of address may also need to be noted on other policies (e.g. motor or travel).
- A client might ask the intermediary to add another building to their commercial property insurance policy. The intermediary would need to ask about the construction of the new building and the reasons for its addition to the policy. For example, is the client expanding their business or changing the type of business they engage in? The answers to these questions may require changes to the client's other policies, e.g. **liability insurance** or **business interruption insurance**.

Typical situations in which an adviser may have further contact with their client include:

- Additions to the client's household buildings (e.g. an extension) or contents, in which case the sum insured may need to be adjusted
- A change of vehicle or changes to the named drivers' details under a motor policy
- Notification to the insurer if the insured or named driver is convicted of a motor offence or receives additional penalty points
- The addition of a partner or child to a private health insurance policy
- A request to change the level of cover
- Assistance with a claim
- Ensuring the client's compliance with policy conditions or warranties.



### Just think

List some situations where an adviser will have ongoing contact with a client during the policy period.

Issues that might suggest a need for a more frequent, proactive review with the client include:

- Identified poor claims experience
- Any requirement that the client take measures to improve their risk, and an indicated date for completion
- Identified plans by the client for development, e.g. new buildings, increased turnover
- The existence of a '**service level agreement**'.

For personal consumers, even those with complex needs, it is highly unlikely that a formal review will take place more often than once a year. However, Example 3.1 provides a scenario in which a proactive approach would be needed for a period of time.



### Example 3.1

Your client, Aoife, made two recent claims under her motor policy. Both incidents involved the theft of items from her car and damage to the vehicle. Her insurer has now insisted that Aoife fit an alarm/immobiliser to the car if theft cover is to be continued.

It is important that Aoife understands that she must meet the insurer's requirement, as failure to do so or any delay in completion could leave her without cover. A series of telephone calls or emails may be necessary to monitor what is happening and keep all parties informed of progress. Once everything has been resolved, there will probably be no need to contact Aoife again until her policy is due for renewal.



#### service level agreement

an agreement made between the intermediary and the client for specific activities over and above the standard agreement in the Terms of Business Document



#### Quick question 4

Why would a client's poor claims experience be more likely to require more frequent reviews?

## F1 Renewal review

When a client wishes to renew an insurance policy, insurers and intermediaries need to undertake the renewal process in line with the requirements of the **Non-Life Insurance (Provision of Information) Regulations 2007** and **2018**. We will consider these regulations in Chapter 5D.

The areas covered in the renewal process vary according to the particular client and policy, but will typically include:

- **Business description** – Any change must be notified to ensure the validity and type of insurance policy. For example, a change of business description (e.g. from 'furniture sales' to 'furniture manufacturer'), will change the client's insurance requirements. The insurer will consider the new liability exposures and it may revise the premium or cover.
- **Scope of cover** – Are there any reasons why the client might wish to increase or reduce the scope of cover?
- **Newly acquired items** – This includes machinery, computers or extensions to a building, and may affect the cover or sum insured. The adviser will also ask about any proposed acquisitions or building programmes.
- **Particular issues or problems with claims** – Issues such as unresolved claims, a policy cover shortfall or the possibility of fraudulent activity may lead to an underwriting decision to cancel the policy or change its terms.
- **Client satisfaction** – The client may have particular issues with the level of service provided.

Under the **Consumer Insurance Contracts Act 2019**, a consumer is not under any obligation to provide the insurer with any additional information at renewal unless the insurer expressly requires them to do so by asking them a specific question or requesting them to update information previously provided concerning a specific matter. In these situations, the insurer must provide the consumer with a written copy of the information previously disclosed. The consumer must respond honestly and with reasonable care. If the consumer does not provide any new information in response to the insurer's request and pays the renewal premium, it is presumed that the information previously provided has not changed.

## G

# Summary

Although this is a fairly short chapter, there is still a lot to consider! We looked at the role of an agent in creating a contractual relationship between their principal and a third party. We identified the unique position of an insurance intermediary, who may act for either of the contracting parties at different stages of the process. We also considered the different types of intermediary, their respective roles and regulatory responsibilities, and their continuing involvement in the insurance contract.

## G1 What's next?

In Chapter 4 we will look at the Consumer Protection Code. This continues our study of the regulatory framework in which firms provide advice and services to consumers.

## G2 Study tips

It is important to remember that this textbook is the primary information source for this module. All the questions in your exam will relate directly to information featured in the textbook. Use the 'End of chapter questions', 'Quick questions' and the 'Sample multiple-choice questions' to quickly test what you've learned so far. Make a note of any topics/areas you need to improve in and keep it to hand so you can refer to it when you revise this chapter again before your exam.

In addition to the textbook, your Member Area has many online learning supports that can help you as you study this module.

## G3 Online learning supports

Your Member Area includes a Guide to Success, an automated study planner, an exam countdown timer and study tips guide. These learning supports are invaluable in reinforcing what you have learned from the textbook so far. The webinars, chapter-by-chapter key points and other supports will help you to break down the chapter content when revising.

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# End of chapter questions

Use these questions to test your understanding of what we've covered in Chapter 3.

1. Define the term 'agent'.  
\_\_\_\_\_  
\_\_\_\_\_
2. An agent owes their principal a duty of 'personal performance'. State what is meant by this.  
\_\_\_\_\_  
\_\_\_\_\_
3. State two duties of a principal towards an agent.  
\_\_\_\_\_  
\_\_\_\_\_
4. List the main ways in which an agency may be terminated.  
\_\_\_\_\_  
\_\_\_\_\_
5. Outline what is meant by the term 'limited analysis of the market'.  
\_\_\_\_\_  
\_\_\_\_\_
6. Outline what is meant by the term 'tied insurance intermediary'.  
\_\_\_\_\_  
\_\_\_\_\_
7. An insurance intermediary is normally the agent of their client, but in some actions is deemed an agent of the insurer. List the actions in which they are an agent of the insurer.  
\_\_\_\_\_  
\_\_\_\_\_
8. List five pieces of information that must be included in a Terms of Business Document between a consumer and an intermediary.  
\_\_\_\_\_  
\_\_\_\_\_
9. 'When dealing with mid-term changes, the adviser must take a holistic approach'. Outline what is meant by this statement.  
\_\_\_\_\_  
\_\_\_\_\_
10. Outline the broad headings under which an intermediary would gather information for a renewal review with a client.  
\_\_\_\_\_  
\_\_\_\_\_

# Answers to end of chapter questions

**Check your answers against those below and make a note of any points you left out. This will highlight some sections you may need to look at more closely during your revision.**

1. An agent is one who is authorised by a principal to bring that principal into a contractual relationship with another, a third party.
2. The agent must not delegate their duties to someone else unless they are purely administrative tasks. However, if an agent is a firm or company, different employees can perform certain specialist tasks.
3. Two duties of a principal to an agent are to provide:
  - Remuneration, either as agreed or, if no agreement has been fixed, whatever is reasonable
  - An indemnity against all expenses or losses incurred in acting on the principal's behalf.
4. An agency may be terminated by:
  - Mutual agreement between the principal and agent
  - In accordance with the terms of cancellation
  - Withdrawal by the principal, or given up by the agent, other than in accordance with agreed notice periods
  - Automatically on death, bankruptcy or insanity of either party (but in the case of bankruptcy, the agency is only terminated if it prevents the agent from carrying out their duties).
5. A limited analysis of the market means providing services on the basis of a limited number of contracts and product producers available on the market. Although not tied to one product producer, the intermediary does not provide services on the basis of a fair and personal analysis of the market.
6. A tied insurance intermediary distributes insurance on behalf of one or more insurers, reinsurers or other intermediaries in relation to products that are not in competition. They can only provide advice about the products of the insurer/reinsurer/intermediary(s) to which they are tied and all responsibility for their actions is accepted by the insurer/reinsurer/intermediary(s).
7. The intermediary is an agent of the insurer when they:
  - Have express authority from the insurer to receive and handle proposal forms
  - Handle the forms according to a previous course of business with the insurer and within an implied authority that has arisen
  - Act without express authority, and the insurer either subsequently ratifies this action or has ratified such actions in the past
  - Collect a premium for an accepted proposal or renewal of an existing policy, in which case the premium is treated as having been paid to the insurer
  - Have express authority to handle claims
  - Have express authority from the insurer under the terms of a delegated authority scheme.



8. Any five of the following:

- The legal name, trading name(s), address and contact details of the firm and the name of the group it belongs to (if any)
- Confirmation that the firm is authorised, licensed or registered, and the name of the competent authority (e.g. the Central Bank or another European regulatory authority)
- A statement that it is subject to the Central Bank Codes of Conduct, which offer protection to consumers and that the codes can be found on the Central Bank's website
- A description of the regulated activities carried out
- A statement that the advice given to the consumer is based on a fair/limited analysis of the market or, if the intermediary acts as a tied insurance intermediary for one or more insurance products, it must specify the name of each of the product(s) and/or service(s) for which it is tied and the name of the firm to which it is tied for those product(s) and/or service(s)
- A general statement of the charges imposed directly, e.g. for making changes to a policy, issuing duplicate documentation or for other services such as risk management or claims assistance
- A summary of the firm's policy on how it will use a consumer's personal data, in compliance with the obligations of the Data Protection Acts and GDPR
- A summary of the firm's policy on conflicts of interest, usually a statement of intent that the firm will seek to avoid any conflict of interest when providing business services and, if unavoidable, will advise the client of this in writing before providing a business service
- An outline of what will happen in the event of default by the consumer, normally that any failure to pay premiums due will result in policy cancellation or incurring a late-payment charge
- A summary of the firm's complaints procedure
- If a member of a statutory compensation scheme, the nature of the scheme and the level of protection it provides
- The effective date of the Terms of Business Document.

9. If a client tells the adviser about a change to the risk (e.g. a change of address or an increase in a sum insured), the adviser must identify any wider implications, including the possible impact on the client's other policies.

10. Typical headings include:

- Business description
- Scope of cover
- Newly acquired items
- A claims review
- A review of client satisfaction.

## Answers to quick questions

1. One reason is that, since contracts are between the principal and the third party, the agent's imprisonment will not affect the performance of the contract.
2. When an insurer delegates authority to an intermediary, the intermediary is the agent of the insurer.
3. The Terms of Business Document must be supplied to each consumer (as a stand-alone document) before providing the first service.
4. It is likely that the intermediary will need to make a presentation to other insurers to check the availability of credible options at renewal. It is necessary to check what risk-management/risk-improvement measures are being taken to improve the risk.

## Sample multiple-choice questions

1. The two main rights an agent has in respect of their employment by a principal are the right to:

- A. remuneration and the right to ratification
- B. remuneration and the right to indemnity
- C. ratification and the right to expenses
- D. expenses and the right to indemnity

Your answer:

☐

2. Beta Brokers, an intermediary, surveys a restaurant in order to prepare an insurance submission to Kodal Insurance. In this scenario, Beta Brokers is:

- A. the agent of the insurer
- B. a tied insurance intermediary
- C. the agent of the client
- D. an insurance assessor

Your answer:

☐

3. Zeal Brokers, a tied insurance intermediary, gives misleading advice and sells an inappropriate insurance policy to Helen. The responsibility for the error would usually rest on:

- A. Zeal Brokers, unless Zeal Brokers referred the matter to the insurer to which they are tied
- B. the insurer to which Zeal Brokers is tied, regardless of whether or not Zeal Brokers referred the matter to the insurer
- C. the insurer to which Zeal Brokers is tied, only if specifically agreed in the Terms of Business Document
- D. Zeal Brokers, regardless of whether or not Zeal Brokers referred the matter to the insurer to which they are tied

Your answer:

☐

# Answers to sample multiple-choice questions

## Question 1

**Chapter reference:** Chapter 3B

**Question type:** K

**Correct response:** B

**Learning outcome:** Identify the concept of agency, the main duties of an agent to its principal and how an agency may be terminated.

## Question 2

**Chapter reference:** Chapter 3D2a

**Question type:** U

**Correct response:** C

**Learning outcome:** Explain how agency operates in insurance.

## Question 3

**Chapter reference:** Chapter 3D2b

**Question type:** U

**Correct response:** B

**Learning outcome:** Explain how agency operates in insurance.





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# Quitch

# Impact of the Central Bank Consumer Protection Code

## What to expect in this chapter

This chapter covers the Consumer Protection Code (CPC). We will look at its general principles and requirements, as well as the rules applying to different stages of the advising process.

Other areas of the CPC are considered elsewhere in the textbook e.g. requirements relating to quotations (Chapter 5A), conflicts of interest (Chapter 7E2) and complaints handling (Chapter 8A2).

The current CPC came into effect in January 2012. In March 2021, Derville Rowland announced a root-to-branch review of the CPC noting that:

The Consumer Protection Code is the cornerstone of our consumer protection framework. We are working to finalise our plans for a broad consultation on a substantial update of the Consumer Protection Code. The update will address emerging trends and risks across the rapidly changing financial services landscape, to ensure that it continues to deliver strong protections for consumers into the future.<sup>45</sup>

In the Foreword to the 2022 *Consumer Protection Code Review Discussion Paper*, Gabriel Makhoul

(Governor and Chair of the Central Bank Commission) said:

It is time to review it (CPC) in light of the significant changes we are seeing in financial services. But before we identify specific revisions to the Code, we want to engage with stakeholders on some important consumer-related themes which are set out in this paper. Over the next few months, we want to hear perspectives from interested parties. We want to listen to consumers and their representatives, as well as the financial services industry, government and other authorities.<sup>46</sup>

This Discussion Paper and a survey for public feedback on the review of the CPC were launched by the Central Bank in October 2022. The response to the public consultation is to be published in late 2023 and the revised retail conduct framework is to be published in 2024.

Given this pending update and that this textbook does not cover the entire CPC, we encourage students to read the full CPC on the Central Bank website and stay up to date with developments in this area, while reminding you that only the content of this textbook is examinable.<sup>47</sup>

<sup>45</sup> Central Bank of Ireland (News & Media – Press Releases), 'Conduct, culture and trust – priorities for 2021' (speech to BFPI Membership Forum), 16 March 2021, [www.centralbank.ie](http://www.centralbank.ie).

<sup>46</sup> Central Bank of Ireland, *Consumer Protection Code Review Discussion Paper*, October 2022, p.4, [www.centralbank.ie](http://www.centralbank.ie).

<sup>47</sup> Central Bank of Ireland, *Consumer Protection Code*, 2012, [www.centralbank.ie](http://www.centralbank.ie).

## Learning outcomes for this chapter

Section	Title	At the end of each section you should be able to:
<b>A</b>	<b>Consumer Protection Code</b>	Describe and apply the general principles and requirements of the Central Bank Consumer Protection Code.
<b>B</b>	<b>General principles</b>	
<b>C</b>	<b>General requirements</b>	
<b>D</b>	<b>Provision of information</b>	Explain the effect of the Central Bank Consumer Protection Code on providing information to a consumer.
<b>E</b>	<b>Knowing the consumer and suitability</b>	Explain the effect of the Central Bank Consumer Protection Code on knowing the consumer and assessing the suitability of insurance products.
<b>F</b>	<b>Post-sale information requirements</b>	Demonstrate the effect of the Central Bank Consumer Protection Code on post-sale information and rebates.
<b>G</b>	<b>Rebates</b>	



## A

# Consumer Protection Code

The current **Consumer Protection Code** (CPC) came into effect in January 2012. Since then, the Central Bank has regularly issued addendums to keep it relevant and responsive.<sup>48</sup> The Central Bank also issues guidance documents 'to aid regulated entities in their interpretation and understanding of its (CPC) provisions'.<sup>49</sup>

The CPC aims to strengthen protection for consumers and to keep the level of protection consistent. The CPC does this by:

- Introducing clear conduct of business rules for all regulated firms
- Raising standards of service
- Ensuring consumers obtain the financial products best suited to them
- Ensuring greater transparency.

Most of the requirements considered in this chapter relate to a firm's dealings with those who fall within the Central Bank's definition of 'consumer'. This definition recognises that small enterprises (i.e. under €3 million turnover) may not have any greater understanding of insurance matters than the average individual. However, it is important to note that every category of client or policyholder, whatever their size or turnover, should be treated fairly and consistently.

## A1 Important terms

There are many definitions used in the CPC, some of which we have substituted or abbreviated for ease of reading. A phrase that is used extensively in the CPC is 'on paper or on another **durable medium**'. We have replaced that phrase here with 'in writing'.

Another phrase that has been abbreviated, in some instances, is the term 'regulated entity' or 'regulated firm'. We have simply referred to the 'firm'. The context indicates whether this relates to an insurer, intermediary or both.

The general principles – covered in Chapter 2 of the CPC – apply to the provision of services and advice to all 'customers' in the State. Other chapters of the CPC apply to those who fall within the CPC's definition of 'consumer', some being specifically restricted to 'personal consumers' or '**vulnerable consumers**'.

Table 4.1 uses adapted definitions to explain these CPC terms.<sup>50</sup> Some of these were introduced in earlier chapters, and also appear in the glossary of key terms at the end of this textbook.



### Consumer Protection Code (CPC)

code issued by the Central Bank setting out requirements that regulated entities/firms must comply with in order to ensure a minimum level of protection for consumers



### durable medium

any instrument that allows information to be stored and accessible for future reference, for a required period of time, and prevents the stored information from being changed or reproduced

<sup>48</sup> The original Consumer Protection Code 2006, subsequent revisions, addendums and guidances, and details of the CPC review and update can be found on the Central Bank website ([www.centralbank.ie](http://www.centralbank.ie)) under 'Consumer Protection Codes and Regulations'.

<sup>49</sup> Central Bank of Ireland, *Consumer Protection Code 2012 Guidance (updated)*, May 2021, [www.centralbank.ie](http://www.centralbank.ie).

<sup>50</sup> Chapter 12, Definitions, CPC.

**Table 4.1 Definitions used in the CPC (adapted)**

<b>consumer</b>	<p>any of the following:</p> <ul style="list-style-type: none"> <li>a. A person or group of persons, but not an incorporated body with an annual turnover in excess of €3 million in the previous financial year (includes partnerships and other unincorporated bodies such as clubs, charities and trusts)</li> <li>b. Incorporated bodies with an annual turnover of €3 million or less in the previous financial year (provided the body is not part of a group with a combined turnover of more than €3 million)</li> </ul> <p>... and includes a potential 'consumer'</p>
<b>customer</b>	any person, firm or organisation to whom a regulated firm provides or offers to provide an insurance product or service (for an intermediary the terms 'client' and 'customer' are interchangeable) and any person, firm or organisation who requests such a product or service
<b>personal consumer</b>	a consumer who is a natural person acting in their private capacity outside their business, trade or profession
<b>vulnerable consumer</b>	<p>a natural person who:</p> <ul style="list-style-type: none"> <li>a. has the capability to make their own decisions but who, because of individual circumstances, may require assistance to do so, e.g. hearing-impaired or visual-impaired persons</li> <li>b. has limited capacity to make their own decisions and who requires assistance to do so, e.g. persons with intellectual disabilities or mental health difficulties</li> </ul>

**A1a Who is a vulnerable consumer?**

Identification of a consumer's vulnerability requires the exercise of judgement and common sense and should be based on a consumer's ability to make a particular decision at a point in time.<sup>51</sup>

The Central Bank considers that identifying a vulnerability should be an inherent part of the 'knowing the consumer' process (see Section E). When gathering information about a consumer and their needs, firms should consider whether there is any evidence of consumer vulnerability. Table 4.2 shows some relevant examples.

<sup>51</sup> Central Bank of Ireland, *Consumer Protection Code 2012 Guidance (updated)*, May 2021, (4.2) [www.centralbank.ie](http://www.centralbank.ie).

Table 4.2 Identifying a vulnerable consumer	
Vulnerable consumers	Examples of vulnerabilities
Capable of making decisions, but their particular life stage or circumstances should be taken into account	Age, poor credit history, low income, serious illness, bereavement
Capable of making decisions, but require reasonable accommodation to do so	Hearing-impaired, visual-impaired, English not their first language, poor literacy
Limited capacity to make decisions (permanent or temporary) and require assistance to do so	Mental health difficulties, intellectual disability

Not everyone over a certain age or with a physical disability should be classed as a vulnerable consumer but these consumers may require greater attention. One of the most cited criticisms of the financial services industry is that it has lost consumer trust. The industry is taking active steps to help consumers rebuild that trust. For example, a person who needs motor insurance but is unable to read or write may be regarded as ‘vulnerable’. An intermediary engaging with this consumer needs to make sure that they fully understand the insurer’s terms and conditions and the contents of the proposal form. Notes to this effect should be retained on the consumer’s file.



### Microlearning resources

In the Member Area of [www.iii.ie](http://www.iii.ie), via the Connect logo and in Your Learning Centre, select the microlearning section of this chapter to access a resource specifically developed to help you better understand this topic.

# B General principles

We will begin by examining the general principles set out in Chapter 2 of the CPC. It is important to note that these general principles apply to a firm's dealings with all its customers. In other words, the principles have a wide application and are not restricted by the Central Bank definition of 'consumer'. As we will see later in this chapter (and in Chapter 7 of this textbook), some of these general principles are developed into specific rules that apply to a firm's dealings with its consumers.

Extracts 4.1–4.12 are taken from Chapter 2 of the CPC. The extracts show the CPC principles a firm must comply with in all its dealings with customers.

4.1

## Extract Regulatory imperative, CPC Provision 2.1

Act honestly, fairly and professionally in the best interests of its customers and the integrity of the market.

Honesty, fairness and professionalism are positive qualities that should be a major part of all business dealings – both when dealing with customers and with others in the insurance market (e.g. insurers, intermediaries). It links the firm's behaviour with its responsibility to uphold best market practice. An equivalent requirement to 'act honestly, fairly and professionally in accordance with the best interests of their customers' is imposed by the IDR.

4.2

## Extract Regulatory imperative, CPC Provision 2.2

Act with due skill, care and diligence in the best interests of its customers.

In practical terms, this means that firms must meet the requirements of the Central Bank Fitness and Probity Standards and **Minimum Competency Code**. However, this is also a general principle that the firm must adopt in all its dealings with customers. For example, the firm's accounts department should demonstrate an appropriate level of competence in accounting.

4.3

## Extract Regulatory imperative, CPC Provision 2.3

Do not recklessly, negligently or deliberately mislead a customer as to the real or perceived advantages or disadvantages of any product or service.

The principle clearly relates to intent, or lack of due care on the firm's part. The relative merits of different products must be fully understood and explained.



### Minimum Competency Code

code issued by the Central Bank of Ireland setting minimum competency standards to be met by those falling within the Code's scope when undertaking certain controlled functions

4.4

**Extract** Regulatory imperative, CPC Provision 2.4

Have and employ effectively the resources, policies and procedures, systems and control checks, including compliance checks, and staff training that are necessary for compliance with this Code.

This requirement means that the firm must show that it has adequate resources in place, e.g. compliance, risk and internal audit mechanisms and effective governance frameworks. There should be appropriate training for all staff, which will enable them to comply with written procedures and standards and meet relevant regulatory rules and expectations.

4.5

**Extract** Regulatory imperative, CPC Provision 2.5

Seek from its customers information relevant to the product or service requested.

'Relevant' information includes client preferences, personal circumstances, needs and objectives, financial situation and risk appetite.

4.6

**Extract** Regulatory imperative, CPC Provision 2.6

Make full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer.

This relates to the adviser's duty of disclosure to make the client aware of all material matters and, in particular, the basis of the adviser's remuneration.

4.7

**Extract** Regulatory imperative, CPC Provision 2.7

Seek to avoid conflicts of interest.

Conflicts of interest are situations or circumstances that might lead a firm to take a particular course of action that is not necessarily in the best interests of their client, but one that favours the firm. We will consider this in more detail in Chapter 7E2.

4.8

**Extract** Regulatory imperative, CPC Provision 2.8

Correct errors and handle complaints speedily, efficiently and fairly.

Firms must have in place adequate procedures to monitor errors and complaints and quickly deal with them according to the timelines outlined in the CPC. Complaints procedures are examined in Chapter 8A.

4.9

**Extract** Regulatory imperative, CPC Provision 2.9

Do not exert undue pressure or undue influence on a customer.



### outsourcing

where another person/firm (other than an employee of the firm) is employed to carry out an activity on behalf of the firm



### Quick question 1

With regard to the general principles in the CPC, how does the Central Bank ensure that compliance is achieved?

The answer is at the end of this chapter.

Dealing with customers fairly is a fundamental requirement of the CPC. Firms must examine all their practices and procedures to make sure there are no incentives to pressurise clients into decisions.

#### 4.10 **Extract** Regulatory imperative, CPC Provision 2.10

Ensure that any outsourced activity complies with the requirements of this Code.

The Central Bank has no problem with firms **outsourcing** some of their functions. However, compliance with the regulatory requirements still rests with the firm. The basic principle is that a function can be delegated, but not the regulatory responsibility.<sup>52</sup>

#### 4.11 **Extract** Regulatory imperative, CPC Provision 2.11

Without prejudice to the pursuit of its legitimate commercial aims, does not, through its policies, procedures, or working practices, prevent access to basic financial services.

This particular requirement is most likely aimed at the banking sector rather than general insurance. Nevertheless, the principle applies to all firms. For example, if an insurer refuses to provide proof of no claims discount for motor insurance or refuses to renew a motor policy, this could be seen as preventing access to a basic financial service.

#### 4.12 **Extract** Regulatory imperative, CPC Provision 2.12

Comply with the letter and spirit of this Code.

Specific emphasis on the spirit of the CPC is necessary because of the following:

- Certain areas of the CPC rely on principles rather than specific rules (see Chapter 1F1) and firms are expected to embrace these in a positive and active manner. For example, phrases such as 'properly' and 'promptly' or 'on a timely basis' are often used; however, the absence of a specific timescale in certain areas of the CPC should not be used as a reason for delay.
- Any new and unforeseen issues that emerge (e.g. opening a new area of business activity, such as risk management advice within a firm) should be embraced within the overall intention of the CPC.

We will now consider some of the specific requirements of the CPC. Our approach is to consider matters mainly from the perspective of an adviser who is providing advice or information across the market. If you take on a more limited role, either as a tied insurance intermediary or as an insurer's employee (direct sales), many of the principles still apply but some in a more limited context.

Like many pieces of legislation and regulation, the CPC prescribes timeframes within which certain tasks must be undertaken. It can be challenging to remember these numerous deadlines so for ease of reference, Appendix 1 (at the end of this chapter) summarises key timeframes from the CPC as well as from other pieces of legislation referenced in this textbook.

<sup>52</sup> In December 2021, the Central Bank published the *Cross-industry guidance on outsourcing* to assist firms in developing their outsourcing risk management frameworks to effectively identify, monitor and manage their outsourcing risks.

## C

# General requirements

Chapter 3 of the CPC contains a range of requirements relating to particular customer types and to services provided. This section summarises some of the key requirements that apply to insurers and intermediaries. Where it is helpful to clarify application or context, we will also give examples.

## C1 General requirements

### C1a Vulnerable consumers and power of attorney

Insurers and insurance intermediaries must provide a vulnerable consumer with reasonable arrangements and/or any assistance that may be necessary in their dealings with the firm. This would clearly include (but is not limited to) access to premises.

When dealing with a person who holds **power of attorney** who is acting on behalf of a consumer, a firm must:

- Obtain a certified copy of the power of attorney
- Ensure that it permits the person to act on the consumer's behalf
- Operate within its limitations.<sup>53</sup>

### C1b Product names

The name of a product or service must not mislead in terms of the benefits it provides. For example, a policy or product name such as 'Cover All' would be misleading, as the name might imply that the policy covered all risks and eventualities. Another example would be a firm claiming that they are the 'most reliable' or 'cheapest' without being able to support this with independent research.

### C1c Warning statements

Warning statements required by the CPC must be prominent, i.e. they must be in a box, in bold type and of a font size that is at least equal to the main font size used throughout the document or advertisement.<sup>54</sup>

### C1d Consumer instructions

Instructions received from a consumer must be processed properly and promptly.<sup>55</sup> This means that the adviser has a duty to process what is requested, but sometimes they may need to take it further. If the adviser becomes aware that the information is important to another aspect of insurance, they must also take that into account, as Example 4.1 shows.



#### power of attorney

statutory authorisation given to an individual to act on behalf of another individual in either all or specified legal or financial matters

<sup>53</sup> Provision 3.7, CPC.

<sup>54</sup> Provision 3.9, CPC.

<sup>55</sup> Provision 3.3, CPC.



### Example 4.1

As an adviser you receive notification that your client, Brendan, is moving house and wants to check the extent to which his household contents are covered while he is moving them to the new house in a rental van. This would prompt you to consider the following actions:

- Check Brendan's current household insurance cover, i.e. whether the contents are already covered and if so, to what extent
- Change the address on the current policy
- Check if the sum insured is adequate
- Find out if Brendan has any other policies through you (in order to change the address and possibly revise the premiums, depending on the new area).

All of this must be carried out promptly if the removal date is very soon and separate furniture-in-transit cover needs to be arranged.

## C2 Bundling and contingent selling

### C2a Contingent selling

Firms are not allowed to make the sale of one of its products or services contingent (or dependent) on purchasing another, as in Example 4.2. Firms may, however, offer additional products or services to existing customers, that are not available to potential consumers.<sup>56</sup>



### Example 4.2

BeSafe, an insurance intermediary, offers a stand-alone risk-management service and prices this separately from other contracts. The firm sees a business opportunity and advises clients that, in order to obtain quotes, they must purchase this service.

This practice is not permissible. Firms must price optional extras separately from the main product and provide written confirmation to clarify that the purchase of one is not contingent on the purchase of the other.



#### bundling

the packaging of two or more distinct products into a bundle, where each of these products can be purchased separately from or through the firm

### C2b Bundling

A firm is prohibited from **bundling** products except where it can be shown that there is a cost saving for the consumer.

In the case of a bundled product, the firm must provide the cost of the individual parts of a policy to the consumer in writing. For example, a commercial combined policy could not simply show a total premium, as a combined policy is made up of separate sections that can be selected (or not selected) by a consumer. Each element has a separate and identifiable premium, which the insurer must show very clearly. When a consumer cancels a section of the contract, no penalty is permitted, apart from the loss of any discount for bundling.<sup>57</sup>

<sup>56</sup> Provision 3.17, CPC.

<sup>57</sup> Provisions 3.19–3.21, CPC.



Package policies (e.g. household or motor) that have separate sections do not fall within this definition, as the component parts are not offered separately. However, the rule about contingent selling still applies. For example, an insurer may not insist on a proposer insuring their main residence if they are only seeking insurance cover for their holiday home.

When bundled products are offered over the phone, all required information must be provided orally at the time, and then followed up in writing.<sup>58</sup>

## C3 Remuneration

Chapter 3 of the CPC deals with the payment of remuneration and Chapter 4 of the CPC deals with the information that must be provided to the consumer in relation to how an intermediary is paid.

### C3a Payment of remuneration

A firm (e.g. an insurer or intermediary) may pay a fee, commission or other reward or remuneration, in respect of the provision of regulated activities, only to a person/firm that is:

- A regulated firm
- An individual for whom a regulated firm has taken full and unconditional responsibility under the **Investment Intermediaries Act 1995** (e.g. a tied insurance intermediary)
- A certified person (e.g. a member of, or regulated by, an approved professional body (e.g. a solicitor or accountant)).<sup>59</sup>

The Central Bank's 2019 *Addendum to the Consumer Protection Code 2012* introduced enhanced consumer protection measures relating to:

- Conflicts of interest, e.g. avoiding remuneration linked to targets that do not consider the consumer's best interests (i.e. targets based on volume of business placed or business retention) or agreements under which remuneration is provided in the form of goods or services (e.g. golf trips or hotel stays) in return for business (see Chapter 7E2).<sup>60</sup>
- The circumstances in which an intermediary can describe themselves and their regulated activities as 'independent' (see Chapter 3D1a).<sup>61</sup>

Provision 3.25A brings the CPC in line with IDR, by requiring that a firm ensures that any remuneration it pays or is paid (in connection with the provision of a regulated activity to a consumer):

- Is designed to enhance the quality of the service to the consumer (in the case of a **non-monetary benefit** e.g. seminar, CPD training)
- Does not impair compliance with the firm's obligation to satisfy the conflicts of interest and suitability requirements
- Does not impair compliance with the firm's duty to act honestly, fairly and professionally in the best interests of the consumer.<sup>62</sup>



#### non-monetary benefit

benefit that is capable of enhancing the quality of the service provided to a consumer. If described as 'minor', it is of a scale/nature such that would not impair compliance with a firm's duty to act in the best interest of the consumer

<sup>58</sup> Provision 3.23, CPC.

<sup>59</sup> Provision 3.25, CPC.

<sup>60</sup> Central Bank of Ireland, *Addendum to the Consumer Protection Code 2012*, September 2019 (Updated May 2021), Provision 3.28A.

<sup>61</sup> Central Bank of Ireland, *Addendum to the Consumer Protection Code 2012*, September 2019 (Updated May 2021), Provision 4.16.

<sup>62</sup> Central Bank of Ireland, *Addendum to the Consumer Protection Code 2012*, September 2019 (Updated May 2021), Provision 3.25A.

### C3b Information about remuneration

An intermediary must explain to a consumer how they (the intermediary) are paid for their services. They must make available, in their public offices or on their website, a summary of the details of all arrangements for any fee, commission, other reward or remuneration paid or provided to the intermediary and agreed with product producers. This information is often referred to as a Summary of Commissions document. It must be in a format which is easily accessible to consumers and must, at a minimum, include:

- the agreed amount or percentage of any remuneration
- an explanation of the type of remuneration paid or provided to the intermediary (e.g. sales commission) and details affecting this remuneration (e.g. clawback provisions)
- details of any other agreed fees, administrative costs, or non-monetary benefits including those not related to the intermediary's individual sales.

This information must be brought to the attention of the consumer before the contract for the product or service is concluded and the intermediary must retain records demonstrating its compliance with this requirement.<sup>63</sup>

Where an intermediary allows the consumer the option of paying for its services by means of a fee, this option and the fee amount must be explained to them in advance. Where the intermediary charges the consumer a fee and also receives a commission from the product producer, they must explain to the consumer whether or not the commission will be offset against the fee, either in full or part.<sup>64</sup>

## C4 Personal visits and consumer contact

A firm is not permitted to make an unsolicited personal visit to a consumer who is an individual. There are no exceptions to this rule, e.g. a representative of a firm can never knock on a consumer's door without a prior appointment.

Extract 4.13 covers the rules that apply to personal visits.

4.13

### Extract Personal visits

- A firm must not make an unsolicited personal visit, at any time, to a consumer who is an individual.
- A firm may only make a personal visit to a consumer who is an individual, if that consumer has given informed consent to being contacted by the firm by means of a personal visit. A firm must obtain informed consent separately for each personal visit and must maintain a record of this consent.
- A firm must have obtained the informed consent of a consumer who is an individual in relation to:
  - a. the purpose(s) for which a personal visit is to be made, including in the case of sales and marketing, the types of product to be discussed during the personal visit
  - b. the time and date for the personal visit.<sup>65</sup>

<sup>63</sup> Central Bank of Ireland, *Addendum to the Consumer Protection Code 2012*, September 2019 (Updated May 2021), from Provision 4.58A.

<sup>64</sup> Provision 4.61, CPC.

<sup>65</sup> Provisions 3.37–3.39, CPC.

Extract 4.14 shows the rules that apply to telephone contact.

#### 4.14

#### Extract Telephone contact

A firm may make telephone contact with a consumer who is an existing customer, only if:

- a. the firm has, within the previous twelve months, provided that consumer with a product or service similar to the purpose of the telephone contact
- b. the consumer holds a product, which requires the firm to maintain contact with the consumer in relation to that product, and the contact is in relation to that product
- c. the purpose of the telephone contact is limited to offering protection policies only
- d. the consumer has given their consent to being contacted in this way by the firm.<sup>66</sup>

A firm may make telephone contact with a consumer other than an existing customer, only if:

- a. the consumer has signed a statement, within the previous twelve months, giving the firm permission to make telephone calls to them for specified purposes and the contact is in respect of such specified purposes
- b. the consumer has a listing in the business listing section of the current telephone directory, classified telephone directory or in trade/professional directories circulating in the State and contact is made via the business telephone number
- c. the consumer is a director of a company, or a partner in a firm with an entry in a business/trade directory via the business telephone number, and it is in connection with their professional role
- d. the consumer is the subject of a referral for which the consumer has provided express consent, received from an authorised entity, another entity with the same group, a solicitor or a certified person
- e. the purpose of the contact is limited to offering protection policies.<sup>67</sup>

A firm must also make sure that, where it makes phone contact because of a referral, it retains a record of the referral and that contact is only between 9am and 9pm Monday to Saturday (excluding bank holidays and public holidays) unless otherwise agreed with the consumer.<sup>68</sup>



#### Quick question 2

Explain what is contained in the Summary of Commissions document.

<sup>66</sup> Provisions 3.40, CPC.

<sup>67</sup> Provisions 3.41, CPC.

<sup>68</sup> Provisions 3.42–3.43, CPC.

## C4a Content of and sequence of actions in consumer contact

Extract 4.15 outlines the information that must be provided (and the order in which it must be provided) to consumers in relation to personal visits or telephone calls.

4.15

### Extract Personal visits and telephone contact

The representative of a firm must immediately and in the following order:

- a. Identify themselves by name, the name of the firm and the commercial purpose of the contact
- b. If the telephone contact is being recorded, the consumer must be informed
- c. Where relevant, disclose to the consumer the source of the business lead or referral
- d. Establish if the consumer wishes to proceed and, if not, end the contact immediately.

In each case, if the consumer indicates that they want no further contact from sales and marketing, the firm must comply with this and record the fact.<sup>69</sup>

Example 4.3 describes a situation where most of these rules apply.



### Example 4.3

James works for a direct motor insurer. He makes an unsolicited telephone call to Róisín, an existing customer, at 5.15pm on Saturday. He introduces himself by name, states the firm he represents and explains that he is calling about the renewal of Róisín's motor policy. He also advises Róisín that the call is being recorded and asks whether she wishes to proceed.

James has complied with the CPC requirements. He made the call at a permitted time and observed the required content and sequence of actions.

<sup>69</sup> Provisions 3.44–3.45, CPC.

## C5 Handling payments

The firm must issue a receipt for every payment received and the receipt must show:

- The firm's name and address
- The consumer's name who provided payment (or on whose behalf payment was made)
- The amount received and date received
- The payment's purpose
- In the case of an insurance intermediary, that receipt of a completed insurance proposal does not automatically put a policy into effect.<sup>70</sup>

The CPC premium handling requirements ensure that the premium payment process is transparent. An intermediary must place all monies it receives in payment of a premium or premium rebate into a separate bank account – known as a 'client premium account'. Separate client premium accounts must be operated for life and non-life business. An intermediary must ensure that the client premium account is never overdrawn. All payments from a client premium account must clearly state that this is where the payment came from. There are also strict rules surrounding money that can pass in (credit) and out (debit) of a client premium account. Firms must also maintain a detailed monthly reconciliation of each client premium account.<sup>71</sup>



<sup>70</sup> From Provision 3.5, CPC.

<sup>71</sup> From Provisions 3.46–3.51, CPC.



### information

that which is provided to a person, whether at the person's request or at the initiative of the firm, that may assist the person in the choice of retail financial product



# Provision of information

Chapter 4 of the CPC sets out the **information** that a firm must provide to a consumer. This includes the Terms of Business Document (TOB) and specific information required at different stages of the advising process. Some rules regarding the provision of information are general in their application, whereas others are tailored to apply to particular products or sectors. In this section, we will concentrate on those that apply to advising on general insurance products.

## D1 General requirements

Information provided to a consumer must be clear, accurate, up to date and written in plain English. The CPC refers to any information likely to influence a consumer's actions with regard to a product or service as 'key information'. The CPC requires that such information must be brought to the consumer's attention. The method of presentation must not disguise, diminish or obscure important information. In addition, the font size used in all printed information provided to consumers must be:

- Clearly legible
- Appropriate to the type of document and the information it contains.

Firms must supply information to a consumer on a timely basis (i.e. as quickly as possible) taking account of:

- The urgency of the situation
- The time necessary for the consumer to absorb and react to the information provided.

When communicating with a consumer using electronic media, there must be appropriate arrangements to ensure the security of information received from, and transmitted to, the consumer.<sup>72</sup>

<sup>72</sup> Provisions 4.1–4.4, CPC.

## D2 Regulatory status

The CPC sets out the rules concerning both the content and disclosure of a firm's regulatory status in the following circumstances:

- On its business stationery used in connection with its regulated activities
- On a section of its website (which must be separated from any non-regulated activity)
- On electronic communications with consumers (excluding SMS messages).

A firm may only use the regulatory disclosure statement in communications with a consumer that relate solely to a regulated activity.

The format and content of the statement differs according to the member state where the firm has been authorised. The regulatory disclosure statement (in Ireland), as stated by the CPC, is outlined in Example 4.4.



### Example 4.4

Where a firm is authorised by the Central Bank:

[Full legal name of regulated entity, trading as (insert all trading names used by the regulated entity)] is regulated by the Central Bank of Ireland.

Where a firm is passporting services into Ireland on a cross-border freedom of services or branch basis:

[Full legal name of regulated entity, trading as (insert all trading names used by the regulated entity)] is authorised/licensed or registered by [insert name of the competent authority from which it received its authorisation or licence, or with which it is registered] in [insert name of the Member State where that competent authority resides] and is regulated by the Central Bank of Ireland for conduct of business rules.

No additional text is permitted and the firm must also make sure the statement is not presented in a way that appears as if the Central Bank (or other relevant EU competent authority) is endorsing either the firm or its products or services.<sup>73</sup>

<sup>73</sup> From Provisions 4.7–4.11, CPC.



Example 4.5 shows some typical regulatory statements on insurer and intermediary websites.



### Example 4.5

An insurer or intermediary with its head office in Ireland will have a simple regulatory statement on its website. For example:

FluidCo Insurance DAC is regulated by the Central Bank of Ireland.

or

Glen Waters & Co. (Insurances) Ltd, trading as Waters Insurance, is regulated by the Central Bank of Ireland.

An insurer or intermediary registered in another EU member state will have a more detailed regulatory statement, showing the member state in which it is authorised and that it is regulated by the Central Bank for conduct of business rules. For example:

Offshore Legal Expenses Insurance Company Limited is authorised by Autorité de contrôle prudentiel et de résolution (ACPR) in France and regulated by the Central Bank of Ireland for conduct of business rules.

## D3 Terms of business

The TOB sets out the basis on which a firm transacts business and provides services to its clients. It must be supplied to each consumer before providing the first service and it must be a stand-alone document. As discussed in Chapter 3E, the CPC specifies the content of this document.

## D4 Information about products

Before offering, recommending, arranging or providing a product, a firm must provide certain information in writing to the consumer about the product's main features and restrictions.<sup>74</sup> As mentioned in Chapter 1E2, under IDR, there is also a requirement to provide an Insurance Product Information Document (IPID). The IPID should be:

- A short, stand-alone document, presented and laid out in a way that is clear and easy to read
- Accurate and not misleading
- Written in English or, if agreed by the consumer and distributor, in another language
- Titled 'Insurance Product Information Document' at the top of the first page.

<sup>74</sup> Provision 4.21, CPC



The IPID should contain:

- The name of the insurer
- Information about the type of insurance cover provided
- A statement that complete pre-contractual and contractual information on the product is provided in other documents
- A summary of the insurance cover under the following headings:
  - What is this type of insurance?
  - What is insured? (i.e. the main risks insured)
  - What is not insured? (i.e. a summary of the excluded risks)
  - Are there any restrictions on cover?
  - Where am I covered? (i.e. the geographical scope)
  - What are my obligations? (i.e. at the start of the contract, during the term of the contract and in the event of a claim)
  - When and how do I pay? (e.g. the means, frequency and duration of premium payments)
  - When does the cover start and end? (i.e. the contract start and end dates)
  - How do I cancel the contract? (i.e. the means of termination).

Appendix 2 at the end of this chapter contains a template IPID.<sup>75</sup>

This information is to help the consumer understand the product. Distance sales (those that involve methods other than 'face to face') are also subject to the additional requirements of the distance marketing regulations (see Chapter 6D2). The Central Bank requires that firms provide specific information at the quotation stage and at the proposal stage and these requirements are considered in Chapter 5.

## D5 Information about charges

Before providing a product or service to a consumer, a firm must provide written information about all charges that will be passed on to the consumer.<sup>76</sup> Examples of these charges would include brokerage fees, mid-term adjustments, issuing duplicate documentation, setting up premium finance facilities.

A firm must also display in its public offices, in a manner that is easily accessible to consumers, a full schedule of such fees and charges. This information must also be available on the firm's website (if it has one).<sup>77</sup>

<sup>75</sup> Article 20, IDD. A template IPID is provided in Commission Implementing Regulation (EU) 2017/1469.

<sup>76</sup> Provisions 4.54, CPC.

<sup>77</sup> Provisions 4.56, CPC.

## E

# Knowing the consumer and suitability

Chapter 5 of the CPC looks at the type of information a firm must gather in order to understand the consumer's needs and therefore recommend only suitable products. The CPC requirements involve a blend of principles with rules, e.g. definite timescales for responding to consumers in different situations.

## E1 Knowing the consumer

As stated earlier, CPC Provision 5.1 requires a firm to gather and record sufficient information from the consumer prior to offering, recommending, arranging or providing a product or service. The level of information must be appropriate to the nature and complexity of the product or service and of a professional standard. It must include details of the consumer's:

- Needs and objectives – These include the risks to which the consumer is exposed and the type of insurance product the consumer needs. We look at this further in the Personal General Insurance and Commercial General Insurance modules.
- Personal circumstances – These cover the consumer's age, health, knowledge and experience of financial products, dependants, employment status and known future changes to circumstances. Some may be relevant to specific products, e.g. critical illness, payment protection, private health insurance. However, the CPC requires that only relevant information is gathered and recorded.
- Financial situation – Financial advisers must obtain detailed information from the consumer in the case of life, pensions and investment products. In all cases, the adviser must gather enough information to enable them to decide whether a client can afford a particular product.
- Attitude to risk – Some consumers are comfortable retaining a degree of risk, while others prefer the security of a high level of protection. An example of a client's attitude to risk would be reflected in the level of excess they are prepared to take on. We look at this further in the Personal General Insurance and Commercial General Insurance modules.

The CPC also requires the adviser to gather and maintain a detailed record of any material changes to a consumer's circumstances, prior to offering, recommending, arranging or providing a subsequent product or service. Where there is no material change, the firm must note this on the consumer's records.<sup>78</sup>

<sup>78</sup> Provision 5.3, CPC.

It should be noted that the **Consumer Insurance Contracts Act 2019** removed the obligation of utmost good faith placed on consumers (see Chapters 3F1 and 5B2b). A consumer is only required to answer specific questions asked by the insurer honestly and with reasonable care. There is no duty on consumers to volunteer any information beyond this. It is important therefore that all relevant information is specifically elicited from the consumer.

Where a consumer refuses to provide the required information, the adviser must let the consumer know that it does not have enough information to assess suitability. It therefore cannot offer the consumer the product or service they seek.<sup>79</sup> For this reason, it is essential for the adviser to:

- Be aware of what represents sufficient information for the purpose of giving advice
- Carry through this requirement precisely if such information is not forthcoming.

The adviser must try to have the consumer certify the accuracy of information provided.<sup>80</sup>



### Quick question 3

Why do you think the Central Bank insists that, where there is a lack of material information from a consumer, the adviser must not proceed to provide advice?

## E2 Assessing suitability

Having gathered the necessary information to 'know the consumer', the adviser must select a suitable insurance product. As a minimum requirement, the CPC states that, when assessing the suitability of a product or service for a consumer, the adviser must consider and document whether on the basis of the information gathered (see Section E1):

- The product or service meets the consumer's needs and objectives
- The consumer is:
  - likely to meet the financial commitment associated with the product on an ongoing basis
  - financially able to bear any risks attaching to the product or service
- The product or service is consistent with the consumer's attitude to risk.<sup>81</sup>

For example, an adviser would fall short of the CPC requirements if they were to persuade a consumer to purchase an expensive comprehensive motor insurance policy, which they are unlikely to be able to afford, when a suitable basic motor insurance product could be offered at a lower premium. However, the adviser must also point out the benefits of the more expensive product, which are not provided under the basic motor insurance policy.

Where a single product (or selection of products) is offered, it must represent the most suitable product for that consumer.<sup>82</sup>

<sup>79</sup> Provision 5.4, CPC.

<sup>80</sup> Provision 5.5, CPC.

<sup>81</sup> Provision 5.16, CPC.

<sup>82</sup> Provisions 5.17, CPC.

## E2a Statement of suitability

Prior to providing or arranging a product or service, a firm must prepare a written suitability statement setting out the reasons why a product or service (or options if listed) offered/recommended to a consumer is/are considered to be most suitable for that consumer.

The reasons provided must reflect the information gathered and assist the consumer in understanding how the recommendation meets their needs and objectives, personal circumstances and financial situation, and be consistent with their attitude to risk. The CPC sets out some specific requirements for the content of a statement of suitability. We will study these requirements in the Personal General Insurance and Commercial General Insurance modules.

The requirement to prepare a statement of suitability may seem somewhat unnecessary for relatively straightforward products (e.g. travel, motor and home insurance), which have few significant variations in cover. For these products, the statement of suitability may be presented in a standard format. However, all other products or services require a tailor-made statement of suitability.<sup>83</sup>

## E3 Exemption from knowing the consumer and suitability

If a consumer has specified both the product and the product producer by name and has not received any assistance from the adviser in that choice, the CPC requirements previously outlined do not apply. However, this is unlikely to happen as the adviser is under an obligation to obtain a minimum amount of information from the consumer. Furthermore, having opted to seek advice, it is unlikely that a consumer would then insist on a particular insurer's product. Nevertheless, this rule still applies under the terms of the CPC, even if it is seldom used.

<sup>83</sup> Provisions 5.19–5.23, CPC.

## F

# Post-sale information requirements

Chapter 6 of the CPC deals with the provision of documentation and advice after the sale. This includes some general post-sale requirements and others that are specific to the product type.

## F1 General requirements

Where a firm makes a material change to its TOB, it must provide each affected consumer with a revised TOB as soon as possible.<sup>84</sup> In practice, an intermediary will often send a revised TOB out to their clients along with the renewal notice documentation.

## F2 Information about insurance products

An insurer must issue policy documentation within 5 **business days** (as per Example 4.6) from the date that it has obtained all relevant information from the consumer and underwritten the cover. These documents are issued to any consumer who has directly purchased the firm's insurance policy or to any insurance intermediary that has sold its insurance policy.



### business day

any day of the normal business working week, Monday to Friday inclusive, and excluding weekends, bank or public holidays. Sometimes referred to as 'working day'.



### Example 4.6

If a policy is underwritten in an insurer's office on a Friday evening, it must be issued to the policyholder on or before close of business on the following Friday evening. This is in essence 7 calendar days but only 5 working or business days.



### Microlearning resources

In the Member Area of [www.iii.ie](http://www.iii.ie), via the Connect logo and in Your Learning Centre, select the microlearning section of this chapter to access a number of resources specifically developed to help you better understand the application of 'business day' deadlines.

<sup>84</sup> Provision 6.1, CPC.



#### Quick question 4

Consider John's new household insurance policy. He agreed all the policy terms and conditions on 25 January and sent the premium to EZ Insurance Intermediaries, which it received on the inception date (31 January). The insurer issued the policy documentation on 6 February. When should EZ Insurance Intermediaries issue this to John?

It is important to note that this requirement to issue documentation relates to the date the contract is underwritten, not the inception date of the policy (i.e. when cover starts).

On receiving the policy documentation from the insurer, an insurance intermediary must provide the documentation to the consumer within 5 business days. This is a separate requirement from that imposed on the insurer; therefore, this allows 10 business days in total if the intermediary receives the documents from the insurer 5 business days after the contract is underwritten. If the intermediary receives them from the insurer earlier, the 5-business-day period begins for the intermediary on receipt of the documents.<sup>85</sup>

In compliance with the **Fourth Motor Insurance Directive 2000**, when a consumer notifies an insurer that they intend to use an insured vehicle in another EU member state, the insurer must provide the consumer with contact details of its appointed claims representative for that member state.<sup>86</sup>

## F3 Information about charges

Although the rules are general in nature, they apply mainly to banking products and services. However, if a firm does have a charging structure, any changes to its charges would need to be notified to consumers at least 30 calendar days in advance of any change.<sup>87</sup>

<sup>85</sup> Provisions 6.13, CPC.

<sup>86</sup> Provisions 6.14, CPC.

<sup>87</sup> Provision 6.18, CPC.

## G

# Rebates

Chapter 7 of the CPC states the requirements for premium rebates (refunds) and claims processing. In this section, we will consider only the requirements for rebates. The specific provisions for the claims process are examined in the Nature of Insurance module.

Where the rebate is more than €10, the CPC requires a firm to refund it to a consumer within 5 business days of the rebate becoming 'due'. This rule works differently for insurers and intermediaries, as follows:

- For insurers – The rebate becomes 'due' as soon as the insurer is made aware of the circumstances giving rise to the rebate, e.g. a change to full licence or a request to remove an item from a policy.
- For intermediaries – The rebate becomes 'due' when the intermediary receives the rebate from the insurer. Alternatively, if the intermediary holds funds on the insurer's behalf, the rebate becomes 'due' when the insurer notifies the intermediary that it is due and permits the intermediary to pay the rebate from the funds.

Where the premium rebate is €10 or less, the 5-business-day rule applies; however, the insurer/intermediary can offer the consumer a choice to:

- Receive the premium rebate
- Receive a reduction from a renewal premium or other premium currently due
- Permit the firm to donate the rebate amount to a registered charity.

The last two options are permitted only if the firm seeks the consumer's consent on each occasion and it must maintain a record of the consumer's decision. If the third option is chosen, the firm must document the donation and keep a receipt from the relevant charity.<sup>88</sup>

An intermediary may only handle premium rebates due to consumers where an express agreement exists. This agreement must state that, in doing so, the intermediary acts as the agent of the insurer.

If the intermediary has issued a rebate cheque to a consumer and it has not been cashed within 6 months of the date of issue, the intermediary must return the rebate to the insurer.

An intermediary must transfer the rebate amount to the consumer in full. If the consumer owes the intermediary any other charges, they must be paid separately and not deducted from the rebate amount. If the consumer and intermediary agree to deduct the charges from the rebate, the Central Bank requires that the agreement be in writing and the details clearly stated.<sup>89</sup>

<sup>88</sup> Provisions 7.1–7.2, CPC.

<sup>89</sup> From Provisions 7.3–7.5, CPC.



# Summary

The information in this chapter showed us how the CPC applies to all aspects of a firm's dealings with its consumers. It is important to understand the provisions of the CPC and the obligations it creates for all advisers in the insurance industry, whether you work for an insurer or intermediary.

## H1 What's next?

Chapter 5 will look at the main documentation that supports the insurance process and the regulatory requirements that apply.

## H2 Study tips

It is important to remember that this textbook is the primary information source for this module. All the questions in your exam will relate directly to information featured in the textbook. Use the 'End of chapter questions', 'Quick questions' and the 'Sample multiple-choice questions' to quickly test what you've learned so far. Make a note of any topics/areas you need to improve in and keep it to hand so you can refer to it when you revise this chapter again before your exam.

In addition to the textbook, your Member Area has many online learning supports that can help you as you study this module.

## H3 Online learning supports

Your Member Area includes a Guide to Success, an automated study planner, an exam countdown timer and study tips guide. These learning supports are invaluable in reinforcing what you have learned from the textbook so far. The webinars, chapter-by-chapter key points and other supports will help you to break down the chapter content when revising.

Completing online mock exams and reviewing the personalised feedback that follows is a great way of testing your knowledge and preparing for exam day.

To access these online learning supports, just log into the Member Area of [www.iii.ie](http://www.iii.ie) and click on the Connect logo.



## Appendix 1: Summary of important legislative and regulatory timeframes)

### CIP-02 : Important dates to remember



CIP-02 contains information on dates and deadlines.  
This is a summary of this information.

**Note:** a **business day** (working day) is a day of the normal working week, Monday to Friday inclusive but excluding weekends, bank or public holidays.

#### Consumer Insurance Contracts Act 2019

The consumer has the right to 'cooling-off' period of a 14 business days.

#### Consumer Protection Code

##### Within 5 business days

- Where an insurer refuses to quote a consumer for motor/property insurance, it must advise the consumer of the refusal and provide its reasons in writing.
- An insurer must issue policy documentation to an intermediary/consumer from the date that it obtains all relevant information and underwrites the cover (note: from the conclusion of the contract, not the policy inception date).
- On receiving the policy documentation from the insurer, an intermediary must provide the documentation to the consumer.
- Where an error has not been resolved within 40 business days of its discovery, the firm must let the CBI know, in writing.
- Where a rebate is due, a firm must refund it to a consumer from when the rebate becomes 'due'.
- Once received, a firm must acknowledge each complaint in writing.
- On completion of a complaint investigation, a firm must advise the consumer in writing of the outcome, the terms of any offer or settlement, the option of referring the matter to the FSPO and the FSPO's contact details.

##### Within 20 business days

- A firm must provide the complainant with a regular update in writing on the progress of the complaint investigation, at intervals of no greater than 20 business days.

##### At least 30 calendar days

- If a firm has a charging structure, any changes need to be notified to consumers in advance.

##### Within 40 business days

- Once received, a firm must attempt to investigate and resolve a complaint.
- If the complaint is not resolved, the firm must inform the complainant of the timeframe within which it hopes to resolve the complaint, their right to refer the matter to the FSPO and the FSPO's contact details.

#### Non-Life Insurance (Provision of Information) Regulations 2007 & 2018

- An insurer must give written notification not less than 20 business days before the renewal date, either inviting renewal or stating that it does not wish to renew the policy.

#### EC Distance Marketing of Consumer Financial Services Regulations 2004 & 2005

- The insurer is obliged to refund any monies paid by, or on behalf of, the consumer (less any pro-rata adjustment) no later than 30 calendar days after the notice of cancellation.
- The consumer has the right to 'cooling-off' period of a 14 calendar days.

#### Consumer Insurance Contracts Act 2019



#### Consumer Protection Code



#### Non-Life Insurance Regulations 2007 & 2018

#### EC Distance Marketing Regulations 2004 & 2005

## Appendix 2: Template Insurance Product Information Document (IPID)

# Xxxxxx Insurance

## Insurance Product Information Document

Company: <Name> Insurance Company

Product: <Name> Policy

[Statement that complete pre-contractual and contractual information on the product is provided in other documents]

### What is this type of insurance?

[Description of Insurance]



#### What is insured?

- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx



#### What is not insured?

- ✗ Xxxxx
- ✗ Xxxxx
- ✗ Xxxxx
- ✗ Xxxxx
- ✗ Xxxxx
- ✗ Xxxxx



#### Are there any restrictions on cover?

- ! Xxxxx
- ! Xxxxx
- ! Xxxxx
- ! Xxxxx
- ! Xxxxx



#### Where am I covered?

- ✓ Xxxxxx



#### What are my obligations?

- Xxxxxx
- Xxxxxx
- Xxxxxx
- Xxxxxx



#### When and how do I pay?

- Xxxxxx



#### When does the cover start and end?

- Xxxxxx



#### How do I cancel the contract?

- Xxxxxx

Source: EU Commission **Implementing Regulation 2017/1469**.



# End of chapter questions

Use these questions to test your understanding of what we've covered in Chapter 4.

1. State the Central Bank's definition of a 'personal consumer'.  

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2. Outline the sequence of actions an adviser must take when making telephone contact with a consumer.  

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3. List the information that a receipt must contain for every payment received by a firm.  

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4. Identify where a firm's regulatory disclosure statement must appear.  

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5. Outline the regulatory requirements for an intermediary when disclosing remuneration.  

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6. If a consumer refuses to provide information that an adviser feels is vital to making a recommendation, state what the adviser should do.  

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7. State the purpose of a statement of suitability.  

---

---
8. State the timeframe for an intermediary to provide policy documentation to a consumer.  

---

---
9. When there is a rebate due to a client, state the time limit for the intermediary to refund what is due.  

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10. Where a rebate of less than €10 is due to a consumer, state what additional options a firm may offer.  

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# Answers to end of chapter questions

**Check your answers against those below and make a note of any points you left out. This will highlight some sections you may need to look at more closely during your revision.**

1. A 'personal consumer' is a natural person acting in their private capacity outside their business, trade or profession.
2. The adviser (representative of a regulated entity/firm) must immediately and in the following order:
  - a. Identify themselves by name, the name of the firm and the commercial purpose of the contact
  - b. Inform the consumer if the phone call is being recorded
  - c. Where relevant, disclose to the consumer the source of the business lead or referral
  - d. Establish if the consumer wishes to proceed and, if not, end the contact immediately and record the fact.
3. The receipt must show:
  - The firm's name and address
  - The consumer's name
  - The amount and date received
  - The purpose of payment
  - In the case of an insurance intermediary, that their acceptance of a completed insurance proposal does not itself put an insurance policy into effect.
4. The firm's regulatory disclosure must appear on the firm's:
  - Business stationery used for its regulated activities
  - A section of its website (which must be separated from any non-regulated activity)
  - Electronic communications with consumers (excluding SMS messages).

In each case, the disclosure appears only in connection with the firm's regulated activities.
5. An insurance intermediary must make available, in their public offices or on their website, a summary of all agreements with product producers relating to any remuneration paid or provided. This summary must be in a format which is easily accessible to consumers and must, at a minimum, include:
  - the agreed amount or percentage of any remuneration
  - an explanation of the type of remuneration paid or provided to the intermediary and details affecting this remuneration
  - details of any other agreed fees, administrative costs, or non-monetary benefits including those not related to the intermediary's individual sales.

6. The adviser 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.
7. The purpose of a statement of suitability is to assist the consumer in understanding how the recommendation meets their needs, objectives, personal circumstances and financial situation, and how the product or service is consistent with their attitude to risk.
8. The intermediary must provide policy documentation to the consumer within 5 business days of receipt from the insurer. The 5-business-day period begins on receipt of the documentation from the insurer. However, there may be a need for the intermediary to act more quickly if the insurer was late in sending the policy documentation.
9. The intermediary must refund what is due within 5 business days of the rebate becoming due.
10. Where the rebate is €10 or less, the normal 5-business-day rule still applies; however, the firm can offer the consumer a choice to:
  - Receive the premium rebate
  - Receive a reduction from a renewal premium or other premium currently due
  - Permit the firm to donate the rebate amount to a registered charity.

## Answers to quick questions

1. Under CPC Provision 2.4, firms are required to have, and effectively employ, the resources, policies, procedures, systems, control checks (including compliance checks) and staff training necessary for compliance.
2. The Summary of Commissions document contains a summary of the details of all arrangements for any fee, commission, other reward or remuneration agreed with product producers and paid or provided to the intermediary.
3. The Central Bank has concluded that the inability to establish full material information means that it is not possible to give proper advice. Hopefully, the adviser's refusal to move forward with the process will be sufficient inducement for the consumer to volunteer the necessary information.
4. The answer is 'straight away'. The insurer was late in supplying the documentation to the intermediary and, although the intermediary has a timeframe of 5 business days, the due date for receipt by the consumer should be no longer than 10 business days overall. Terms were agreed and the contract was underwritten on 25 January. This means that the policy documentation should be provided to John by 8 February.



# Sample multiple-choice questions

1. Jetson, an incorporated body, has an annual turnover of €3.5 million. By what **minimum** amount, if any, would Jetson's turnover need to decrease for it to be treated as a 'consumer' under the Central Bank Consumer Protection Code?

- A. Nil
- B. €500,000
- C. €1 million
- D. €2 million

Your answer:

☐

2. Under the Central Bank Consumer Protection Code, where a firm's communication with a consumer is in connection with a regulated activity, a regulatory disclosure statement must appear on its:

- A. business stationery and website only
- B. business stationery and electronic communications only
- C. business stationery, website and electronic communications
- D. business stationery, website and SMS messages

Your answer:

☐

3. If an insurer sends all policy documentation to the consumer through an intermediary, how many days at **most** may lapse between the contract being underwritten and the documentation being issued to the consumer?

- A. 5 calendar days.
- B. 5 business days.
- C. 10 calendar days.
- D. 10 business days.

Your answer:

☐

# Answers to sample multiple-choice questions

## Question 1

**Chapter reference:** Chapter 4A1

**Question type:** A

**Correct response:** B

**Learning outcome:** Describe and apply the general principles and requirements of the Central Bank Consumer Protection Code.

## Question 2

**Chapter reference:** Chapter 4D2

**Question type:** U

**Correct response:** C

**Learning outcome:** Explain the effect of the Central Bank Consumer Protection Code on providing information to a consumer.

## Question 3

**Chapter reference:** Chapter 4F2

**Question type:** K

**Correct response:** D

**Learning outcome:** Demonstrate the effect of the Central Bank Consumer Protection Code on post-sale information and rebates.







# Insurance documentation

## What to expect in this chapter

This chapter is about important insurance paperwork and its regulatory significance. We will look at the main documents that insurers issue to proposers and policyholders, and consider their legal significance and regulatory requirements.

The chapter identifies and explores the main documentation that supports the insurance process: namely quotations, proposal forms, policy documentation, motor insurance certificates and renewal notices. As well as the legal and regulatory requirements, we will also examine the function and scope of these documents.

Some students find it challenging to visualise what these documents look like. The best idea is to go and find some examples either online or from your employer or local insurance intermediary. Looking at real life examples of these documents will help you to make sense of this chapter's content. Alternatively, the microlearning resource that is available in your Member Area on this topic gives examples of the various elements in an insurance policy.

## Learning outcomes for this chapter

Section	Title	At the end of each section you should be able to:
<b>A</b>	<b>Quotations</b>	Identify and apply the procedures, including the regulatory requirements, relevant to general insurance quotations.
<b>B</b>	<b>Proposal forms</b>	Explain the methods by which underwriting information is gathered.
<b>C</b>	<b>Policy documentation</b>	Explain the documentation required throughout the insurance process and demonstrate the legal requirements applying to insurers when issuing this documentation.
<b>D</b>	<b>Renewals</b>	

# A Quotations

An insurer's relationship with a client typically begins with a request for a quotation. A person, business or organisation wishing to arrange an insurance policy will want to know the premium to be charged and the terms that will apply. They need this information before they commit to the contract and proceed with cover. As outlined in the Nature of Insurance module and other modules, the client (proposer) provides the required information, either directly to the insurer or through an intermediary. If the risk proposed meets the insurer's underwriting criteria, a quotation is issued.

The quotation sets out the premium to be charged and details of the cover offered. Quotations are valid for a set period of time and, unless stated otherwise, no cover is effective during this time. The insurer must honour the terms of the quotation if the proposer accepts it during the specified timescale (unless the client's circumstances have changed). The insurer is not obliged to honour the terms of the quotation after its expiry date, but they may choose to do so, e.g. if their rates and underwriting criteria remain the same.

Sometimes, an insurer will provide a quotation that is 'subject to' a particular action by the proposer or insurer. This 'subjectivity wording' must be set out very clearly in the quotation, to avoid any confusion. For example, in the case of household insurance, the quotation may be 'subject to' deadlocks being fitted to all exit doors; in commercial insurance, the quotation may be 'subject to' a satisfactory insurer survey.



## A1 Regulatory requirements for quotations

The CPC states that a quotation provided to a consumer must include the:

- Monetary amount of the quotation
- Length of time the quotation is valid
- Full legal name of the relevant underwriter
- Any warranties or endorsements that apply (this information must be in the same font size as the other information in the document)
- Any discounts or loadings that were applied.<sup>90</sup>

Some special requirements apply to quotations for specific classes of insurance.

<sup>90</sup> Provisions 4.30–4.32, CPC.



### Quick question 1

Why do you think the Central Bank has singled out the 'write-off' value under a motor insurance policy for specific disclosure?

The answer is at the end of this chapter.



### Declined Cases Agreement

an agreement that ensures a designated insurer will provide cover to a motorist seeking insurance if the customer has approached and been declined by at least three insurers

### Financial Services and Pensions Ombudsman

an office that deals independently and impartially with unresolved complaints from consumers about the conduct of a pensions provider or a regulated financial service provider

## A1a Motor insurance

### A1a1 Consumer Protection Code

Under the CPC, a motor insurance quotation must clearly set out the basis on which an insurer may calculate the value of the vehicle for the purposes of settling a claim where the vehicle is deemed to be beyond economic repair, i.e. a 'write-off' following a traffic accident, fire or theft.<sup>91</sup>

When offering motor insurance to a consumer, an insurer must explain (where relevant) that in the event of a claim the insurer may appoint its own expert to conduct restitution work on a motor vehicle.<sup>92</sup>

The CPC also states that, where an insurer refuses to quote a consumer for motor insurance, it must advise the consumer of the refusal and provide its reasons in writing within 5 business days. It must also notify the consumer of their right to refer the matter to the Declined Cases Committee and the method of doing so.<sup>93</sup>

### Declined Cases Agreement

The **Declined Cases Agreement** (DCA) committee is operated by Insurance Ireland and administered by a committee representing all insurers active in the motor insurance market in Ireland, as well as a representative of the Consumers' Association of Ireland (CAI) and the **Financial Services and Pensions Ombudsman** (FSPO).

Motorists experiencing difficulty in obtaining motor insurance can apply for cover under this programme. Under the DCA, an insurer will provide cover to a motorist seeking insurance if at least three insurers have refused to quote.

Generally, in such a situation, the insurer first approached must provide the motorist with a quote. If the motorist held a valid policy in their own name with any insurer within the previous three years, that insurer will be asked to provide a quote. However, an insurer can refuse cover on the grounds that it would be contrary to the public interest.

The DCA may also apply in cases where a quote is so high, or the terms so stringent, that it amounts to a refusal, in which case the Committee can be asked to review the matter.

### A1a2 Non-life Insurance (Provision of Information) Regulations

Under the **Non-Life Insurance (Provision of Information) Regulations 2007** and **2018**, motor insurers are required to provide the following information to a potential client at quotation stage:

- The registration number of each vehicle insured under the policy
- The name(s) of the driver(s) insured or the classes of drivers
- Policy cover (comprehensive; third party, fire and theft; third party only; or a combination of these)
- The total premium for each policy cover option available (i.e. comprehensive; third party, fire and theft; third party only; if offered by the insurer)

<sup>91</sup> Provision 4.33, CPC.

<sup>92</sup> Provision 4.38, CPC.

<sup>93</sup> Provision 4.39(a), CPC.

- The portion of the premium that has been charged because of the client's claim(s) history or prior convictions
- The cost of any optional cover, ancillary to the motor cover, e.g. legal expenses or breakdown assistance
- Any fees or charges applied (other than the premium)
- The terms of the policy including any restrictions or limitations
- Details of payment options available
- Any discounts applied, specifying the:
  - o discount percentage and amount
  - o point on the no claims discount scale
  - o number of years with no claims made against the policy.

### A1b Property insurance

An insurer who refuses to quote a consumer for property insurance must inform them of its reasons within 5 business days of the refusal. In addition, it must notify the consumer that failure to have property insurance in place could lead to a breach of terms and conditions attaching to any loan secured on that property. This may be done simply by speaking with the consumer; however, the insurer must inform the consumer of their right to request and receive the information in writing.<sup>94</sup>



Similar to motor insurance, an insurer must (where relevant) explain at the quotation stage that, in the event of a claim, the insurer may appoint its own builder or other expert to carry out restitution work on a property.<sup>95</sup>

Apart from cash payments, insurers typically have the option to repair, replace or reinstate property (as we saw in the Nature of Insurance module). Where policy wordings give insurers a choice of such indemnity options, this must be explained at the quotation stage.



#### Just think

Which two indemnity options under property insurance does an insurer need to specify under this regulatory requirement?

This regulatory requirement emphasises the need to identify the 'repair' and 'reinstatement' options.

<sup>94</sup> Provision 4.39(b), CPC.

<sup>95</sup> Provision 4.38, CPC.



### proposal form

type of questionnaire about the subject matter of insurance before an insurance contract is entered into

### material fact

any fact that would influence an underwriter/insurer in either accepting or rejecting a risk and in deciding what terms to impose

## B Proposal forms

Underwriters require information to help them make decisions about the assessment and pricing of risks. **Proposal forms** are the traditional means of gathering this information. In this section, we explore the content of proposal forms and their regulatory requirements, and some of the other methods insurers use to gather **material facts** about a risk.

### B1 Content of proposal forms

Proposal forms exist in most classes of insurance. They are a type of questionnaire that the proposer completes and returns to the insurer for consideration.

Proposal forms are of varying length, depending on the nature of the risk and the information needed to underwrite the risk. You are encouraged to access a range of different types of proposal forms (personal and commercial) to see the variety in structure and style of questions, both general and specific.

General questions commonly appear on proposal forms across a range of insurances and may include:

- The proposer's name
- The proposer's postal and risk address
- The proposer's occupation/business
- The proposer's age
- Details of past insurance history
- Details of previous accidents/claims/convictions<sup>96</sup>
- Details of other insurances
- The period of insurance
- The subject matter of insurance
- The sum insured or limit of liability.

Specific questions relate to a particular class of insurance business. Every class of insurance has its own specific questions, as Table 5.1 illustrates.

<sup>96</sup> Note previous convictions that fall under the **Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016** need not be provided.



Table 5.1 Examples of risk-specific questions for certain insurances	
Class of business	Subject of question
Motor	<ul style="list-style-type: none"><li>• Driver age</li><li>• Type of licence held, e.g. full, provisional, Irish, EU, international</li><li>• Previous driving experience</li><li>• Criminal prosecutions pending</li><li>• Previous accidents, claims, convictions and penalty points</li><li>• Details of the vehicle/trailer</li></ul>
Employers liability insurance	<ul style="list-style-type: none"><li>• Machinery safeguards</li><li>• Noise risks</li><li>• Pollution hazards</li><li>• Working away from premises</li><li>• Working at heights</li></ul>
Fire insurance	<ul style="list-style-type: none"><li>• Manufacturing processes</li><li>• Storage arrangements</li><li>• Building construction</li><li>• Fire detection/protection measures</li></ul>
Theft insurance	<ul style="list-style-type: none"><li>• Full stock breakdown</li><li>• Security precautions, e.g. locks, alarms</li></ul>
Personal accident	<ul style="list-style-type: none"><li>• Occupation, hobbies</li></ul>





### Quick question 2

Why is there no question regarding past claims experience on a private health insurance form?



### statement of fact

a statement provided by the insurer after confirmation of cover, clarifying the basis on which insurance is accepted and what conditions apply

### factsheet

an electronic form asking if the statements given onscreen are correct – to which the insured clicks Yes or No (see also 'statement of fact')

### voice recording

the record of a telephone call, which is timed and dated for future verification

## B1a Private health insurance application forms

For private health insurance, a very restricted application form is used for gathering information. The statutory principles outlined in Chapter 2D make many personal details irrelevant to the underwriting process.

The questions asked relate to:

- Proposer's name and address
- Details of any dependants, e.g. spouse, children
- Age of proposer and dependants, to determine if a Lifetime Community Rating (LCR) applies
- Details of previous private health insurance including any gaps in cover, for adjusting loadings and waiting periods
- (If applicable) Confirmation of the following to determine if an exemption to LCR loadings may apply:
  - previously held insurance that was cancelled due, for example, to unemployment
  - residency status (in Ireland/abroad) on 1 May 2015<sup>97</sup>
  - membership of the Permanent Defence Forces
  - membership of the Joint Sickness Insurance Scheme of the EU
- Date of commencement of cover
- Level of cover.

## B2 Alternatives to proposal forms

Increased use of technology in the distribution of insurance products has led to changes in the way insurers collect information from proposers. This is particularly the case for personal insurances (e.g. motor and household), but it is also becoming more common for some commercial insurance products, including shop, office and tradespersons liability policies.

Although the proposal form is the traditional method of obtaining information about a risk, insurers often use other ways to gather the information they need. We will now look at some alternatives to proposal forms.

### B2a Statement of fact, factsheets and voice recordings

Direct insurers frequently replace proposal forms with a **statement of fact**. This can speed up the process of arranging cover as the proposer does not need to complete a proposal form. Following the inception of a policy, the statement of fact is issued to the client. Insurers may request the return of the signed statement of fact and any other necessary documentation (e.g. driving licence or proof of no claims discount (NCD)) within a certain number of days. Alternatively, the insurer may simply state that any inaccuracies in the statement of fact must be reported to them within 7 days from the date of receipt.

For online quotations, the proposal form/statement of fact may be replaced by a **factsheet**. This acts in the same way as a proposal form.

In the case of phone sales, insurers may instead use the digital **voice recording** of the phone call. However, the proposer must be made aware of the recording of information at the outset.<sup>98</sup>

<sup>97</sup> An LCR exemption may apply if the proposer moved to Ireland after that date.

<sup>98</sup> Provision 3.44(b), CPC.

## B2b Commercial insurances

Though practice varies from insurer to insurer, proposal forms are rarely used in commercial insurance apart from commercial motor risks. For example, they are not traditionally used in commercial property (fire) and marine insurance, but each risk may be subject to its own rules. The insurer relies on other methods to obtain material facts such as:

- Intermediary submission or presentation – For some commercial insurances (e.g. a large manufacturing plant), the risk might be so complex that it cannot be described on a proposal form. The intermediary may prepare a market submission, containing full details of the risk in a clear, concise and well-recognised format. This saves time for the insurer and proposer and allows the risk to be presented in a form readily understood by all parties.
- Risk surveys – For large or complex risks, the insurer may arrange a risk survey. The surveyor will visit the proposer's premises and prepare a detailed report on all aspects of the risk. This report will either replace or supplement the use of a proposal form.

Where an insurer needs more information than provided, it can obtain this through:

- Research on the client's website or social media pages or listings in business directories
- Correspondence, telephone conversations or meetings with the proposer or intermediary
- Supplementary questionnaires (in addition to the proposal form) that request further information about known hazards for a particular risk type, e.g. thatch roofs, risk management arrangements for motor fleets or the use of chemicals in hairdressing salons.



### Quick question 3

What is the difference between a statement of fact and a factsheet?

## B3 Legal and regulatory requirements at proposal stage

### B3a Consumer Protection Code

The CPC requires that a firm must explain, at the proposal stage, the consequences of a failure to fully disclose relevant facts, including:

- The consumer's medical details or history
- Previous insurance claims the consumer has made for the type of insurance being underwritten.

The explanation must include, where relevant, that failure to fully disclose relevant facts can result in:

- Cancellation of the policy
- Non-payment of claims
- Difficulty trying to purchase insurance elsewhere
- (For property insurance) A potential breach in the terms and conditions of any loans attaching to the property if the policy is cancelled.<sup>99</sup>

However, these CPC Provisions will have to be amended to reflect the introduction of the **Consumer Insurance Contracts Act 2019**. As noted at the start of Chapter 4, the Central Bank is conducting a substantial review of the CPC in 2023.

<sup>99</sup> Provision 4.35, CPC.



#### pre-existing medical condition

any condition for which the insured has (or should have) sought/received advice, diagnosis, treatment or counselling at any time prior to inception of a policy. This is of relevance to pet, personal accident or private health insurance.

### B3b Consumer Insurance Contracts Act 2019

This Act applies to consumers and replaces the long-standing principle of utmost good faith.<sup>100</sup> The consumer's pre-contractual duty of disclosure is now confined to answering specific questions posed by the insurer honestly and with reasonable care. The consumer is not obliged to volunteer any information over and above that required by these questions.

The insurer must only ask specific questions, and not general questions, when requesting information. The onus is on the insurer to ensure that these questions are written in plain and intelligible language. Any ambiguity about the meaning of a question will be interpreted in favour of the consumer. The insurer must, before entering or renewing a contract of insurance, inform the consumer in writing of the general nature and effect of the pre-contractual disclosure. The insurer is deemed to have waived any further duty of disclosure of the consumer where it does not investigate an absent or obviously incomplete answer to a question.

Section 9 of this Act outlines the remedies for misrepresentation depending on whether the misrepresentation was innocent, negligent or fraudulent. Where a claim is made following:

- an innocent misrepresentation, the insurer must pay the claim and cannot avoid the contract on the ground of the innocent misrepresentation
- a negligent misrepresentation, the remedy reflects what the insurer would have done had it been aware of the full facts
- a fraudulent misrepresentation, or where any conduct by the consumer, relative to the insurance contract or steps leading to its formation, involves fraud, the insurer can avoid the contract.

### B3c General Data Protection Regulation 2016

As we will see in Chapter 6B, under the GDPR, personal data must be adequate, relevant and limited only to what is necessary for the purposes for which it is being processed.<sup>101</sup>

This means that insurers must assess all data collected to ensure it is relevant and not overly intrusive relative to the product being underwritten. For example, when applying for personal accident, payment protection, critical illness and travel insurance, medical details or history are vital in terms of disclosure. For these contracts, the adviser will need to alert the proposer to the fact that the policy may exclude the effects of **pre-existing medical conditions**.

For private health insurance, if the adviser recommends switching from one insurer to another or increasing cover, they will need to make the client aware of any waiting periods in respect of pre-existing medical conditions.

<sup>100</sup> The definition of a 'consumer' is the same as that in the **Financial Services and Pensions Ombudsman Act 2017** (see Chapter 8B1).

<sup>101</sup> Provision 1(c), Chapter 2, Article 5, **EU General Data Protection Regulation 2016**.

## C

# Policy documentation

In this section, we will consider the procedures relating to the issue of policies, cover notes and insurance certificates. As noted, once the contract is underwritten, the insurer must issue the policy documentation to a consumer within 5 business days. An intermediary has a further 5 business days to pass this on to the consumer.<sup>102</sup>

It is important to note that cover is in place regardless of whether the documentation has been issued. The policy documentation is evidence of the contract, but is not the contract itself. However, it ensures that both the insured and the insurer are clear as to the terms of the policy. It is important proof in the event of a dispute.

## C1 Structure of insurance policies

Most modern policies are issued in what is known as a scheduled form. However, for larger commercial risks, most insurers issue a tailor-made, computer-generated policy showing only the clauses and sections relevant to the insured.

Policy booklets vary considerably in both style and length, but there are basic elements in all general insurance policies. These are shown in Table 5.2.



<sup>102</sup> Provision 6.13, CPC.



#### exclusion/exception

a policy provision that defines circumstances or types of loss that are not covered

**Table 5.2 Policy structure**

Policy section	Content
<b>Heading</b>	Name of insurer, company logo and usually the address and other contact details
<b>Recital clause/ preamble</b>	A scene-setting clause referring to the parties to the contract, premium payments, indemnity and the proposal (if any) as the basis of the contract
<b>Definitions</b>	A list of frequently used terms or words with a particular meaning
<b>Signature</b>	Signed by the officer of the insurer (pre-printed)
<b>Operative clause(s)</b>	One or more clauses that describe the standard scope of cover of each section
<b>Policy schedule</b>	Normally a separate sheet, showing the policy number and all variable information about the policyholder, policy period, premium and subject matter, and highlighting any special terms, conditions, warranties or exclusions that apply
<b>Information and facilities</b>	For example, information on customer helplines, service standards and complaints and claims procedures
<b>General conditions</b>	Standard conditions applied by all insurers to policies of a given type
<b>General exclusions/ exceptions</b>	Standard <b>exclusions/exceptions</b> applied by all insurers to policies of a given type

Some students find it challenging to visualise what these elements look like. You should access a range of policy booklets to see the various presentations and structures.



### Microlearning resources

In the Member Area of [www.iii.ie](http://www.iii.ie), via the Connect logo and in Your Learning Centre, select the microlearning section of this chapter. There you will find a microlearning resource that gives examples of the various elements in an insurance policy. This should help you to better visual these elements and so better understand this topic.

As you read through this section, you may notice that much of the information contained in the insurance policy will also appear in the Insurance Product Information Document (see Chapter 4D4 and Appendix 2 of Chapter 4).

#### C1a Heading, recital clause, definitions and signature

Each policy has a heading, which includes the name of the insurer and usually the address and company logo, along with other contact details.

The recital clause, also known as the preamble, refers to the two parties – policyholder and insurer (but not by name). It states that the formation of the contract is based on the insurer, in return for the premium, undertaking to indemnify the insured in accordance with the cover set out in the policy.



The definitions section of a policy contains a list of words and phrases, together with their meaning. Defined terms in a policy are normally written in bold or italics. They have the same meaning each time they are used.

Under the recital clause, or close to it, will be the pre-printed signature of an official from the insurer.



### Just think

Why does the insurer define the terms used in the policy?

Insurers do this to keep the length of the policy wording as brief as possible and to avoid the repeated use of lengthy lists whenever a word/phrase such as 'territorial limits', 'household' or 'business' appears in the document.

Because of the need to simplify complex policy wordings, many insurers in Ireland have restyled their language, using the word 'we' instead of 'the insurer' and 'you' instead of 'the insured'.

### C1b Operative clauses

The operative clauses form the heart of the policy and specify the contingencies (events) and perils that are covered.

There may be a single clause defining cover, or more commonly, a number of such clauses (as in motor and household policies), each dealing with a different aspect of insurance cover. They usually contain exclusions, restrictions or conditions specific to each individual operative clause.

### C1c Policy schedule

The policy schedule is an important component of the policy because it is where the policy is made personal and specific to the insured.

The schedule shows the variable details of the policy:

- Policyholder's name and address
- Policy period (inception and renewal dates)
- Premium
- Details of the subject matter
- Sum insured or limit of liability
- **Territorial limits** (if any)
- Policy number
- Reference to endorsements, special exclusions, warranties and conditions
- Identification of the operative sections of the policy.



#### territorial limits

those countries or territories where the policy cover will operate



#### Quick question 4

What type of perils do you expect to see in the operative clause in a household policy?

## C1d General conditions

Examples of general conditions include:

- Due observance – The insured must fulfil all terms and conditions of the policy for a claim to be payable.
- Reasonable precautions – The insured must take all reasonable care/precautions to minimise the risk of loss or damage or of incurring liability.
- Alteration of risk – The insurer describes the material changes to the subject matter of the contract (changes to the extent that it could be said that the risk is now something which the insurer did not agree to cover) of which it must be notified.
- Cancellation – Where an insurer cancels the insurance policy, it must notify the insured in writing and refund the premium for the unexpired period of insurance. The insured also has the right to cancel the policy. The cancellation rights relevant to distance non-life general insurance contracts are outlined in Chapter 6D2a.
- Right to withdraw – As can be seen in Extract 5.1, under the **Consumer Insurance Contracts Act 2019**, where the insurance policy is purchased face to face and its duration is greater than 1 month, the consumer has the right to cancel cover by notifying the insurer in writing within 14 business days from the date that they are informed that the contract is concluded.<sup>103</sup> This right to withdraw from the insurance contract is known as a **cooling-off period**. If the insured cancels during this period, they only pay the premium for the period of time they were covered by the policy.<sup>104</sup> The cooling-off period relevant to distance non-life general insurance contracts is outlined in Chapter 6D2a.
- Claims conditions – Policies will contain conditions specific to claims, e.g. that the insured notifies claims promptly and cooperates with the insurer.
- Dispute resolution – This is a contractual condition that binds both insurer and insured to refer disputes to **arbitration** and/or **mediation**. However, the insured retains the right to refer their complaint to the Financial Services and Pensions Ombudsman (see Chapter 8B), if eligible.



### cooling-off period

a period of time in which a consumer has a right to cancel an insurance contract without any penalty

### arbitration

a legally binding process whereby cases are heard by an arbitrator (an independent person or body officially appointed to settle a dispute) rather than a judge in court

### mediation

informal method of dispute resolution involving a neutral mediator, who helps the parties work out their own solutions without apportioning blame

<sup>103</sup> Note that, this is different for life assurance policies. The **European Union (Insurance and Reinsurance) Regulations 2015** provide for a 30-day cooling-off period for individual life assurance policies.

<sup>104</sup> The **Consumer Insurance Contracts Act 2019**, Section 11.



## 5.1

**Extract**

Consumer Insurance Contracts Act 2019, Section 11  
 Right to withdraw from contract of insurance by  
 notice: cooling-off period<sup>105</sup>

(1) ..... in a case in which the consumer's entitlement to cancel a contract of insurance is not governed by the **European Union (Insurance and Reinsurance) Regulations 2015** or the **European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004** [see Chapter 6D2a], a consumer may cancel a contract of insurance, by giving notice in writing of cancellation to the insurer, within 14 business days after the date when the consumer is informed that the contract has been concluded.

(2) The giving of notice of cancellation by a person shall have the effect of releasing the person from any further obligation arising from the contract.

(3) The right to cancel a contract of insurance under subsection (1) does not apply where the duration of the contract is less than one month.

(4) Where the consumer cancels the contract of insurance under subsection (1), the insurer shall not impose any financial cost on the consumer other than the cost of the premium for the period of cover.

**C1e General exclusions**

A policy exclusion defines circumstances or types of loss that are not covered. General exclusions apply to the whole of the policy (rather than a specific section). The terms 'exclusions' and 'exceptions' are interchangeable. We will use the term 'exclusions', although you may see the alternative in some policy wordings.

Typical general exclusions are losses or damage caused by:

- War and related perils
- Infectious diseases, pandemics etc.
- Acts of terrorism
- Radioactive or nuclear contamination
- Sonic aircraft, i.e. 'sonic bangs'.

**C2 Temporary cover**

It is not always possible to issue the actual policy documentation, because the agreement to terms may be conditional on the proposer taking some action, or there may be a need for further information. In such cases, a **cover note** can be issued. For example:

- An insurer has sufficient detail to price a property risk but requests that a surveyor visit the premises and provide a survey report of the risk, to establish any risk improvements that may be needed.
- An insurer is waiting for the completion of a proposal form and grants temporary cover until the form arrives.

In this situation, the responsibility is with the insurer to state what temporary cover is provided in any interim period. When this is done, cover cannot be withdrawn retrospectively. However, the insurer may cancel the temporary arrangement if it becomes aware in the interim period that the risk is unacceptable. Intermediaries have a duty to clarify such issues on their client's behalf.

<sup>105</sup> The **Consumer Insurance Contracts Act 2019**, Section 11.

**Quick question 5**

In which sections of a policy will you find:

- The elements that personalise the contract to the insured?
- The contingencies or perils covered?

**cover note**

document setting out details of temporary cover granted, usually in advance of permanent documentation being issued, e.g. policy or endorsement

## C3 Motor insurance certificates and discs



### Certificate of Motor Insurance

document required by law, which is issued by an insurer to a policyholder and proves that an acceptable minimum level of cover is provided by a motor insurance policy



### blanket certificate

certificate of motor insurance that refers to classes of vehicles rather than specific registration numbers

### fleet policy

a motor policy that covers a collection of vehicles owned by a corporate entity

With regard to compulsory motor insurance, a **Certificate of Motor Insurance** acts as proof that the minimum cover set out in the **Road Traffic Act 1961** and its later amendments is provided under a policy. The insurer issues the motor insurance certificate in the name of the insured.

The information to be shown on a motor insurance certificate is specified in the **Road Traffic (Compulsory Insurance) Regulations 1962**. The motor insurance certificate must contain the:

- Certificate number (may be the same as the policy number)
- Policy number
- Name and address of the person to whom the policy is issued
- Period of cover
- Limitations as to use
- Persons, or classes of persons, whose liability is covered
- Vehicles, or classes of vehicles, the use of which is covered
- Drivers, or classes of drivers, whose driving is covered
- Declaration (of an approved policy under the Road Traffic Acts)
- Signature/seal of the insurer and address
- Signature of the person authenticating on behalf of the insurer
- Date of authentication.

The Regulations also permit the use of '**blanket certificates**' for vehicles. The wording of a blanket certificate may refer to 'any motor vehicle the property of the policyholder or hired or lent to the policyholder'. This wording is used for larger commercial risks (e.g. transport risks with fleets of a significant size) and a policy condition requires the insured to notify details of any additions, deletions or changes. For **fleet policies**, there is a requirement to keep the vehicle information up to date on the National Fleet Database (NFD).<sup>106</sup>

The high incidence of uninsured driving prompted the government to introduce the **Road Traffic (Insurance Disc) Regulations 1984** and **Road Traffic (Insurance Disc) (Amendment) Regulations 1986**, making it compulsory to display a motor insurance disc on the windscreen of motor vehicles used in a public place.

The disc shows less information than the motor insurance certificate, but must contain the:

- Policy number
- Registration number (or for fleets of five or more vehicles, the policyholder's name)
- Period of cover
- Name of insurer.

Motorcycles and certain other limited categories are exempt from displaying a disc.

The absence of a disc does not have the same consequences as the absence of a motor insurance certificate. The former is an offence under the **Road Traffic (Insurance Disc) Regulations 1984** and **1986**; the latter is an offence under the Road Traffic Acts and, therefore, more serious.

<sup>106</sup> National Fleet Database [www.nfd.ie](http://www.nfd.ie).

# D Renewals

Most general insurance policies are issued for a period of twelve months. However, for general insurance policies, there is no obligation on either the insurer to offer to renew, or the insured to accept. There are two exceptions:

- Private health insurances – An insurer cannot refuse renewal on any grounds other than fraud or non-payment of premium.
- **Long-term agreements (LTAs)** – For the insurer, the advantage of LTAs is in minimising the administration costs of renewing on an annual basis. For the policyholder, the benefit is in saving money through premium discounts. However, LTAs are only offered if the business savings are worthwhile for the insurer. In the face of increasing competition, they tend to be rare in practice and usually only available for large commercial insurances.



## long-term agreement

an agreement whereby an insurer allows a discount if the insured renews the policy for an extended period, e.g. 3 years on the same terms/ premium rates



## Just think

Why do you think that insurers generally wish to encourage the renewal of existing policies?

Even where there is no obligation to do so, insurers are keen to encourage renewal of policies. The main reasons are that:

- The costs of renewing a policy are lower than the costs of acquiring new business
- Statistical information is more reliable if the database of existing clients remains stable.

The standard procedure is for the insurer to issue a renewal notice to the insured, or to the intermediary who in turn forwards it to their client. The renewal notice informs the insured that the period of insurance is nearing an end. If the insured wishes to renew, they send the premium to the insurer or intermediary (unless the premium is paid by instalments). The insurer or intermediary then issues a receipt and confirmation of renewal, together with any certificate/disc that may apply.

## D1 Timing of insurance renewal notices

The renewal procedures for all general non-life insurance classes (excluding marine and health) are dictated by the **Non-Life Insurance (Provision of Information) Regulations 2007** and **2018**. Together, these Renewal Regulations require an insurer to give written notification (including by email) not less than 20 business days before the renewal date, either inviting renewal or stating that it does not wish to renew the policy.

The Renewal Regulations allow insurers to send renewal notices through an intermediary. If so, the intermediary is responsible for making sure the renewal notice is issued within the specific timeframes given in the Renewal Regulations.



### Just think

Is a consumer at a disadvantage when dealing with an intermediary because of the delay in receiving renewal documentation?

No because the Renewal Regulations state that the renewal information must be provided by the insurer to the intermediary in sufficient time to be forwarded to the client within the required time period.

## D2 Content of insurance renewal notices

All non-life insurance renewal notices must detail the policy cover and premium calculation.

The **Consumer Insurance Contracts Act 2019** requires that **all** non-life insurance renewal notices to consumers include the following information (in relation to the previous 5 years):

- The amount of the insurance premiums paid by the consumer to the insurer and, where any mid-term adjustments were made to the policy, an annualised premium figure
- A list of any claims (including third-party claims) paid by the insurer to or on behalf of the consumer (except, where the contract is a health insurance contract as per Section 2(1) of the **Health Insurance Acts 1994-2022**).

## D2a Motor insurance

Similar to quotation stage (see Section A1a2), the Renewal Regulations require insurers to provide more detailed information on the terms of the renewal notice. These terms must include:

- The registration number of each vehicle insured under the policy
- The name(s) of the driver(s) insured or the classes of drivers
- Policy cover (comprehensive; third party, fire and theft; third party only; or a combination of these)
- The total premium for each policy cover option available (i.e. comprehensive; third party, fire and theft; third party only; if offered by the insurer)
- The portion of the premium that has been charged because of the client's claim(s) history or prior convictions
- The cost of any optional cover, ancillary to the motor cover, e.g. legal expenses or breakdown assistance
- Any fees or charges applied (other than the premium)
- Any proposed changes to the policy terms, e.g. restrictions or limitations introduced
- Details of payment options available
- Any discounts applied, specifying the:
  - discount percentage and amount
  - point on the no claims discount scale
  - number of years with no claims made against the policy
- (For private motor insurance policies only) The amount of the insurance premium paid in the previous year or, where any mid-term adjustments were made to the policy during the year, an annualised premium figure. (See in Section D2, the **Consumer Insurance Contracts Act 2019** requires renewal notices to consumers to include the amount of insurance premiums from the last **five** years).

Note that the statement of no claims discount (NCD) must be issued on a separate or separable piece of paper. This provides the client with evidence of their no claims entitlement, in case they decide to transfer to another insurer or to another cover type before their policy renewal date. Having it as a separate document allows it to be more easily provided to a new insurer.



# Summary

In this chapter, we looked at the main documentation that insurers issue during the underwriting process. We considered the function and scope of each document, as well as its legal and regulatory significance.

## E1 What's next?

Throughout Chapters 4 and 5, we have seen how the CPC sets out the important provisions that apply to different stages of the insurance process. However, the CPC does not represent the full extent of the laws and regulations of the Irish insurance market. Chapter 6 will look at other relevant legislation in areas such as financial crime, data protection and consumer protection.

## E2 Study tips

It is important to remember that this textbook is the primary information source for this module. All the questions in your exam will relate directly to information featured in the textbook. Use the 'End of chapter questions', 'Quick questions' and the 'Sample multiple-choice questions' to quickly test what you've learned so far. Make a note of any topics/areas you need to improve in and keep it to hand so you can refer to it when you revise this chapter again before your exam.

In addition to the textbook, your Member Area has many online learning supports that can help you as you study this module.

## E3 Online learning supports

Your Member Area includes a Guide to Success, an automated study planner, an exam countdown timer and study tips guide. These learning supports are invaluable in reinforcing what you have learned from the textbook so far. The webinars, chapter-by-chapter key points and other supports will help you to break down the chapter content when revising.

Completing online mock exams and reviewing the personalised feedback that follows is a great way of testing your knowledge and preparing for exam day.

To access these online learning supports, just log into the Member Area of [www.iii.ie](http://www.iii.ie) and click on the Connect logo.



# End of chapter questions

Use these questions to test your understanding of what we've covered in Chapter 5.

1. Briefly explain the regulatory requirement in a situation where an insurer refuses to issue a quotation for property insurance.  

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2. Define a 'proposal form'.  

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3. Outline the typical 'risk-specific' questions in a private motor insurance proposal form.  

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4. List four questions typically found in a private health insurance application form  

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5. For personal insurances, identify the means available to an insurer to acquire information, other than by a proposal form.  

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---
6. State the timing requirements for the issue of policy documentation once an insurance contract has been underwritten.  

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7. State five pieces of information that typically appear on a policy schedule.  

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8. State the effect of a 'general exclusion' in an insurance policy.  

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9. Apart from the certificate number, policy number and policyholder's details, identify the specific policy information that must appear on a Certificate of Motor Insurance, under the terms of the **Road Traffic (Compulsory Insurance) Regulations 1962**.  

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10. List the specific information that must be included in a renewal notice for a motor insurance policy under the terms of the **Non-Life Insurance (Provision of Information) Regulations 2007** and **2018**.  

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# Answers to end of chapter questions

**Check your answers against those below and make a note of any points you left out. This will highlight some sections you may need to look at more closely during your revision.**

1. An insurer who refuses to quote a consumer for property insurance must inform them of its reasons within 5 business days of the refusal. In addition, it must notify the consumer that failure to have property insurance in place could lead to a breach of terms and conditions attaching to any loan secured on that property. This may be done by speaking with the consumer; however, the consumer must be told of their right to receive the information in writing should they request it.
2. The proposal form is a type of questionnaire about the subject matter of insurance completed before the contract is entered into.
3. Risk-specific questions would ask about the vehicle and driver details, e.g. age, licence held, criminal prosecutions pending, and previous accidents, claims, convictions and penalty points.
4. Any four of the following:
  - Proposer's name and address
  - Details of dependents
  - Details of previous private health insurance
  - Date of commencement of cover
  - Level of cover.
5. The other methods are:
  - Statements of fact
  - Factsheets
  - Voice recordings.
6. The insurer must issue the policy documentation to a consumer within 5 business days of the contract being underwritten (or if an intermediary is involved, the intermediary has a further 5 business days to pass this on).
7. Any five of the following:
  - Policyholder's name and address
  - Policy period (inception and renewal dates)
  - Premium
  - Details of the subject matter
  - Sum insured or limit of liability
  - Territorial limits (if any)
  - Policy number
  - Reference to endorsements, special exclusions, warranties and conditions
  - Identification of the operative sections of the policy.



8. A policy exclusion states the circumstances or types of losses that are not covered. A general exclusion applies to the whole of the policy (rather than to a specific section).
9. Apart from the certificate number, policy number and policyholder's details, a Certificate of Motor Insurance must contain the following information:
  - Period of cover
  - Limitations as to use
  - Persons or classes of persons covered
  - Vehicles or classes of vehicles covered
  - Drivers or classes of drivers covered
  - Declaration (of an approved policy under the Road Traffic Acts)
  - Signature/seal of the insurer and address
  - Signature of the person authenticating on behalf of the insurer
  - Date of authentication.
10. Under the terms of the Renewal Regulations, motor insurance renewal notices must include:
  - The registration number of each vehicle insured under the policy
  - The name(s) of the driver(s) insured or the classes of drivers
  - Policy cover (comprehensive; third party, fire and theft; third party only; or a combination of these)
  - The total premium for each policy cover option available (i.e. comprehensive; third party, fire and theft; third party only; if offered by the insurer)
  - The portion of the premium that has been charged because of the client's claim(s) history or prior convictions
  - The cost of any optional cover, ancillary to the motor cover, e.g. legal expenses or breakdown assistance
  - Any fees or charges applied (other than the premium)
  - Any proposed changes to the policy terms, e.g. restrictions or limitations introduced
  - Details of payment options available
  - Any discounts applied, specifying the:
    - discount percentage and amount
    - point on the no claims discount scale
    - number of years with no claims made against the policy  
(The statement of NCD must be issued on a separate or separable piece of paper.)
  - (For private motor insurance policies only) The amount of the insurance premium paid in the previous year or, where any mid-term adjustments were made to the policy during the year, an annualised premium figure.

## Answers to quick questions

1. The most significant reason for this is that insurers have different ways of calculating the write-off value at the time of a claim. It is important that a proposer has full information about this before they decide whether or not to accept a quotation. This ensures that there are no surprises in the event of a claim.
2. Previous claims experience is not relevant because, by law, this cannot be taken into account by the private health insurer in their terms or pricing.
3. A statement of fact is a document generated by an insurer during a quotation enquiry, which records the proposer's answers to specific questions. A factsheet is an online form asking if the statements given on the screen are correct, to which the insured clicks a 'Yes' or 'No' answer.
4. The perils you would expect to see under the operative clause on a household policy are: fire, storm, flood and theft.
5. The sections of the policy are:
  - the schedule
  - the operative clause.



# Sample multiple-choice questions

1. SilverRock Packaging has approached ABC Insurance for a fire insurance quotation for its commercial premises. At the proposal stage, ABC Insurance is **least** likely to ask the details of SilverRock's:

- A. manufacturing processes
- B. storage arrangements
- C. fire detection measures
- D. work at heights

Your answer:

☐

2. Which of the following categories of motor vehicle is **exempt** from displaying a motor insurance disc in a public place?

- A. Cars.
- B. Vans.
- C. Motorcycles.
- D. Articulated lorries.

Your answer:

☐

3. George's motor insurance policy is due for renewal with his insurer, Inca Insurance, on 5 December. The **latest** date by which George should receive his renewal notice from Inca is:

- A. 7 November
- B. 14 November
- C. 20 November
- D. 28 November

Your answer:

☐

# Answers to sample multiple-choice questions

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## Question 1

**Chapter reference:** Chapter 5B1

**Question type:** U

**Correct response:** D

**Learning outcome:** Explain the methods by which underwriting information is gathered.

---

## Question 2

**Chapter reference:** Chapter 5C3

**Question type:** K

**Correct response:** C

**Learning outcome:** Explain the documentation required throughout the insurance process and demonstrate the legal requirements applying to insurers when issuing this documentation.

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## Question 3

**Chapter reference:** Chapter 5D1

**Question type:** A

**Correct response:** A

**Learning outcome:** Explain the documentation required throughout the insurance process and demonstrate the legal requirements applying to insurers when issuing this documentation.

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# Other legal requirements

## What to expect in this chapter

This chapter will consider some important legislation which, although not specific to the insurance sector, impacts on insurance practice in areas such as money laundering, data protection, equality, and consumer protection.

We will consider the obligations on firms to detect and combat attempts to launder money. We will also examine firms' duties in relation to the collection, storing, processing and use of personal data.

In addition, we will look at some key areas of consumer protection, including the **Consumer Rights Act 2022**, the **EC Distance Marketing of Consumer Financial Services Regulations 2004** (as amended) and the **Consumer Insurance Contracts Act 2019**.

# Learning outcomes for this chapter

Section	Title	At the end of each section you should be able to:
A	Financial crime	Demonstrate the impact of non-insurance specific legislation on activities of insurers and intermediaries in relation to financial crime, data protection and equality.
B	Data protection	
C	Equality legislation	
D	Consumer protection	Demonstrate the scope of consumer protection legislation impacting on insurance contracts and the main legal and regulatory requirements regarding the retaining of consumer information.
E	Record-keeping	



# A Financial crime

Although the term '**financial crime**' covers a wide range of activities, we will concentrate here on the impact of money laundering and terrorist financing on the insurance sector.

Firms are required to take a risk-based approach to financial crime. This means focusing resources where the risk is the greatest. In order to help firms understand and comply with this risk-based approach and their statutory obligations, the Central Bank issued updated *Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector* in June 2021.



## financial crime

a wide term embracing money laundering, proceeds of crime, fraud, bribery and corruption



## money laundering

process by which criminals and terrorists convert money that has been obtained illegally into apparently legitimate funds

## A1 Money laundering

**Money laundering** includes all forms of handling or possessing of funds that are known or believed to represent the proceeds of criminal conduct.

Money laundering is particularly relevant to the financial services sector. A criminal may choose to deposit their illegally obtained money into an apparently legitimate financial product (e.g. a bank account, life insurance policy, investment product or certain insurance products) for the purpose of laundering it. Example 6.1 shows how money-laundering might take place in the general insurance sector.



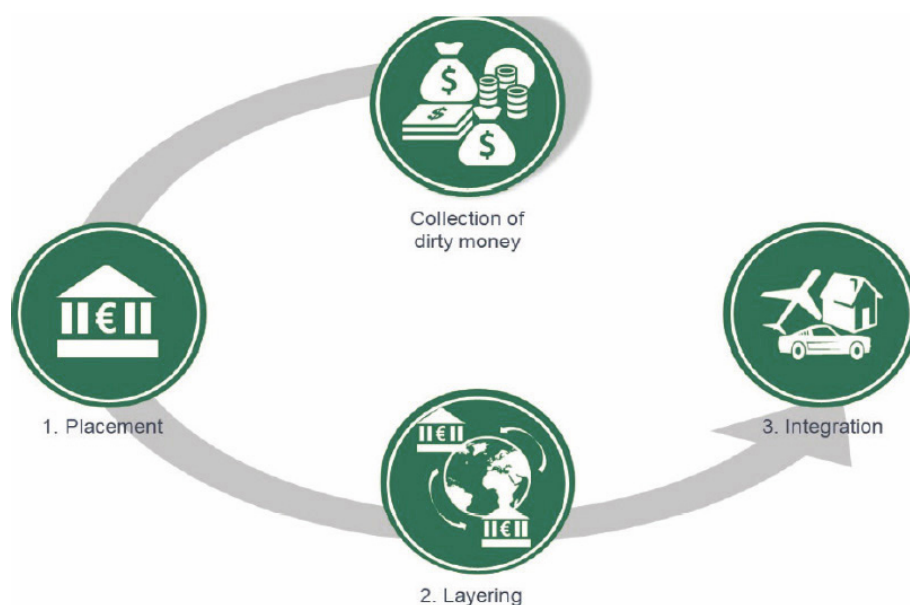
### Example 6.1

**Example A:** An individual pays a large cash premium (using illegally obtained funds) but they cancel the insurance policy shortly after inception. The premium refund from the insurer converts the illegal funds into apparently legitimate funds.

**Example B:** An individual uses illegally obtained funds to purchase an asset (e.g. a car, property or item of jewellery) and makes a claim under an insurance policy for a total loss. The claim paid by the insurer converts the illegal funds into apparently legitimate funds.

The three stages in the money-laundering process (as outlined in Figure 6.1) are:

1. Placement – Placing the proceeds of criminal conduct into the financial system
2. Layering – Attempting to conceal the money's origins by creating a series of complex transactions, thus disrupting the audit trail
3. Integration – Gaining access to the money as if it were legitimate funds. The proceeds of the criminal conduct have now been fully laundered and reintroduced into the economy.

**Figure 6.1 Money-laundering process**

A common misconception is that these three stages must occur together for a money-laundering offence to occur. The three stages can take place independently of each other, or in parallel or can overlap. A money-laundering offence can be committed during any stage of the process.



### Just think

Consider the examples of how a general insurance policy might be used in a money-laundering process. Which stages of the events in Example 6.1 represent placement, layering and integration?

In Example A, placement occurred when the insurance premium was paid. The layering stage was the inception and cancellation of the policy. The process was then completed (integration) when the individual received the premium refund and was able to spend or bank it.

In Example B, the purchase of the car, jewellery or property and payment of the insurance premium was the placement stage. The layering stage was when the policy was inception and the claim was made. Integration occurred when the individual accessed the proceeds of the claim.

## A2 Terrorist financing

In contrast to money-laundering, when we consider **terrorist financing**, the source of the funds is irrelevant, i.e. the funds may or may not be the proceeds of criminal conduct. The key consideration is the intended use or destination of the funds.



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#### terrorist financing

the provision, collection or receipt of funds with the intent or knowledge that they will be used for the benefit of a terrorist group or to carry out an act of terrorism or any act intended to cause death or serious bodily injury



#### designated person

a category of person in a firm or organisation (or the firm itself) as listed in the **Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010-2021**, who is given responsibility to guard the firm or organisation against being used for money laundering or terrorist financing

#### customer due diligence

the requirement to obtain a certain level of documentation to confirm identification in order to satisfy anti-money laundering laws

#### financial sanctions

restrictive financial measures imposed on individuals or entities in an effort to curtail their activities and to exert pressure and influence on them (also includes restrictions on trade, travel or civil aviation)

## A3 Anti-money laundering and counter-terrorist financing legislation and regulation

Anti-money laundering (AML) and counter-terrorist financing (CTF) legislation in Ireland is found in the **Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010-2021** (CJA 2010-2021).<sup>107</sup>

Under the CJA 2010-2021, a 'financial institution' includes both insurers carrying out life assurance activities and insurance intermediaries who provide life assurance or other investment-related services. These financial institutions are classed as **designated persons** and are subject to the Acts' obligations, which include:

- Application of **customer due diligence** (CDD) measures to identify their customers and to understand the 'nature and purpose of the business relationship'<sup>108</sup>
- Identification of politically exposed persons (PEPs), their family members and close associates
- Adoption of compliant policies and procedures and retention of relevant records
- Provision of ongoing staff training to familiarise staff with security procedures
- Reporting of suspicious transactions and not alerting or 'tipping off' suspects that may be under investigation.

To prevent the financing of terrorism, in addition to complying with AML legislation, insurers and intermediaries must monitor customers and transactions against both the EU and United Nations (UN) Sanctions Committees' lists relating to terrorism.<sup>109</sup> If a match occurs with an EU Financial Sanction or UN Targeted Financial Sanction, they must stop the transaction and carry out additional identity checks to verify that the customer is 'one and the same person' as stated on the **Financial Sanctions** list. If they are 'one and the same person', the insurer/intermediary must immediately report this to An Garda Síochána and the Central Bank. In addition, where an insurer/intermediary has knowledge or suspicion of activities that may indicate money laundering or terrorist financing, it is obliged to immediately file a Suspicious Transaction Report (STR) with An Garda Síochána and the Revenue Commissioners.

In July 2021, the European Commission published a package to reform the EU's legislative and supervisory framework for AML/CTF. The package includes the establishment of an EU Anti-Money Laundering Authority (AMLA) which will:

- seek to enhance supervision of AML/CTF at the EU level
- seek to enhance cooperation between and coordination of national Financial Intelligence Units
- assist with the consistent application of the EU AML/CTF requirements
- directly supervise certain high-risk institutions (particularly those with businesses in multiple member states).

This reform package is still subject to legislative scrutiny, but it is expected that the AMLA will become operational in 2024.

<sup>107</sup> CJA 2010-2021 is the collective term for the **Criminal Justice (Money Laundering and Terrorist Financing) Act 2010** and its various amendments undertaken to transpose the European Anti-Money Laundering Directives and to align the legislation with the recommendations of the Financial Action Task Force.

<sup>108</sup> General insurers and intermediaries are exempt from carrying out CDD, but life insurers must.

<sup>109</sup> The Financial Sanction lists are regularly updated at the Central Bank of Ireland website ([www.centralbank.ie](http://www.centralbank.ie)) and must be frequently checked. The FATF has published a number of reports on identifying terrorist activity (available on [www.fatf-gafi.org](http://www.fatf-gafi.org)).

**Quick question 1**

List the steps an insurer should take when an EU Financial Sanction or UN Targeted Financial Sanction match occurs.

The answer is at the end of this chapter.

## A4 Measures to prevent and detect financial crime

Firms should take specific measures to prevent and detect any attempt to launder money or finance terrorism. These include:

- Performing a business risk assessment which identifies the inherent risks of money laundering and terrorist financing to the business, and any controls currently in place or which should be implemented to mitigate these risks
- Establishing internal AML/CTF policies and procedures for staff to follow
- Training staff to identify transactions that may be an attempt to launder money or finance terrorism, and to know what to do in these circumstances.

# B Data protection

Data protection relates to everyone's fundamental right to the privacy of their **personal data**. In the context of insurance, it means safeguarding the security and confidentiality of personal information that individuals provide. It is therefore essential that insurance advisers and other staff develop a full knowledge of data protection legislation.

The **EU General Data Protection Regulation 2016** (GDPR) aims to allow the free movement of personal data across the EU while protecting **data subjects** and their personal data. The **Data Protection Acts 1988-2018** (Data Protection Acts) form the basis of Irish data protection legislation.

## B1 Scope of the GDPR

The GDPR introduced substantial changes to European data protection law. It applies to organisations established in the EU as well as those non-EU organisations that offer goods or services to EU residents or monitor the behaviour of individuals in the EU. Fines of up to €20 million (or 4% of annual global turnover, whichever is greater) can be applied for breaches of the GDPR (see Example 6.2).



### Example 6.2

In January 2019, the French data protection supervisor (Commission Nationale de l'Informatique et des Libertés) fined Google €50 million for GDPR breaches relating to a failure to provide sufficient information to individuals on how Google was collecting and using their information.<sup>110</sup>

In July 2019, the UK Information Commissioner's Office proposed fines for British Airways and Marriott International of €204.6 million and €110.4 million respectively for having insufficient technical and organisational measures to ensure information security.<sup>111</sup>

In July 2019, the Luxembourg National Commission for Data Protection fined Amazon.com €746 million for GDPR breaches in relation to the processing of personal data. Amazon reportedly intends to appeal the decision.<sup>112</sup>

In 2020, the Irish Data Protection Commission (DPC) issued its first fines under the GDPR to Tusla Child and Family Agency (€105,000) for breaches of the GDPR<sup>113</sup> and to Twitter (€450,000) as a result of its failure to notify data breaches to the DPC on time or to adequately and appropriately document the breach.<sup>114</sup>



#### personal data

data relating to a living individual who can be identified from this data



#### data subject

a living individual who is the subject of personal data

<sup>110</sup> 'Google hit with €50 million fine for data privacy breach', The Irish Times, 21 January 2019, [www.irishtimes.com](http://www.irishtimes.com).

<sup>111</sup> 'Europe's huge privacy fines against Marriott and British Airways are a warning for Google and Facebook', CNBC, 10 July 2019, [www.cnn.com](http://www.cnn.com)

<sup>112</sup> 'Amazon fined €746 million by EU for data breaches', The Irish Times, 31 July 2021, [www.irishtimes.com](http://www.irishtimes.com).

<sup>113</sup> Data Protection Commission, 2020. 'Data Protection Commission Fine on Tusla Child and Family Agency Confirmed in Court', 04 November 2020, [www.dataprotection.ie](http://www.dataprotection.ie)

<sup>114</sup> Data Protection Commission, 2020. 'Data Protection Commission announces decision in Twitter inquiry', 15 December 2020, [www.dataprotection.ie](http://www.dataprotection.ie)



## Example 6.2 (Contd)

In 2021, the European Data Protection Board directed the Irish DPC to increase its proposed fine on WhatsApp for breaches of its GDPR obligations relating to the provision of information and the transparency of that information to both users and non-users of WhatsApp's service. The Irish DPC fined WhatsApp a record €225 million and ordered it to bring its processing into compliance by taking a range of specified remedial actions.<sup>115</sup>

In January 2023, the Irish DPC fined Meta Ireland €210 million for breaches of the GDPR relating to its Facebook service and €180 million for breaches in relation to its Instagram service. Meta Ireland was also directed to bring its data processing operations into compliance within a period of 3 months.<sup>116</sup>

The Data Protection Acts and the GDPR are concerned with the processing of personal data. A business with a single employee is still subject to this legislation.

Data processing is defined under the GDPR as:

Any operation or set of operations which is performed upon personal data or sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.<sup>117</sup>

A **data controller** that wishes to appoint a **data processor** (e.g. where a third party processes personal data, such as an external payroll provider) must use only processors that agree to comply with the GDPR. The controller must appoint the processor in the form of a binding written agreement.



### data controller

a natural or legal person who controls and is responsible for the keeping and use of personal information on a computer or in structured manual files (e.g. an insurer)

### data processor

a natural or legal person, public authority, agency or any other body that processes personal data on behalf of the data controller (e.g. an outsourced service provider)

<sup>115</sup> Arthur Beesley, 'Record €225m fine imposed on WhatsApp by Irish regulator for 'severe' breaches of privacy law', The Irish Times, 02 Sept 2021, [www.irishtimes.com](http://www.irishtimes.com)

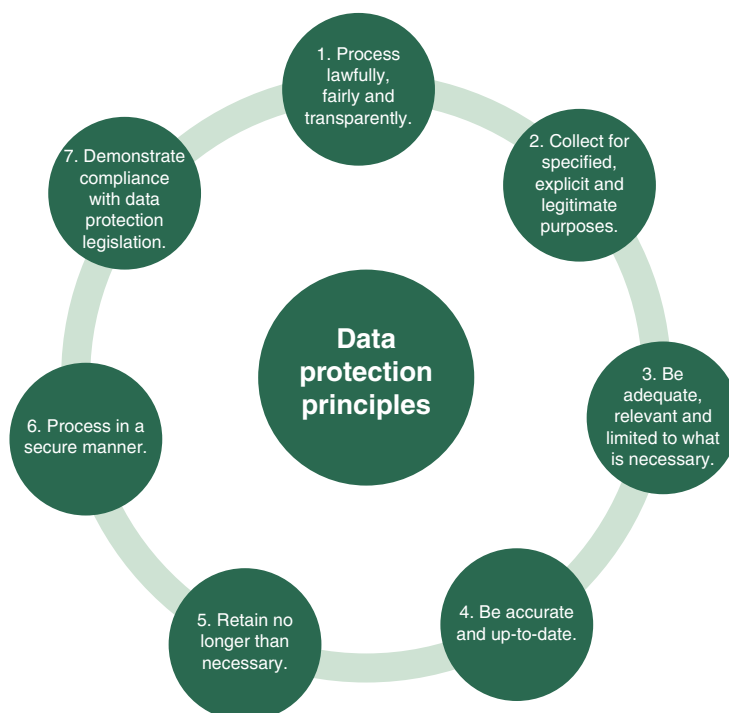
<sup>116</sup> Data Protection Commission, 'Data Protection Commission announces conclusion of two inquiries into Meta Ireland, 04 January 2023, [www.dataprotection.ie](http://www.dataprotection.ie)

<sup>117</sup> Article 4, GDPR 2016

## B2 Data protection principles and the Data Protection Commission

The GDPR is underpinned by a number of data protection principles, which are summarised in Figure 6.2.

**Figure 6.2 Data protection principles<sup>118</sup>**



The **Data Protection Commission** (DPC) publishes an annual report that, in certain cases, names data controllers that were the subject of investigation or action. In a 2013 case involving an Irish insurer and a breach of data protection rights, Justice Kevin Feeney said that data protection legislation places an obligation on a data controller to ‘exercise a duty of care’ and that ‘a breach of that duty of care can result in an award of damages’.<sup>119</sup> The DPC has also fined private investigators employed by insurers in the past, as illustrated in Case study 6.1.

### Case study 6.1

#### Private investigator fined for breaches of data protection legislation

In June 2016, the DPC successfully prosecuted a private investigator for breaches of Irish data protection legislation. Following an investigation, the defendant was charged with 61 counts of breaches of Section 22 of the **Data Protection Acts 1988–2003**. The charges related to ‘obtaining access to personal data without the prior authority of the data controller by whom the data was kept and disclosing that data to another person’. Insurance companies (including Zurich and Allianz) and the State Claims Agency used the defendant’s services to carry out surveillance on potential fraudulent claimants in personal injuries cases. The defendant was convicted on the first four charges and was fined €1,000 per charge.<sup>120</sup>



#### Data Protection Commission

commission responsible for monitoring and enforcing the GDPR and the **Data Protection Acts 1988–2018** in Ireland

<sup>118</sup> Adapted from Article 5, GDPR 2016.

<sup>119</sup> ‘Insurer ordered to pay costs in data breach case’, *thejournal.ie*, 18 March 2013.

<sup>120</sup> Data Protection Commission, ‘Office of the Data Protection Commissioner Welcomes Another Successful Prosecution of a Private Investigator’, press release, [www.dataprotection.ie](http://www.dataprotection.ie).



## B3 Data protection requirements for organisations

In order to ensure compliance with the GDPR, organisations must observe several requirements:

- Organisations must ensure that they have a clear and lawful basis for processing personal data. For insurers, this lawful basis will usually be a contract (e.g. insurance policy), the fact that the processing is required by law (e.g. collecting AML documentation) or the consent of an individual.
- Consent for data processing must be explicit; a clear affirmative act rather than assumed. Pre-ticked boxes are no longer acceptable, there should be an 'opt in' process.
- Organisations must notify the Data Protection Commission within 72 hours of any data breach that may result in a risk to the privacy rights of an individual. If the risk is high, the organisation must also notify the individual.
- Organisations are required to take privacy considerations into account when developing new products and services involving the processing of personal data ('privacy-by-design').
- Data Privacy Impact Assessments are a formal process that allows firms to make informed decisions about the acceptability of data protection risks and to identify and mitigate against them. They are an integral part of a privacy-by-design approach.
- Data controllers or processors that only operate in a single member state (and only process personal data of residents of that member state) are regulated by the Data Protection Authority (DPA) of that member state, e.g. the Data Protection Commission in Ireland.
- Organisations established in multiple member states have the DPA for its main establishment (i.e. the place where its main processing decisions are taken) as its 'lead DPA'. This lead DPA has the power to regulate the data controllers across all member states.
- Internal compliance requirements include record-keeping, appointment of a Data Protection Officer and certification measures.
- The GDPR enables data controllers to require proof of identity from a data subject before granting them their rights. This limits the risk of third parties gaining unlawful access to personal data.

## B4 Data subjects' rights

Natural living persons (individuals) are data subjects and have rights in relation to their personal data that is processed by a person or organisation.

The main rights of a data subject under the GDPR and the Data Protection Acts are:

- The right to be informed – to be given 'fair processing information' on how their personal data is to be used (normally set out in a privacy notice)
- The right of access – to be able to make a **data subject access request** (DSAR), whereby the data controller must provide the information (free of charge) within 1 month of receipt of the request



### data subject access request

a formal request by a person for a copy of information about them that is (or intends to be) kept on computer or in a manual filing system by an entity or organisation



- The right to rectification – to have personal data rectified if it is inaccurate or incomplete
- The right to erasure (also known as the ‘the right to be forgotten’) – to be able to request the deletion or removal of personal data where there is no compelling reason for its continued processing
- The right to restrict processing – to ‘block’ or suppress the processing of their personal data
- The right to data portability – to receive personal data in a structured, commonly used and machine-readable format, which they can then provide to another organisation, e.g. if they wish to switch to another firm
- The right to object – in certain limited circumstances, to be able to object to the processing of their personal data, e.g. direct marketing
- Rights in relation to **automated decision-making** and profiling – to request that decisions about them (e.g. an online quote) are made by a human, rather than by a computer-based process.<sup>121</sup>

An important exception to the right of data subjects to access their personal data is of relevance to the insurance industry and is contained within the **Data Protection (Access Modification) (Health) Regulations 1989**. If a data subject requests access to their medical information, the request should be referred to their GP or another health professional, especially if the information relates to a serious medical condition. A person who is not a health professional should not disclose health data to the data subject without first consulting the data subject’s own doctor or another suitably qualified health professional. In most cases the data subject will be referred to their GP or another medical professional to receive such information about their health.

#### B4a Special category personal data

The GDPR provides additional protection to certain sensitive personal data known as ‘special category personal data’. This data can only be processed by an organisation in limited circumstances, e.g. where the individual has given explicit consent or where it may be necessary for a medical diagnosis. Special category personal data:

- Reveals racial or ethnic origin, political opinions or religious/philosophical beliefs
- Reveals trade union membership
- Reveals genetic or biometric data
- Concerns health
- Concerns a person’s sex life or sexual orientation.



#### automated decision-making

a process by which computer programs analyse data and make judgements without human involvement (e.g. online insurance quote)

<sup>121</sup> Adapted from Information Commissioner’s Office [https://ico.org.uk/\(For organisations – Guide to the General Data Protection Regulation \(GDPR\), Individual rights\)](https://ico.org.uk/(For%20organisations%20-%20Guide%20to%20the%20General%20Data%20Protection%20Regulation%20(GDPR),%20Individual%20rights)).

## B5 Electronic marketing and data protection

Specific data protection rules apply to electronic marketing. These are covered generally by **EU ePrivacy Regulations 2011** which outline strict data protection rules when conducting direct marketing by phone, email, SMS and internet use. The basic rule is that a firm needs the consent of the individual to use their personal data for direct marketing purposes. At a minimum, an individual must be given the right to refuse such use, both at the time the electronic data is collected and on every subsequent marketing message.

In relation to telephone calls, individuals may choose to be listed on the National Directory Database (NDD). The NDD holds details of all consumers who:

- Wish to be listed for directory enquiry purposes
- Do not wish to be contacted for direct marketing purposes.

Firms must check the NDD before making marketing contact with any individuals by telephone.<sup>122</sup>

The updated ePrivacy Regulation (ePR), which will repeal and replace the existing **ePrivacy Directive 2002**, forms part of the 2023 European Commission Work Programme.

While the 2011 Regulations apply to traditional electronic communication service providers (e.g. mobile and landline telephone operators), the revised Regulation will cover electronic communications content transmitted using publicly available services and networks, including metadata, as well as covering machine-to-machine data that is transmitted via a public network.

The revised Regulation is likely to apply to online electronic communication services providers such as Skype, WhatsApp, Facebook Messenger, the Web, the Internet (email, apps etc.) and even Internet TV services. Users will need to be provided with a genuine choice on whether to accept cookies (or similar technology), and users should be able to consent to the use of certain types of cookies through **whitelisting**.



### whitelisting

a mechanism which explicitly allows access to a particular privilege, service, mobility, or recognition. It is a list of things allowed when everything is denied by default. It is the opposite of a blacklist which is list of things denied when everything is allowed by default.

<sup>122</sup> For general guidance on direct marketing issues, access the Data Protection Commission website, [www.dataprotection.ie](http://www.dataprotection.ie)

## B6 Data protection and consumer protection

The approach to consumer protection and data protection may need to be revised in the light of the increasing digitalisation of financial services.

In 2017 the Central Bank of Ireland published a Discussion Paper: *Consumer Protection Code and the Digitalisation of Financial Services*.<sup>123</sup> This sought to identify a range of key risks and opportunities from technological innovation and to provide the basis for an informed discussion around some of these issues.

In a Dear CEO letter that outlined its key regulation and supervision priorities for 2023, the Central Bank referred to the implementation of the **Digital Operational Resilience Act (Regulation – EU) 2022** which introduces rules relating to the management of information and communication technology (ICT) risks.<sup>124</sup>

The Central Bank's *Consumer Protection Outlook Report 2023* identified 'technology-driven risks to consumer protection' as one of its five primary drivers of consumer risk.<sup>125</sup> Extract 6.1 outlines Gerry Cross' (Central Bank Director of Policy and Risk) view on the potential risks and rewards of technology for consumers.

6.1

### Extract Financial regulation and technological innovation: a thematic approach

Technology has of course the potential to both significantly improve and to undermine the quality of engagement between financial firms and their customers. It has the potential to significantly enhance the outcomes that consumers experience while at the same time bringing risks including around fair treatment, suitability of offering, information and disclosure, amongst others.<sup>126</sup>

It is expected that the Central Bank's review of the CPC in 2023 will also focus on its appropriateness for an increasingly digitalised world.



#### Quick question 2

Explain what is meant by special category personal data.

<sup>123</sup> Central Bank of Ireland, (News & Media – Press Releases), 'Discussion Paper: Consumer Protection Code and the Digitalisation of Financial Services published', 29 June 2017, [www.centralbank.ie](http://www.centralbank.ie).

<sup>124</sup> Central Bank of Ireland, Dear CEO letter 'Key regulation and supervision priorities for 2023', 16 February 2023, [www.centralbank.ie](http://www.centralbank.ie).

<sup>125</sup> Central Bank of Ireland, *Consumer Protection Outlook Report 2023*, p.21, [www.centralbank.ie](http://www.centralbank.ie).

<sup>126</sup> Central Bank of Ireland (News & Media – Press Releases), 'Financial regulation and technological innovation: a thematic approach' (speech), 27 November 2019, [www.centralbank.ie](http://www.centralbank.ie).



## Equality legislation

The **Equal Status Acts 2000–2015** are designed to protect individuals against discrimination in the provision of goods and services, accommodation and education. They encourage the evaluation of people on their merits as individuals rather than their identity as part of a group.

These Acts specifically prohibit discrimination on the grounds of:

- Gender
- Marital/civil status
- Family status
- Sexual orientation
- Religion
- Age
- Disability (mental and physical)
- Race (skin colour, nationality and ethnic origin)
- Membership of the travelling community.

Prior to 21 December 2012, insurers were permitted to take gender into account as a risk factor in calculating premiums or benefits payable under insurance products as long as there was a reliable actuarial or statistical basis for its use. However, in March 2011 the *Test-Achats* case (see Case study 6.2) resulted in a landmark ECJ ruling on the use of gender when pricing and providing insurance.

## Case study 6.2

### *Test-Achats case*<sup>127</sup>

In this case, the ECJ agreed that the use of gender when pricing and providing insurance was contrary to the EU principle of equal treatment of men and women (as set out under the **Gender Directive 2004**). The ECJ ruled that 'taking the gender of the insured individual into account as a risk factor in insurance contracts constitutes discrimination'. The **Equal Status (Amendment) Act 2012** provided for the changes made necessary by this case.

The *Test-Achats* judgment had a direct bearing on insurance premiums as it is no longer allowable to use gender-specific statistics in rating insurance products. Motor insurance is a clear example of this. Statistically, female drivers produce fewer claims costs than male drivers of an equivalent age, particularly at the younger end of the scale. Life insurance products and the benefits received from, for example, an annuity, are other examples. Traditionally, males received a higher sum per annum if the benefit was taken at the same time as a female of the same age, as the life expectancy of a male is statistically less on average.

The judgment applies to both price and benefits. While insurers are no longer permitted to use gender as a rating factor, they may still offer products that target consumers on the basis of gender, e.g. a 'lady drive' policy. However, they are only permitted to do this provided the product is made available to both male and female drivers and is gender neutral in its pricing and benefits.

The **Disability Act 2005** prohibits a person from processing genetic (family) data in relation to a policy of insurance (including life assurance and health insurance policies).

<sup>127</sup> *Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des Ministres* 2011 ('Test-Achats').

Consider the scenario in Case study 6.3.

### Case study 6.3

#### **Ross v RSA 2003**

This case arose from a complaint by Ross to the Equality Authority, in which he sought a car insurance quotation from Royal & Sun Alliance Insurance (RSA), but was refused a quotation because of his age (77).

The Equality Officer found that RSA failed to produce full details of the actuarial or statistical data that underpinned their 'over-70s' policy and therefore failed to satisfy the Authority that the data had come 'from a source on which it is reasonable to rely'. The Equality Officer also found that the respondent's 'over-70s' policy was not 'reasonable having regard to the data or other relevant factors', as it did not take all relevant factors into account; instead, it simply applied an 'across the board' policy of refusing quotations to persons over 70 years of age.

The Equality Officer found that the company's policy did not fall within the exemption provided for under the Equal Status Acts. Accordingly, he upheld Ross's complaint of discrimination and awarded €2,000 for loss of amenity suffered.

This leads us to conclude that the main issue was the blanket refusal to insure anyone over the age of 70. If sufficient data to justify the cut-off age had been provided, the exemption may have been allowable. Many insurers will have age limitations for personal accident, travel or motor insurance policies. In such cases, insurers must have reliable data on which to base their 'acceptable' age ranges.

The draft **Horizontal Anti-Discrimination Directive 2008** aimed at implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation. The draft Directive dealt with discrimination that occurs in public and private sectors and access to social protection, education, and goods and services. At present, the implications of the *Test-Achats* ruling do not extend to risk factors such as age. However, this could potentially change if member states agree on the draft Directive. This may result in higher prices for some insurance products, with other products being withdrawn from sale altogether.



#### Quick question 3

Outline how the *Test-Achats* case impacted on insurance.

# D Consumer protection

Although the CPC contains most of the important regulatory provisions for the protection of insurance consumers, insurers and intermediaries must also comply with other legislation that affects their consumer interactions. There are many examples of such legislation and most are beyond the scope of this textbook.

The following sections discuss the main provisions relating to unfair terms in consumer contracts (Section D1), distance marketing of consumer financial services (Section D2) and consumer insurance contracts (see Section D3).

## D1 Unfair terms in consumer contracts

The **Unfair Terms in Consumer Contracts Regulations 1995** (as amended) aimed to protect consumers in their contractual relationships, particularly standard-form contracts. The Regulations were repealed and replaced by Part 6 of the **Consumer Rights Act 2022** (CRA).

The definition of a 'consumer' under the CRA applies to individuals acting wholly or mainly outside their trade, business, craft or profession. So, unlike the CICA, the CRA does not apply to insurance products supplied to SMEs or small businesses, even where they have a turnover of less than €3 million.

The CRA:

- expands the current prohibitions set out in the Unfair Terms Regulations to all areas of consumer law
- codifies the consumer protection law in this area
- provides for stricter penalties for breaches.

Under the CRA, where a term in a consumer contract is considered 'unfair', this term will not be binding on the consumer, although the consumer may rely on it if they chose to do so.<sup>128</sup> Terms which are presumed 'unfair' are set out in the CRA but basically, a term is considered unfair where it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer, contrary to a requirement of good faith.

In assessing whether a term complies with the requirement of 'good faith', consideration will be given to:

- the strength of the bargaining positions of the parties
- whether the consumer had an inducement to agree to the term
- whether the service was sold or supplied to the special order of the consumer
- the extent to which the trader has:
  - o dealt fairly and equitably with the consumer, and
  - o taken the consumer's legitimate interests into account.

<sup>128</sup> **Consumer Rights Act 2022**, Section 129.

The CRA includes a contract 'blacklist' of terms and conditions that are deemed to be unfair in all circumstances.<sup>129</sup> For example, terms which exclude or hinder a consumer's right to take legal action or exercise a legal remedy. It should be noted that a term that is always considered unfair is one which seeks to 'exclude or limit the liability of a trader for the death of or personal injury to a consumer arising from an act or omission of the trader', but such a term will not be considered unfair in an insurance contract, including a contract to pay an annuity on human life.

The CRA requires that consumer contract terms be transparent. A term will be considered transparent where:

- (a) the term is expressed in concise, plain and intelligible language
- (b) the term is legible and presented clearly (if in writing)
- (c) the term is made available to the consumer in a manner that gives them a reasonable opportunity to become acquainted with it before the conclusion of the contract, irrespective of whether or not such an opportunity is availed of
- (d) in the case of a term that is 'novel or onerous', it has specifically been brought to the consumer's attention in such a way that the 'average consumer' would be aware of it, and
- (e) any costs or other financial consequences deriving from the term would be comprehensible to the average consumer.<sup>130</sup>

In the case of dispute, the trader must demonstrate that a term of a consumer contract is transparent. The CRA provides that if there is doubt as to the meaning of a term in the contract, the interpretation most favourable to the consumer should prevail (*contra proferentem rule*). If a term is considered unfair, provided that the contract can survive without the term, the contract will continue to be binding.<sup>131</sup>

Historically there was limited action against regulated firms under the **Unfair Terms in Consumer Contracts Regulations 1995**. Whether the CRA's expanded scope will lead to greater scrutiny and/or findings of unfair terms remains to be seen.

### D1a Enforcement

Complaints about unfair terms in consumer contracts should be made to the Competition and Consumer Protection Commission (CCPC). If required, the CCPC will refer these to the High Court, which will issue a judgment.

Under the CRA, the CCPC and Central Bank were given rights of enforcement where consumers are not provided with the remedies to which they are entitled under the Act. The CRA allows authorised bodies to apply to the courts for a declaration or injunction in respect of businesses who mislead their consumers or fail to provide them with the adequate remedies or compensation to which they are entitled.<sup>132</sup>

Authorised bodies can seek a declaration as to the proper interpretation of a term that has been drawn up for general use as a term of a consumer contract. In insurance, this provision could be used to interpret policy terms in circumstances similar to the Covid business interruption claims. In more extreme cases, the CRA provides that a court may prohibit the use or continued use in any consumer contract of an unfair term or similar terms of like object or effect.

<sup>129</sup> **Consumer Rights Act 2022**, Section 132.

<sup>130</sup> **Consumer Rights Act 2022**, Section 133.

<sup>131</sup> **Consumer Rights Act 2022**, Section 135.

<sup>132</sup> **Consumer Rights Act 2022**, Section 137.



The CRA provides for fines of up to €60,000 or even imprisonment for up to 18 months where a person breaches such an order. If a business instead breaches such an order, the directors could themselves be penalised. Convicted businesses may also be made subject to a compensation order requiring them to compensate any consumers where they commit an offence using a term found to be unfair.

## D2 Distance selling of financial services

The **EC Distance Marketing of Consumer Financial Services Regulations 2004** and **2005** transposed the **Directive on the Distance Marketing of Consumer Financial Services 2002** into Irish law. The Regulations aim to ensure that consumers who buy financial services via distance selling (without face-to-face contact) are protected and are not at a disadvantage because they do not have face-to-face contact with the firm.

The 'consumer' in these Regulations is a 'personal consumer' and does not include small businesses.

The Regulations apply to every **distance contract for the supply of a financial service**, which includes certain insurance business. Examples of distance selling are:

- Internet sales
- Telephone/call centre sales
- Sales by email, letter or fax.

The Regulations specify the minimum information to be given to a consumer in writing and within a reasonable time, before being bound by an insurance contract. This includes details of the:

- Supplier
- Product
- Price
- Distance contract
- Relevant regulatory authority
- Cancellation rights
- Complaints process.



When a consumer enters into a distance contract, the method of communication (e.g. a phone sale) may not allow this information to be provided beforehand. Therefore, the Regulations allow for the insurer to supply the information to the consumer 'immediately after the contract is entered into'.

However, a consumer's right under the Regulations cannot be waived. Any term in a distance contract for the supply of a financial service is void if the term is inconsistent with the Regulations.



### distance contract for the supply of a financial service

a contract under which a supplier supplies a financial service to a consumer in an organised distance sale (or service provision scheme) operated by the supplier and who, for the purpose of the contract, makes exclusive use of one or more means of distance communication (up to and including when the contract is entered into)



### cooling-off period

a period of time in which a consumer has a right to cancel an insurance contract without any penalty

## D2a Cooling-off periods and cancellation

A consumer who enters into a distance non-life general insurance contract (of more than 1 month's duration) is entitled to a 14 calendar day **cooling-off period**. During that time, the consumer can withdraw from the contract without penalty.

In Chapter 5C1d, the cooling-off period relevant to face-to-face consumer insurance contracts was noted as being 14 business days. Example 6.3 illustrates how this differs from the 14 calendar day cooling-off period applicable to distance non-life general insurance contracts.



### Example 6.3

Remember that a business day is defined as 'any day of the normal business working week, Monday to Friday inclusive, and excluding weekends, bank or public holidays. It is sometimes referred to as 'working day'.'

Caleb (a consumer under both the CICA and Distance Marketing Regulations) visited his local insurance broker to buy a motor insurance policy but bought his annual travel insurance policy through a call centre. Both policies are concluded on Monday 6 March 2023.

As Caleb's travel policy was purchased through a call centre, the Distance Marketing Regulations apply and the cooling-off period is 14 calendar days. Therefore, the cooling-off period expires on Monday 20 March 2023. In calculating the cooling-off period of 14 calendar days, every day of the week is counted including weekend days and bank holidays.

The CICA's cooling-off period of 14 business days applies to Caleb's motor policy. This cooling-off period expires on Friday 24 March 2023. In calculating the cooling-off period of 14 business days, only days of the normal business working week are counted. This includes Monday to Friday but excludes Saturdays and Sundays and the bank holiday for St Patrick's Day on Friday 17 March.



### Microlearning resources

In the Member Area of [www.iii.ie](http://www.iii.ie), via the Connect logo and in Your Learning Centre, select the microlearning section of this chapter to access a number of resources specifically developed to help you better understand the application of 'business day' deadlines.

The consumer who enters into a distance non-life general insurance contract also has the right to cancel certain contracts. In this case, the insurer is obliged to refund any monies paid by, or on behalf of, the consumer (less any pro-rata adjustment) no later than 30 calendar days after the notice of cancellation. It must be noted that if a claim has occurred, the cooling-off period cannot take place and a refund will not be made.

## D2b Enforcement

The Central Bank is the relevant authority that enforces these Regulations in Ireland. If the Central Bank brings an action against a supplier of distance consumer financial services for breach of the Regulations, the burden of proof rests with the supplier to show it has been compliant.

The Financial Services and Pensions Ombudsman may also investigate and adjudicate a dispute between a customer and supplier arising out of a distance contract.

## D2c Future legislation

Following extensive public consultation and impact assessment, the European Commission published a directive proposal in May 2022. Once in force, this proposal will introduce 'rules concerning financial services contracts concluded at a distance' to the **Consumer Rights Directive 2011** and will repeal the **Directive on the Distance Marketing of Consumer Financial Services 2002**. The goal is to harmonise consumer rights and capture them in this single piece of legislation.

## D3 Consumer Insurance Contracts Act 2019

The **Consumer Insurance Contracts Act 2019** (CICA) gives effect to the recommendations in the Law Reform Commission's 2015 *Report on Consumer Insurance Contracts*. It aims to provide an appropriate balance between the bargaining powers of insurers and consumers and bring together in one piece of legislation, pre- and post-contractual obligations and claims handling obligations placed on insurers and consumers by different pieces of legislation.

The Act applies to life and general insurance contracts with consumers, i.e. persons and businesses with a turnover of less than €3 million. Those who fall outside this definition continue to be subject to legislation and insurance principles previously in place, such as the principle of utmost good faith, insurable interest, etc.

CICA was not only one of the most significant pieces of insurance legislation in the last 30 years but also one of the most important pieces of consumer protection legislation in the insurance industry. The CICA provisions represent a considerable change to the long-established principles surrounding disclosure in insurance and place a significant onus on insurers to ensure that they are asking the right questions and gathering the correct information from consumers at the time the contract is being entered into.

The Act has resulted in insurers and intermediaries examining how their contracts were being inceptioned and renewed, and implementing substantial system and documentation changes in order to be compliant.

Many of this Act's provisions have been referred to already where relevant throughout this textbook and the remainder will be addressed in the other modules you study.

The Central Bank's substantial review of the CPC in 2023 will provide an opportunity for the CPC to be aligned with the CICA.

## E

# Record-keeping

Insurers and intermediaries must comply with a number of requirements on how they collect, process and store information from and about a consumer.

In Section B2 we noted that the rules of data protection include the requirement to keep personal data secure, accurate and up to date, and to retain it for no longer than necessary. Firms must therefore have a clear data retention policy outlining how they retain a consumer's personal data and when this data is to be destroyed.

The CPC also contains very specific requirements about record-keeping and the length of time that firms should retain records. While many of these record-keeping requirements make for good 'housekeeping' practices, their inclusion in the CPC makes them legally binding.

In summary, a firm must record all of the following:

- All instructions from, or on behalf of, a consumer (with dates of receipt and transmission)
- Any decision to use a firm's discretion on behalf of a consumer
- Any condition attaching to an instruction from a consumer
- A list of customers who are 'consumers' as defined by the CPC.



The CPC contains requirements about the nature of a firm's consumer records. At a minimum, they must include the following consumer details in an up-to-date form:

- A copy of all documents required for identification and profile
- Contact details
- All information and documents prepared in compliance with the CPC
- Details of products and services provided
- All correspondence and details of any other information provided
- All documents or applications completed or signed
- Copies of all original documents submitted when applying for supply of a service or product
- All other relevant information and documentation.<sup>133</sup>

<sup>133</sup> Provisions 11.1–11.5, CPC.

Details of individual transactions must be kept for 6 years after the date on which the particular transaction is discontinued or completed, or from the date on which the firm ceased to provide any product or service to the consumer. Records must be complete and readily accessible but not necessarily in a single location.<sup>134</sup>

If a firm is required to produce evidence to show its compliance with the CPC, it must be able to produce such information for the previous 6-year period.<sup>135</sup>



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**Quick question 4**

State the CPC's record-keeping requirements in relation to completed or discontinued transactions.

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<sup>134</sup> Provisions 11.6–11.7, CPC.

<sup>135</sup> Provision 11.10, CPC.



# Summary

In this chapter we considered some of the important non-insurance specific legislation, focusing on areas such as money laundering, data protection and consumer protection. This general legislation, combined with insurance-specific regulations, forms the legal and regulatory framework in which insurers and intermediaries provide services to their clients.

## F1 What's next?

In Chapter 7 we will look at two more important areas of regulation – the Central Bank's Fitness and Probity Standards and Minimum Competency Code.

## F2 Study tips

It is important to remember that this textbook is the primary information source for this module. All the questions in your exam will relate directly to information featured in the textbook. Use the 'End of chapter questions', 'Quick questions' and the 'Sample multiple-choice questions' to quickly test what you've learned so far. Make a note of any topics/areas you need to improve in and keep it to hand so you can refer to it when you revise this chapter again before your exam.

In addition to the textbook, your Member Area has many online learning supports that can help you as you study this module.

## F3 Online learning supports

Your Member Area includes a Guide to Success, an automated study planner, an exam countdown timer and study tips guide. These learning supports are invaluable in reinforcing what you have learned from the textbook so far. The webinars, chapter-by-chapter key points and other supports will help you to break down the chapter content when revising.

Completing online mock exams and reviewing the personalised feedback that follows is a great way of testing your knowledge and preparing for exam day.

To access these online learning supports, just log into the Member Area of [www.iii.ie](http://www.iii.ie) and click on the Connect logo.



# End of chapter questions

Use these questions to test your understanding of what we've covered in Chapter 6.

1. Outline how a general insurance policy could be used as part of a money-laundering process.  

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2. Outline the three stages of the money-laundering process.  

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3. State the main distinction between money laundering and terrorist financing.  

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4. Outline the type of data the **EU General Data Protection Regulation 2016** is concerned with.  

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5. Define the term 'data processor'.  

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6. List four data protection principles.  

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7. List five rights of a data subject.  

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8. Outline the main issue in *Ross v RSA* 2003.  

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9. Outline the effect of a term considered 'unfair' in an insurance contract with a consumer.  

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10. List four items of pre-contract information that must be provided to consumers under the **EC Distance Marketing of Consumer Financial Services Regulations**.  

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11. List the details the CPC requires insurers and intermediaries to record.  

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# Answers to end of chapter questions

**Check your answers against those below and make a note of any points you left out. This will highlight some sections you may need to look at more closely during your revision.**

1. A person/organisation/business may effect a general insurance policy and then cancel it shortly after inception to obtain the return premium. They may also make a fraudulent claim for loss or damage to the subject matter.
2. The three stages are:
  - Placement – putting cash into the financial system
  - Layering – concealing the origins of the money by creating a series of complex transactions that are untraceable during the audit process
  - Integration – gaining access to the money as apparently legitimate funds.
3. For an act to be considered money laundering, the funds involved must be the proceeds of criminal conduct, but in terrorist financing the source of the funds is irrelevant, i.e. the funds may or may not be the proceeds of criminal conduct. The key consideration for terrorist financing is the intended use or destination of the funds, as opposed to their origin.
4. The GDPR is concerned with personal data.
5. A 'data processor' is a natural or legal person, public authority, agency or other body that processes personal data on behalf of the controller.
6. Any four of the following data protection principles:
  - Process lawfully, fairly and transparently
  - Collect for specified, explicit and legitimate purposes
  - Be adequate, relevant and limited to what is necessary
  - Be accurate and up to date
  - Retain no longer than necessary
  - Process in a secure manner
  - Demonstrate compliance with data protection legislation.
7. Any five of the following data subject rights:
  - The right to be informed
  - The right of access
  - The right to rectification
  - The right to erasure (also known as the 'right to be forgotten')
  - The right to restrict processing
  - The right to data portability
  - The right to object
  - Rights in relation to automated decision-making and profiling.



8. The main issue in *Ross v RSA* 2003 was the insurer's blanket refusal to insure anyone over the age of 70, which was not supported by actuarial or statistical data.
9. An unfair term will not be binding on the insured. However, if the contract can survive without the presence of the offending term, then the contract will continue to be legally binding.
10. Any four of the following items of pre-contractual information:
  - Supplier
  - Product
  - Price
  - Distance contract
  - Relevant regulatory authority
  - Cancellation rights
  - Complaints process.
11. The following details must be recorded:
  - All instructions from, or on behalf of, a consumer (with dates of receipt and transmission)
  - Any decision to use a firm's discretion on behalf of a consumer
  - Any condition attaching to an instruction from a consumer
  - A list of customers who are 'consumers' as defined by the CPC.

## Answers to quick questions

1. If an EU Financial Sanction or UN Targeted Financial Sanction match occurs, the transaction must be stopped and additional identity checks carried out to verify that the customer is 'one and the same person' as stated on the Financial Sanctions list. If they are 'one and the same person', the insurer/intermediary must immediately report this to An Garda Síochána and the Central Bank.
2. Special category personal data:
  - Reveals racial or ethnic origin, political opinions or religious/philosophical beliefs
  - Reveals trade union membership
  - Reveals genetic or biometric data
  - Concerns health
  - Concerns a person's sex life or sexual orientation.
3. The *Test-Achats* judgment had a direct bearing on insurance premiums as it is no longer allowable to use gender-specific statistics in rating insurance products. Motor insurance and life insurance are clear examples of this. The judgment applies to both pricing and benefits. Insurers may still offer products that target consumers on the basis of gender, provided the product is made available to both male and female consumers and is gender neutral in its pricing and benefits.
4. Under the CPC, details of individual transactions must be kept for 6 years after the date on which the particular transaction is discontinued or completed.



# Sample multiple-choice questions

1. Craig has requested access to the personal data his insurer holds about him but his insurer advised that this will not be sent to him personally. This is **most likely** because the data:
- A. is held in paper form
  - B. relates to Craig's medical details
  - C. is suspected of being factually incorrect
  - D. was not obtained fairly

Your answer:

☐

2. What is the meaning of the *contra proferentem* rule under the **Consumer Rights Act 2022**?
- A. In cases of ambiguous wording, the interpretation most favourable to the consumer will prevail
  - B. The burden of proof lies with the dominant party, to show that a contractual term has been individually negotiated.
  - C. For a contract to be valid, it should not be intrinsically unfair to any party.
  - D. There is a presumption that all parties to a contract act in good faith.

Your answer:

☐

3. Kevin purchased a household insurance policy from FlatSure Insurance over the internet on 10 September. If Kevin changes his mind the next day, by what latest date must he cancel the contract in order to obtain a full refund?
- A. 15 September
  - B. 17 September
  - C. 24 September
  - D. 10 October

Your answer:

☐

# Answers to sample multiple-choice questions

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## Question 1

**Chapter reference:** Chapter 6B4

**Question type:** U

**Correct response:** B

**Learning outcome:** Demonstrate the impact of non-insurance specific legislation on activities of insurers and intermediaries in relation to financial crime, data protection and equality.

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## Question 2

**Chapter reference:** Chapter 6D1

**Question type:** K

**Correct response:** A

**Learning outcome:** Demonstrate the scope of consumer protection legislation impacting on insurance contracts and the main legal and regulatory requirements regarding the retaining of consumer information.

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## Question 3

**Chapter reference:** Chapter 6D2a

**Question type:** A

**Correct response:** C

**Learning outcome:** Demonstrate the scope of consumer protection legislation impacting on insurance contracts and the main legal and regulatory requirements regarding the retaining of consumer information.

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# Ethics and competency

## What to expect in this chapter

In this chapter we will consider:

- The importance of ethics
- The requirements for firms in ensuring proper standards of competency and behaviour.

This chapter looks at the regulatory requirements regarding the competence and behaviour of individuals who give advice to consumers. Chapter 1 outlined the Central Bank's Individual Accountability Framework (IAF) which was introduced by the **Central Bank (Individual Accountability Framework) Act 2023**. This Act is expected to have a very significant impact on the promotion of positive behaviours by individuals and on improving organisational culture within firms.

Meanwhile, the main focus in this chapter is on the Fitness and Probity Regime, set out in the **Central Bank Reform Act 2010 (Sections 20 and 22) Regulations 2011** ('the 2011 Regulations') and the **Minimum Competency Code 2017** and **Minimum Competency Regulations 2017**, which is a key component of the IAF.

Insurance is an intangible product which requires trust to exist between all parties involved. For an adviser, this means a high standard of ethics. We will also examine the nature of good ethical practice, linked to various regulatory requirements.

## Learning outcomes for this chapter

Section	Title	At the end of each section you should be able to:
<b>A</b>	<b>Fitness and probity</b>	Identify the importance of fitness and probity in the insurance market and demonstrate the effect of the <b>Central Bank Reform Act 2010 (Sections 20 and 22) Regulations 2011</b> and the Central Bank minimum competency requirements.
<b>B</b>	<b>Minimum competency</b>	
<b>C</b>	<b>Obligations on individuals</b>	
<b>D</b>	<b>Obligations on firms</b>	
<b>E</b>	<b>Ethics</b>	Explain the importance of ethical standards in the insurance market, particularly in situations involving conflicts of interest or whistleblowing.





# A

## Fitness and probity

The **Central Bank Reform Act 2010** (most recently amended by the **Central Bank (Individual Accountability Framework) Act 2023**) created a harmonised system for regulating the performance of certain roles in the financial services industry. Persons performing **controlled functions** (CFs), including **pre-approval controlled functions** (PCFs), must have an appropriate level of fitness and probity (F&P). The aim of the Fitness and Probity Regime is to ensure that such persons are:

- Competent and capable
- Honest, ethical and act with integrity
- Financially sound.

The Central Bank has wide-ranging powers across the financial services industry to:

- Approve or refuse the appointment of people to positions where they have a significant influence on the operation of the firm
- Investigate and, where appropriate, remove or prohibit holders of certain positions
- Set statutory standards of fitness and probity across the financial services industry.

It is important at this point to understand what is meant by the terms 'fitness' and 'probity':

- 'Fitness' means that a person is competent and capable of performing their duties. The Central Bank states that 'a person shall have the qualifications, experience, competence and capacity appropriate to the relevant function'.<sup>136</sup>
- 'Probity' refers to a person's honesty, fairness and ethical attitude, based on past behaviour. Individuals performing a controlled or a pre-approval controlled function must be honest, diligent and independent-minded. They must act ethically and with integrity, without being affected by conflicts of interest.

The main requirements of the Central Bank Fitness and Probity Regime are set out in:

- The **Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2011** (the '2011 Regulations')
- The **Fitness and Probity Standards Code 2011** (the 'F&P Standards')
- The **Minimum Competency Code 2017** (MCC 2017)
- The **Minimum Competency Regulations 2017** (MCR 2017).<sup>137</sup>

The 2011 Regulations make employers responsible for ensuring that staff meet the requirements of the F&P Standards, both when entering the financial services industry and throughout their careers. Employers must carry out **due diligence** to ensure the standards are met. The due diligence process involves gathering appropriate documentation, supported by clear internal assessment criteria and governance. Due diligence is higher for PCFs than for CFs.

### controlled function

designated role for which the Central Bank requires regulated firms to identify and maintain a record of:

- those persons performing CFs from the date of application of the Fitness and Probity Standards
- due diligence undertaken in respect of those persons

### pre-approval controlled function

a designated role (mainly to do with executive or senior management, heading up significant functional areas or implementing regulation), whereby the Central Bank must approve the person for the function before they are appointed to the job



### due diligence

enquiries undertaken to assess the fitness and probity of an individual

<sup>136</sup> Central Bank of Ireland, *Fitness and Probity Standards (Code issued under Section 50 of the Central Bank Reform Act 2010)*, Section 3.1, 2014, [www.centralbank.ie](http://www.centralbank.ie).

<sup>137</sup> MCC and F&P Standards are issued under Section 50 of the **Central Bank Reform Act 2010**. F&P guidance and related FAQs are available on the Central Bank website, [www.centralbank.ie](http://www.centralbank.ie).

As mentioned in Chapter 1F2b, F&P is a key component of the Individual Accountability Framework (IAF) introduced by the **Central Bank (Individual Accountability Framework) Act 2023**. This Act and Framework introduce some changes to the existing F&P Regime, including:

- bringing financial holding companies, mixed financial holding companies, insurance holding companies, and investment holding companies into the scope of the F&P Regime, with a requirement for a certificate of compliance with F&P standards to be given to the Central Bank in connection with any CFs or PCFs.
- introducing a 6-year look back for F&P investigations (currently the Central Bank can investigate individuals if they are in a CF/PCF position when it commences the investigation).
- extending the maximum period of suspension to 6 months, with possible extension up to 24 months on application to the High Court.

The Senior Executive Accountability Regime (SEAR), another key component of the IAF, requires insurers to map the roles and responsibilities of individuals performing Senior Executive Functions (SEF), including:

- prescribing allocated responsibilities
- identifying and allocating responsibilities
- providing a statement of responsibilities to the Central Bank
- producing a management responsibility map setting out the management and governance of the firm.<sup>138</sup>

## A1 Scope of Fitness and Probity Standards

The F&P Standards apply to two main groups:

- Controlled functions
- Pre-approval controlled functions (a subset of controlled functions).

We will now briefly consider the roles that fall within each category.

### A1a Controlled functions

In regulated firms, the Regulations identify the following roles as controlled functions:

- Exercising significant influence on the firm's conduct
- Ensuring, controlling or monitoring compliance
- Giving advice to a customer regarding a financial service
- Arranging, or offering to arrange, a financial service
- Assisting a customer in making an insurance/reinsurance claim
- Determining the outcome of an insurance/reinsurance claim



<sup>138</sup> At the time of writing, whilst the **Central Bank (Individual Accountability Framework) Act 2023** has been introduced into law, additional guidance on the implementation of the IAF is yet to be published by the Central Bank.

- Acting in the direct management or supervision of those who provide a financial service
- Adjudicating on any complaint
- Directing and managing an undertaking or being directly involved in insurance or reinsurance mediation
- Dealing in, or having control over, the property of a customer of the firm
- Dealing in, or with, property on behalf of the firm.<sup>139</sup>

A firm must not permit a person to perform a CF unless it is satisfied, on reasonable grounds, that they comply with the F&P Standards, e.g. by conducting an annual assessment. The Central Bank requires that firms identify, and maintain a record of, persons performing CFs, together with a record of due diligence. The record starts from the date the F&P Standards are applied.

### A1b Pre-approval controlled functions

PCFs are a subset of CFs but are considered more significant, as they often involve senior management or other important regulatory roles. 'Pre-approval' means that the Central Bank must approve the person for the function, in writing, before they are appointed to the job. Individuals wishing to carry out PCFs must submit an online Individual Questionnaire to the Central Bank.

There are almost 50 functions (jobs) that fall within the PCF category. A small sample, relevant to the insurance industry, includes:

- Directors (both executive and non-executive)
- Head of Claims
- Head of Underwriting
- Head of Compliance
- Head of Actuarial Function
- Head of Retail Sales
- Chief Executive Officer
- Chief Operating Officer
- Chief Risk Officer.<sup>140</sup>

A firm must not appoint a person to perform a PCF role unless the Central Bank has approved the appointment in writing (see Case study 7.1).

<sup>139</sup> Central Bank of Ireland (Regulation – How We Regulate, Fitness & Probity, List of 11 Controlled Functions), [www.centralbank.ie](http://www.centralbank.ie).

<sup>140</sup> Central Bank of Ireland (Regulation – How We Regulate, Fitness & Probity, List of 46 Pre-approval Controlled Functions), [www.centralbank.ie](http://www.centralbank.ie).

## Case study 7.1

### Fitness and Probity breach

On 1 March 2022, the Central Bank fined Insure4Less Teoranta (t/a Kerry Insurance Group) €8,400 in respect of three breaches of F&P obligations under the **Central Bank Reform Act 2010**. The firm admitted to the breaches.

The original fine (€12,000) was reduced by 30% in accordance with the settlement discount scheme provided for in the Central Bank's Administrative Sanctions Procedure.

The Central Bank found that the firm failed to obtain prior approval before appointing three individuals as directors of the firm; senior positions that were designated as PCF positions. The firm did not submit any application forms for approval of the individuals until a year after their appointment. At no stage in the application process did the firm indicate to the Central Bank that the three individuals had already been appointed.

The Central Bank's Director of Enforcement and Anti-Money Laundering, Seána Cunningham, said:

The F&P regime is central to the Central Bank's role as a gatekeeper for the financial system, and in ensuring that we can assess whether the most senior people working in the financial services industry are competent and capable, honest, ethical and of integrity and also financially sound. This is a critical element of protecting consumers and investors and ensuring that there is public trust and confidence in the financial system.

As well as acting as a deterrent to this firm, this enforcement action serves as a reminder to all regulated firms, in all sectors and regardless of size, of the importance which the Central Bank attaches to F&P compliance. We are committed to following through to hold firms accountable for F&P failures and to raising compliance standards in this critical protection for customers of regulated firms.<sup>141</sup>

In assessing a firm's PCFs and considering whether sufficient or specific additional PCFs may be required by the firm, the Central Bank will have regard to their proposed time commitments, the number of PCF positions proposed for a particular individual, and the firm's overall corporate governance arrangements.



### Just think

In what circumstances might an individual be deemed 'not a person of probity'?

<sup>141</sup> Central Bank of Ireland (News & Media – Press releases), *Insure4Less Teoranta t/a Kerry Insurance Group reprimanded and fined €8,400 by the Central Bank of Ireland for breaches of fitness and probity pre-approval requirements*, 04 March 2022, [www.centralbank.ie](http://www.centralbank.ie)

## A2 Consequences of a lack of fitness and probity

Dishonest, unethical, incompetent or criminal behaviour are indicators that a person may not be suitable to perform a particular function in a firm. As noted in Section A1b, more stringent standards apply to persons who perform senior roles within regulated firms.

A person's behaviour outside the workplace will also be taken into account when assessing their probity, particularly when they hold, or are being considered for, a senior position in a regulated firm. Although Case study 7.2 concerns a decision by the UK regulator, the principle it is based on is equally relevant to the Irish environment.

### Case study 7.2

#### Fitness and probity breach (UK)

A former executive at a top London financial services firm was banned from senior roles in the UK financial sector after he was found to have been repeatedly dodging paying the train fare for his commute to the City. The Financial Conduct Authority (FCA, the UK regulator) said his behaviour demonstrated a 'lack of honesty and integrity'.

Mr JB, who worked as a managing director at BlackRock Asset Management Investor Services, was stopped by ticket inspectors at Cannon Street station in November 2013 and admitted that he had not paid the £21.50 fare. He ended up paying £43,000 to settle the case when the extent of the evasion, which took place over several years, became clear.

Mr JB had failed to purchase tickets at his rural home station in East Sussex, where there were no ticket barriers. On arriving in London, he 'tapped out' of fare gates using a travelcard, paying the fare of £7.20, rather than the full ticket price of £21.50, according to the FCA notice.

Mr JB agreed to pay the £43,000 to Southeastern railways after reaching an out-of-court settlement. The FCA acted after press reports that an unidentified fund manager had become the 'biggest fare dodger in history'.

The FCA's decision to act reflects the increased emphasis it is placing on personal integrity and honesty. Tracey McDermott, the FCA's Director of Enforcement and Financial Crime, said: '[He] held a senior position within the financial services industry. His conduct fell short of the standards we expect. Approved persons must act with honesty and integrity at all times and, where they do not, we will take action.'<sup>142</sup>

<sup>142</sup> Adapted from Sam Fleming, 'Fare dodger banned from City posts', *Financial Times*, 15 December 2014. A summary of the FCA's decision is available at the Financial Conduct Authority website: (News – Former Blackrock Asset Management Managing Director Banned), [www.fca.org.uk](http://www.fca.org.uk).

Case study 7.3 illustrates how the F&P standards apply to insurance intermediaries.

### Case study 7.3

#### Fitness and probity

In January 2017, a prohibition notice was issued in respect of Ms CM, a sole trader insurance intermediary, who was prohibited from performing certain pre-approval controlled functions for a period of 2 years. Ms CM's infractions included the following:

- Her management and documentation of the petty cash box of a regulated firm was not in accordance with good operational controls and good accounting practice. The manner in which she sought recompense from the petty cash box was irregular and displayed poor judgement.
- She diverted client funds which were due to be refunded to a client for her own benefit, in circumstances where she was aware or ought to have been aware that what she was doing was wrong and, in doing so, displayed poor judgement and an inability to discharge her duties.

In the opinion of the Central Bank, Ms CM was deemed not to be of such fitness and probity as is appropriate to perform certain pre-approval controlled functions based on the facts that she:

- Did not satisfy the **Fitness and Probity Standards 2011**
- Participated in serious misconduct in relation to the business of a regulated firm
- Failed to make a disclosure to the Central Bank pursuant to Section 38(2) of the **Central Bank (Supervision and Enforcement) Act 2013** or made such a disclosure knowing it to be false or misleading in a material respect
- Directly or indirectly provided information to the Central Bank pursuant to Part 3 of the Act or otherwise that she knew or ought to have known was false or misleading.<sup>143</sup>



#### Quick question 1

Why does the Central Bank have a more demanding regime for PCFs than for CFs?

The answer is at the end of this chapter.



#### Microlearning resources

In the Member Area of [www.iii.ie](http://www.iii.ie), via the Connect logo and in Your Learning Centre, select the microlearning section of this chapter to access a resource specifically developed to help you better understand this topic.

<sup>143</sup> Central Bank of Ireland (News & Media – Legal Notices, Prohibition Notices), [www.centralbank.ie](http://www.centralbank.ie).

**B**

# Minimum competency

The Central Bank first introduced minimum competency requirements in 2007. These requirements established minimum professional standards for persons providing financial services to consumers. The main aim is to ensure that consumers of financial services receive a minimum standard of competency in their dealings with regulated firms.

The current minimum competency requirements can be found in:

- The **Minimum Competency Code 2017** (MCC 2017) which contains the obligations on individuals (see Sections B & C); and
- The **Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1) Minimum Competency) Regulations 2017** (MCR 2017) which contain the obligations on firms (see Section D).

While the MCC 2017 and MCR 2017 focus on technical knowledge and expertise and the F&P Standards focus on personal qualities and characteristics, there is an overlap. The MCR 2017 require that a person performing a relevant function has obtained the competence and skills appropriate to that function, through experience or training gained in an employment context. The F&P Standards require that a person demonstrates that they have obtained the competence and skills appropriate to that function (see Section A).

## B1 Important terms

These competency requirements (MCC 2017 and MCR 2017) apply to regulated firms and to persons carrying out controlled functions within those firms.

The MCC 2017 identifies the following activities as controlled functions:

- Providing advice or information to consumers on retail financial products (including personal and commercial insurance policies)
- Arranging or offering to arrange retail financial products for consumers, including changes to insurance cover and restructuring or rescheduling loans
- Undertaking certain specified functions.

Specified functions under the MCC 2017 are described in Extract 7.1.



## 7.1

**Extract** Specified functions

Under the MCC 2017, specified functions include:

1. Assisting consumers in making a claim
2. Determining the outcome of consumer claims
3. Direct involvement in reinsurance distribution
4. Direct management or supervision of those who provide advice or information to consumers on retail financial products, or who carry out claims functions 1 or 2
5. Adjudicating (i.e. deciding on) complaints about advice/information-related or claims-related matters
6. Direct involvement in the design of retail financial products.<sup>144</sup>

**Just think**

Would the management of a claims function be classed as a specified function under the MCC 2017?

The answer is 'Yes'. MCC 2017 states that 'specified function' (as shown in Extract 7.1) includes direct management of those who carry out the claims functions.

**B2 Giving advice**

We have already noted that the MCC 2017 requirements apply to individuals carrying out a controlled function on behalf of a firm. Providing advice or information to consumers on retail financial products is an example of a controlled function.

**Just think**

What do we mean by the terms 'advice' and 'information'? For example, do they mean every possible contact with a consumer?

The MCC 2017 begins with a wide definition of 'advice' but then excludes certain specific types of communication and activity. According to the MCC, 'advice' refers to a personal recommendation provided to a person, whether at the person's request or at the initiative of the firm, in the course of performing a relevant (controlled) function.

According to the MCC 2017, 'information' refers to the provision of information to a person, whether at the person's request or at the initiative of the firm, that may assist the person in the choice of retail financial product.

<sup>144</sup> Appendix 2, MCC 2017.



In this context, 'information' does not include the following actions:

- Employees pointing out where information can be found
- Providing information of a general nature, provided that the purpose is not to help conclude or fulfil a contract in relation to a retail financial product
- Providing a brochure or booklet or similar documents without giving additional information with regard to its content or providing any follow-up advice
- Information in a newspaper, journal, magazine or other publication (including electronic publications), which is not meant to lead the reader to a specific product or provider
- Information in a lecture, seminar or similar presentation, which is not meant to lead to a specific product or provider (and where the organisers or presenters earn no remuneration or other reward for sales that might occur because of that information)
- Information in sound or television broadcasts that is not meant to lead to a specific product or provider
- Information provided by back-office employees who do not have direct contact with consumers
- Information incidental to some other professional activity (not subject to the MCC 2017), where the purpose is not to assist a consumer with a retail financial product.



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**Quick question 2**

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An intermediary provides brochures or booklets to clients and only clarifies what certain questions or provisos mean. Under the MCC 2017, is this included in the term 'information'?

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**grandfathered person**

a person who, on 1 January 2007, was dealing with the retail financial product or specified function in question and had 4 years' relevant experience between 1 January 1999 and 1 January 2007, and who complies with the continuing professional development requirement

**qualified person**

person with one or more recognised qualification(s) which are relevant to the function to be exercised

**prescribed script function**

a controlled function exercised within a narrow and rigid set of criteria and according to a prescribed script and routine

**continuing professional development**

attendance at seminars, lectures, conferences, certified completion of appropriate e-learning tutorials, workshops or courses dealing with a directly relevant topic – related to the competencies set out in the MCC



# Obligations on individuals

Parts 1 and 2 of the MCC 2017 set out the minimum competency standards and the relevant requirements for individuals. An individual may not carry out a controlled function unless they either:

1. Have completed one or more recognised qualification(s) that are relevant to the function
2. Are **grandfathered** in respect of the function
3. Are a new entrant, taking part in a training process under the supervision of a **qualified person** or a grandfathered person
4. Are performing a **prescribed script function**, having met prescribed, more limited, standards specified and
5. In the case of 1 and 2, are compliant with the **Continuing Professional Development** (CPD) requirement.

We will now consider each of these in turn.<sup>145</sup>

## C1 Completing a recognised qualification

Part 3 of the MCC 2017 sets out the specific professional qualifications and relevant competencies a person must have for different product categories.

A list of qualifications that meet the current competencies for the various categories of product is set out in Appendix 4 of the MCC 2017. Recognised qualifications for personal general, private medical and commercial general insurances include The Insurance Institute Accredited Product Adviser and Certified Insurance Practitioner, as well as Associate or Fellow of the Chartered Insurance Institute.

There is a further list of additional qualifications recognised by the Central Bank for specified functions, e.g. assisting consumers in making a claim under an insurance contract.<sup>146</sup> These include Associate or Fellow of the Chartered Institute of Loss Adjusters, among others.



<sup>145</sup> Full details of the MCC requirements are available in the Central Bank of Ireland, *Minimum Competency Code 2017*, [www.centralbank.ie](http://www.centralbank.ie).

<sup>146</sup> Appendix 4, MCC 2017.

The Central Bank does not take part in developing education programmes. Its role involves setting and reviewing the MCC 2017's competencies for different product categories and deciding whether or not a particular professional qualification meets those competencies. As such, any new qualification requires formal approval as a recognised qualification by the Central Bank.

## C2 Grandfathering arrangements

Grandfathering is a mechanism used to recognise the value of hands-on experience by existing practitioners. The term applies only if certain conditions were met and grandfathered status achieved by 31 December 2012.<sup>147</sup>

## C3 New entrants

A new entrant in a regulated firm must participate in a training programme that includes:

- Initial training – a relevant training programme organised by the firm, or as part of a relevant recognised qualification
- Supervision – direct supervision by a qualified or grandfathered person, who must check and sign off on all documentation relating to offering or arranging a product or specified function, until the entrant obtains a recognised qualification
- Working towards a recognised qualification – defined as:
  - registering for the first exam sitting available and, if failing the examination, each available sitting thereafter until the qualification is obtained
  - studying or training for the qualification on a consistent and timely basis until completion
  - maintaining a record of all examinations completed, results obtained and further examinations scheduled
- A timeframe – the maximum period for which a new entrant may participate in the training process, i.e. 4 years in total.

In limited circumstances, a pro-rata adjustment may be applied for certain statutory leave, e.g. statutory adoption, maternity or carer leave, a medically certified serious illness (not less than 2 months) or a career break. This is provided as long as the person is not carrying out any of the relevant functions while availing of the statutory leave. No adjustment applies for part-time work, unemployment, retirement or holidays.<sup>148</sup>



### Quick question 3

Why does the MCC adopt such a prescriptive set of rules for acquiring a recognised qualification?

<sup>147</sup> Section 1.5, MCC 2017.

<sup>148</sup> Section 1.4, MCC 2017.

## C4 Prescribed script function

Certain individuals are effectively excluded from the broader requirements of the MCC. These individuals would include those in call-centre roles who, while interacting with consumers, do not advise them. The activities of these individuals fall within the definitions of 'prescribed script function'. To be recognised as fulfilling a prescribed script function, the person must:

- Operate according to a script developed by someone who meets the standards set out in the MCC
- Participate in an initial training programme organised by the firm, or obtain part of a recognised qualification relevant to the function
- Complete additional training relevant to the function on an ongoing basis, to keep their knowledge up to date
- Refer requests for information and advice that are outside the specific content of the script to a person who is a qualified or grandfathered person for that function
- Operate under the supervision of a person who is a qualified or grandfathered person for that function.<sup>149</sup>



### Quick question 4

If a person carrying out a prescribed script function is asked a question that falls outside the scope of the script, what action should the person take?

## C5 Continuing professional development

As stated in Section C, qualified and grandfathered persons must maintain their competency through CPD. This involves structured learning activities designed to ensure that an individual's education and development continue throughout their career.

Successful completion of the specific CPD requirement of a recognised professional qualification (e.g. ACII) automatically satisfies the MCC 2017 requirement. The Central Bank insists that all persons performing controlled functions complete a minimum period of CPD each calendar year to ensure compliance with the IDR.

In addition:

- Where a person who is grandfathered for one function and holds a recognised qualification for other functions completes the required 15 hours of CPD each calendar year, the content of the CPD hours must be relevant to both (or all) functions.
- A person must complete a minimum of 1 hour of CPD each calendar year for each function undertaken that falls within the Minimum Competency Standards
- A person must complete at least 1 hour of CPD each calendar year relating to **ethics**.

Each year is treated separately and surplus hours in one year may not be carried over to the following year. There is, however, one exception to this rule. If a person fails to complete 15 CPD hours (and has not incurred another shortfall within the previous 5 years), they may make up the shortfall by the end of the following year (in addition to the requirement for that CPD year).



### ethics

practical analysis of objective standards of right and wrong (also known as 'moral philosophy')

<sup>149</sup> Section 1.6, MCC 2017.

### C5a CPD hours

CPD hours may be obtained by attending seminars, lectures, conferences; successful completion of relevant examinations; or certified completion of appropriate e-learning tutorials, workshops; or courses dealing with a directly relevant topic (as per the competencies set out in Appendix 3, MCC 2017). All CPD hours must be accredited by the provider of a recognised qualification or by one of the professional educational bodies providing recognised qualifications with a CPD requirement. Records of CPD hours are subject to audit by the professional body and the Central Bank reserves the right to check any person's compliance with the CPD requirements.



#### Just think

Fiona has not yet completed her required CPD, but she has an opportunity to attend a 1-day course and an evening course on the same day, providing a total 10 hours of CPD. Is this a reasonable way to achieve her outstanding CPD requirement?

It is widely accepted that intense training for a short period is less effective than training spread over a longer period. For this reason, a maximum of 8 hours is allowed in any one day for one event, and 4 hours for any single topic.

There are essentially two options for obtaining CPD hours. One option is to participate in a CPD scheme operated by an external professional education body that provides a recognised qualification (e.g. The Insurance Institute); the other option is to arrange one's own CPD hours, e.g. accredited CPD training provided by major insurers to their staff and/or intermediaries. Either way, a record must be kept to demonstrate that they have satisfied the requirement (e.g. maintenance of a log, receipts from courses attended, certificates of attendance or completion), including a statement of relevance to the particular products or functions.<sup>150</sup>

<sup>150</sup> Section 1.7, MCC 2017.



# Obligations on firms

Firms' obligations under the MCR 2017 are briefly described in the following sections.

## D1 Internet services

Where services are provided over the internet, a qualified or grandfathered person for that service must approve and sign off on the process of product selection and advice.<sup>151</sup>

## D2 Outsourcing

A firm is responsible for ensuring that anyone undertaking functions (which are subject to the MCC) on an outsourced basis on its behalf complies with the MCC (i.e. has an appropriate qualification).<sup>152</sup>

## D3 Prescribed script function

In relation to the performance of a 'prescribed script function' (as described in Section C4) the firm must ensure that:

- The criteria, script and routine are developed by someone who meets the standards set out in the MCC
- The person performing the function is adequately supervised and compliant with the MCC
- The person performing the function has participated in a training programme organised by the firm, or obtain part of a relevant recognised qualification relevant to the function
- The person performing the function has completed additional training relevant to the function on an ongoing basis, to keep their knowledge up to date
- It maintains records to demonstrate compliance with the MCC.<sup>153</sup>

<sup>151</sup> Part 2(5), MCR 2017.

<sup>152</sup> Part 2(3), MCR 2017. In February 2021, the Central Bank published *Consultation paper 138 Cross-industry guidance on outsourcing* in anticipation of its introduction of outsourcing guidance to support and complement existing sectoral legislation, regulations and guidelines on outsourcing, including cloud services.

<sup>153</sup> Part 2(6), MCR 2017.

## D4 Register of accredited persons

A firm must maintain a register of all **accredited persons** acting on its behalf, which must be retained for a minimum of 6 years after the date the person ceases to perform a relevant function on behalf of the firm.<sup>154</sup> The content of the prescribed format is as follows:

- Name
- Qualification, grandfathered status, new entrant or prescribed script function
- Product or specified function
- Date of obtaining a recognised qualification or being grandfathered
- If a new entrant:
  - o Date of commencement of function
  - o Qualification being pursued.

Each branch office must have a register of all accredited persons working in that branch.

An individual whose professional designation has been removed due to failure to comply with the relevant CPD requirements must be removed from the firm's register. Those who are grandfathered (as in Example 7.1) or hold a recognised qualification with no CPD requirement, who have failed to complete 15 CPD hours more than once in any 5-year period, must be removed from the register.



### Example 7.1

Molly works in an insurer's legal department where she decides on claims-related complaints. This specified function falls under MCC 2017 and so Molly is required to undertake 15 hours annual CPD. Molly is grandfathered. In 2018 and 2019, Molly does not fulfil this CPD requirement and so, the insurer removes her from its register of accredited persons. Only when she is compliant with the CPD requirements again, will Molly be put back on the insurer's register.

Those removed from the register specifically for non-compliance with the CPD requirements must be restored promptly once they become compliant.<sup>155</sup>

## D5 Grandfathered status

The MCR 2017 state that the firm must provide a statement confirming the person's grandfathered status upon request and must retain any records and documentation needed to create and confirm any Statement of Grandfathered Status.<sup>156</sup>



### accredited person

one who satisfies the Central Bank's minimum competency requirements

<sup>154</sup> Part 2(7), MCR 2017.

<sup>155</sup> Part 2(7), MCR 2017.

<sup>156</sup> Part 4, MCR 2017.

## D6 New entrants – training and supervision

Firms have significant responsibilities for training and supervising new entrants. From the beginning, they must:

- Inform the new entrant before commencing the activity of the 4-year examination requirement
- Agree a plan to achieve this and monitor progress in adhering to the plan
- Ensure that the new entrant undergoes a training programme or undertakes part of a recognised relevant qualification before dealing with consumers.

The firm must ensure that procedures are in place for adequate supervision by a qualified or grandfathered person. This must include regular meetings and contact between the supervisor and new entrant. The length and extent of supervision will depend on the firm's assessment of the new entrant's performance. This assessment will consider a variety of factors, e.g. previous experience, quality of performance (e.g. advice to consumers or handling of complaints) and the nature and complexity of their role.

Each supervisor must supervise no more than seven new entrants. The firm must maintain written records of the supervision, including assessments and records of meetings between the supervisor and each new entrant.<sup>157</sup>

## D7 CPD

A firm's procedures must ensure compliance with the CPD requirements on an ongoing basis (see Section C5), which includes keeping records, regular monitoring and reviewing the number of hours completed and planned. It must also document and record any pro-rata adjustments and describe any action taken in respect of a suspected breach of CPD requirements.<sup>158</sup>

## D8 Annual review

Regulated firms must hold an annual review of an employees' qualifications, development and experience needs.<sup>159</sup> It is up to the firm's discretion as to whether this requirement is incorporated into an employee's annual training.

## D9 Certificate of competency

There will be occasions when consumers will wish to confirm that the person performing a relevant function meets the standards of the MCC 2017. When this happens, the firm must provide the consumer with a **Certificate of Competency** on the firm's headed stationery.

An appropriate person within the regulated firm must sign the Certificate of Competency and the firm must maintain a record of all certificates issued. It must also carry out an annual review to ensure the certificates are still accurate and up to date.<sup>160</sup>



### Certificate of Competency

document issued to a consumer confirming that the person providing advice meets the minimum competency standards

<sup>157</sup> Part 3, MCC 2017.

<sup>158</sup> Part 5, MCC 2017

<sup>159</sup> Part 5, MCC 2017.

<sup>160</sup> Part 2(8), MCC 2017.



## E

## Ethics

In a business context, ethics is concerned with moral issues and 'doing the right thing'. Ethical conduct means acting in a fair and honest way and ensuring that the interests of the customer always take priority over the interests of the professional person and the firm.

In 2021 the Institute of Business Ethics (IBE) *Ethics at Work: 2021 International Survey of Employees* found that in terms of ethics in Irish organisations:

- 86% of employees said that honesty is practised always or frequently in their organisation. This is in line with the global average.
- 13% of Irish employees have felt pressured to compromise their organisation's standards of behaviour. Typical types of pressure are time pressure, unrealistic deadlines and following their manager's instructions.
- 57% of employees who have been aware of misconduct at work have spoken up about it with management, another appropriate person, or through another mechanism. Fifty-eight percent of those who spoke up were satisfied with the result though 52% subsequently experienced personal disadvantage or retaliation.
- The main reasons why employees do not raise their concerns are that they felt they might jeopardise their job and that it was none of their business (both at 28%).<sup>161</sup>

Regulation and ethics normally go hand in hand. Observing rules and regulations is essential to 'doing the right thing'. However, compliance with regulation is not in itself a sufficient standard of conduct. This is because legislation and regulation cannot foresee every situation that might arise. Also, legislation often lags behind business developments and innovations. In such circumstances, there is still an obligation to act ethically. Insurers and intermediaries must adopt, and operate by, high ethical standards and must regard the law as the bare minimum required.

In insurance and financial services, the CPC sets the Central Bank's benchmark for good, ethical practice in dealing with all customers (including those who fall outside its definition of 'consumer'). The CPC requires that a firm must act honestly, fairly and professionally in the best interests of its customers and the integrity of the market while complying with the letter and spirit of the CPC.<sup>162</sup> However, compliance with statutory regulation in itself does not guarantee sound ethical conduct. For this reason, many firms also have mandatory codes of ethics/conduct that state the organisation's core values and the standards expected of employees.

<sup>161</sup> Institute of Business Ethics, 2021. *The Ethics at Work: 2021 International Survey of Employees*. Available on [www.ibe.org.uk](http://www.ibe.org.uk). This survey covered almost 10,000 employees in 13 countries over four continents. It was not exclusive to financial services providers; it covered all industry types and public services.

<sup>162</sup> Provision 2.1, CPC.

Ethical behaviour is critical to maintaining sound financial institutions and markets. Those who manage or direct financial institutions have a special responsibility to their stakeholders to ensure that ethical considerations are given as much, or indeed more, importance than economic factors. The board and senior management should set the tone for the ethical conduct of the business and put controls in place to ensure the firm's codes are observed in practice.



But why, if the IBE results are encouraging, do examples of unethical behaviour continue to arise in the financial services industry?

Ethical issues in the financial services industry affect everyone because everyone is a consumer of their products. Some reasons why these examples continue to arise are:

1. Some people equate moral behaviour with legal behaviour, disregarding the fact that even though an action may not be illegal, it may still not be moral.
2. Professional duty can conflict with company demands, e.g. a remuneration system can reward unethical behaviour such as selling unsuitable products to a consumer.
3. Individual responsibility can wither under the demands of a client; sometimes the push to act unethically can come from the client.
4. Some people suffer from stunted moral development, e.g. if the aim of a business is to maximise shareholder value, then some people may never look beyond this stated aim to consider any ethical issues.
5. Self-interest sometimes morphs into greed and selfishness; if left unchecked this self-interest is always at the expense of someone else.<sup>163</sup>

Professionals working within the insurance and financial services industries may also be subject to the ethical codes of their professional bodies. For example, The Insurance Institute Code of Ethics, shown in Extract 7.2, sets out the key ethical values that determine its members' standards of behaviour.<sup>164</sup>

<sup>163</sup> Federwisch, A., 2015. *Ethical issues in the Financial Services Industry*. Markkula Centre for Applied Ethics at Santa Clara University. 06 October. Available on [www.scu.edu](http://www.scu.edu)

<sup>164</sup> The Insurance Institute of Ireland, Code of Ethics and Conduct, [www.iii.ie](http://www.iii.ie).

## 7.2

**Extract** The Insurance Institute of Ireland Code of Ethics and Conduct

The key values that set the standards for the behaviour of all The Insurance Institute members are:

- a. Behaving with responsibility and integrity in their professional life and taking into account their wider responsibilities to society as a whole; acting in a courteous, honest and fair manner towards anyone they deal with; being trustworthy and never putting their interests or the interests of others above the legitimate interests of their stakeholders
- b. Complying with all relevant laws (including the laws of The Institute) and meeting the requirements of all applicable regulatory authorities and appropriate codes of practice and codes of conduct
- c. Demonstrating professional competence and due care, including:
  - meeting the technical and professional standards relating to their level of qualification, role and position of responsibility
  - completing their duties with due skill, care and diligence
- d. Upholding professional standards in all dealings and relationships
- e. Respecting the confidentiality of information
- f. Applying objectivity in making professional judgements and in giving opinions and statements, not allowing prejudice or bias or the influence of others to override objectivity.

Students are encouraged to read the full text of The Insurance Institute Code of Ethics, which also sets out the application of these standards to key stakeholders. As with other professional bodies, a breach of the Code by a member may result in disciplinary action by The Insurance Institute.

**fiduciary relationship**

a relationship recognised by the law as being based on trust and responsibility (which, in the insurance context, means that legal duties and obligations are placed on the agent for having undertaken to perform certain activities on behalf of the principal)

**E1 The importance of trust**

The relationship between the adviser and client is one of trust, confidentiality and responsibility. This is known as a **fiduciary relationship**. An appreciation of this is central to establishing and maintaining an ethical relationship.

People expect high standards from those they entrust with their money and financial affairs. In the insurance sector, a firm's reputation relies much more on trust than regulation. To put it simply: 'Trust is like oxygen – vital to human flourishing and unnoticed until it goes missing'.<sup>165</sup>

<sup>165</sup> Smith & Reeves, *Papering over the cracks? Rules, regulation and real trust*, Provocation Series, vol. 2(1), paper, The Work Foundation, 2006.

Extract 7.3 captures Derville Rowland's view on the importance of trust.

7.3

### Extract Conduct, culture and trust – priorities for 2021

The philosopher Onora O'Neill, known for her contribution to the UK Banking Standards Board, relays the story of Confucius teaching his disciple about government and saying it needs three things: weapons, food and trust.<sup>166</sup> If forced to abandon something, a government should first abandon its weapons, then its food, but guard trust to the end, because 'without trust, we cannot stand'.

Onora O'Neill emphasises that it isn't only rulers and governments who need trust – but every one of us as individuals, every institution, and every profession.<sup>167</sup>

Example 7.2 outlines a review undertaken and rules introduced by the Central Bank to protect consumers and their confidence and trust in the insurance market.



#### differential pricing

where customers with a similar risk and cost of service are charged different premiums for reasons other than risk and cost of service

#### price walking

where customers are charged higher premiums relative to the expected costs the longer they remain with an insurer



### Example 7.2

The Central Bank's *Review of Differential Pricing in the Private Car and Home Insurance Markets (Final Report and Public Consultation) 2021* concluded that the practice of **price walking** could result in unfair outcomes for some consumers in the private car and home insurance markets. It noted that practices such as this erode trust in the insurance industry.<sup>168</sup>

Arising out of this Review, the **Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Insurance Requirement) Regulations 2022** introduced measures to protect consumers and make buying these types of insurance fairer. These measures included:

- a ban on price walking
- a requirement for firms to conduct an annual review of pricing policies and practices
- a requirement for firms to ensure that the automatic policy renewal process is consistent and transparent.<sup>169</sup>

Insurers provide an intangible service, one that customers, particularly personal consumers, often have little or no expertise in. So trust in those who manage and control firms and those who provide advice is paramount. It is likely the single most important factor for the survival and growth of the firm.

<sup>166</sup> See: the 2002 BBC Reith Lectures, Lecture 1: [www.bbc.co.uk/radio4/reith2002/lecture1.shtml](http://www.bbc.co.uk/radio4/reith2002/lecture1.shtml)

<sup>167</sup> Central Bank of Ireland (News & Media – Press Releases), 'Conduct, culture and trust – priorities for 2021' (speech to BFPI Membership Forum), 16 March 2021, [www.centralbank.ie](http://www.centralbank.ie).

<sup>168</sup> Central Bank of Ireland, 2021. *Review of Differential Pricing in the Private Car and Home Insurance Markets (Final Report and Public Consultation)*, p.27, July 2021, [www.centralbank.ie](http://www.centralbank.ie)

<sup>169</sup> Central Bank of Ireland (Regulation – Industry and Market Sectors), 'Home and Motor Insurance Rules', [www.centralbank.ie](http://www.centralbank.ie).

## E2 Conflicts of interest

Given that the insurance industry operates on the basis of fiduciary relationships which require trust, confidentiality and responsibility, arguably the basis for the practice of insurance has always been ethically sound. However, it would be naïve to assume there are no obstacles to an ethical approach. Market pressures can sometimes tempt an adviser or firm to act in a way that conflicts with their ethical and regulatory duties towards a consumer. Such situations are referred to as ‘conflicts of interest’.

Table 7.1 shows some examples of conflicts of interest.

Table 7.1 Examples of conflicts of interest	
Description	Potential conflicts
An adviser has authority to settle claims on behalf of an insurer under a scheme arrangement.	Where the adviser has a profit-share arrangement, they might encourage the client to accept less than the full claim value for the sake of a speedy settlement, e.g. if the client is struggling financially.
The adviser operates a delegated authority scheme.	As such arrangements add to the adviser’s earnings, there is less incentive to offer a product that is not in the scheme. Consequently, the adviser may be unwilling to properly research the market to offer their client the best deal.
Commissions and earning levels vary between insurers.	There is a temptation to only market to insurers that provide higher commissions/earnings.



### Example 7.3

The Central Bank fined the European life and pensions division of Axa (Dublin-anchored Axa Life Europe (ALE)) €3.6 million for a number of regulatory breaches relating to risk management and the group’s handling of conflicts of interest which occurred between 2006 and 2019.

Originally set at €5.2 million, the fine was reduced by 30% after the firm made an early admission to the infringements under the terms of the Central Bank’s settlement discount scheme.

The Central Bank found that ALE ‘failed to establish effective conflict-of-interest policies and procedures and that it failed to conduct an adequate assessment of potential conflicts of interest’.

Seána Cunningham, Central Bank Director of Enforcement and Anti-Money Laundering said:

It is important that firms identify, assess and manage the risks to which they are or might be exposed, to ensure that they can meet their commitments to consumers.<sup>170</sup>

<sup>170</sup> Ian Curran, ‘Central Bank fines Axa €3.6m over ‘serious’ risk failures’, *The Irish Times*, 9 December 2022, [www.irishtimes.com](http://www.irishtimes.com)

## E2a Regulatory requirements

Good ethical practice demands that the interests of the client are always more important than those of the adviser or firm. This principle is at the core of the CPC requirements regarding conflicts of interest. Principle 2.7 of the CPC states that a firm must, in all its dealings with customers, 'seek to avoid conflicts of interest'.

As we saw in Table 7.1 and Example 7.3, conflicts of interest can often arise during the conduct of insurance business. Some of these are subject to specific rules (e.g. remuneration) and others must be identified by the firm. The CPC states that:

- There must be a written conflicts of interest policy
- The policy must be in operation
- The policy must be appropriate to the nature, scale and complexity of the regulated activities.<sup>171</sup>

Each firm is required to engage in a process to determine their own policy. A one-size-fits-all approach will not work. Appendix 1 at the end of this chapter shows a sample conflicts of interest policy.

Where a conflict cannot reasonably be avoided, the nature of the conflict should be disclosed to the consumer. The consumer must then acknowledge in writing that they wish to proceed. The firm must also ensure that the conflict does not result in damage to the interests of the consumer.<sup>172</sup>

All remuneration arrangements must be supported by clear written procedures. The specific rules that apply to conflicts relating to intermediary or employee remuneration are covered in Chapter 4C3a.

All relevant employees within a firm must be aware of the procedures. Where there is potential for conflict or abuse, the CPC requires that effective **Chinese walls** are in place between the different business areas.<sup>173</sup>

Conflicts may also arise in relation to gifts and hospitality. Under Provision 3.25A of the Central Bank's 2019 *Addendum to the Consumer Protection Code 2012*, **non-monetary benefits** are allowed only if they enhance the quality of the service to the consumer. Examples of such non-monetary benefits would include training courses or conferences.

Provision 3.28A of the same addendum required firms to avoid conflicts of interest relating to remuneration linked to the achievement of targets that do not consider the consumer's best interests (i.e. targets based on volume of business placed or business retention).



### Chinese wall

an arrangement within an organisation (or with an associate of the firm) that requires information in one business area to be withheld in certain circumstances from other operating units or from those who deal with in the course of carrying on another part of its business

### non-monetary benefit

benefit that is capable of enhancing the quality of the service provided to a consumer. If described as 'minor', it is of a scale/nature such that would not impair compliance with a firm's duty to act in the best interest of the consumer

<sup>171</sup> Provision 3.28, CPC.

<sup>172</sup> Provision 3.29, CPC. Note this Provision does not apply to conflicts of interest that must be avoided under Provision 3.28A, Central Bank of Ireland, Addendum to the Consumer Protection Code 2012, September 2019 (Updated May 2021).

<sup>173</sup> Provision 3.33, CPC.



## E3 Whistleblowing

A **whistleblowing** or 'speak-up' policy or facility is a key part of the ethical code of firms and can be an additional incentive to behave ethically or to desist from unethical behaviour. Such a policy or facility allows employees to safely voice concerns about possible malpractice, fraud or any wrongdoing. It also permits a firm to deal with the issue in time to prevent serious reputational and other damage. Employees who raise such issues should be confident of being treated fairly and not victimised.

The **Central Bank (Supervision and Enforcement) Act 2013** (as amended) introduced statutory protection for **whistleblowers** in the financial services industry. To qualify for protection under this Act, the reporting of the offence must be reasonable and in good faith, i.e. not knowingly or recklessly false, misleading, frivolous or vexatious. The Act provides that employees who make disclosures in good faith will be protected from civil liability and from penalisation or threats of penalisation at work.

All persons performing PCFs have an obligation to report any breaches of financial services legislation committed by their firm to the Central Bank, unless they have a reasonable excuse for not doing so (e.g. the PCF is not required to disclose information which would incriminate themselves, or information that the firm has already reported to the Central Bank). Failure by a PCF to disclose a breach to the Central Bank, without reasonable excuse, is a basis for the Central Bank to start an investigation into the PCF's fitness and probity.

Under the **Protected Disclosures Act 2014** (amended by the **Protected Disclosures (Amendment) Act 2022**), whistleblowers in all sectors of the economy are protected from both civil liability and any form of penalty by an employer. Previously, an employer could treat an employee who 'blew the whistle' as being in breach of confidentiality and, therefore, in breach of their employment contract. This Act permits disclosures to be made anonymously and without an express requirement of good faith.

A protected disclosure means the disclosure by an employee of relevant information that comes to their attention in connection with their employment, and which in their reasonable belief shows a 'relevant wrongdoing'. Relevant wrongdoing is widely defined in the Act and includes:

- Commission of criminal offences
- Failure to comply with legal obligations
- Endangering the health and safety of individuals
- Damaging the environment
- Miscarriage of justice
- Misuse of public funds
- Oppressive, discriminatory, grossly negligent or grossly mismanaged acts or omissions by a public body
- Concealment or destruction of information about any of the above wrongdoings.

The Central Bank does not publish case studies on protected disclosures but Case study 7.4 from the Financial Conduct Authority (FCA) in the UK is provided to give an example of whistleblowing in the insurance industry.

## Case study 7.4

**The whistleblower:** Steve had concerns about the mis-selling of specific types of insurance in his workplace. He tried to speak to his manager and other colleagues but he didn't feel listened to and became increasingly uncomfortable at work.

Steve decided to speak to the FCA after seeing a poster at work. He rang the Whistleblowing team and spoke to a team member about how the FCA would handle his concern and, importantly, keep his identity protected.

Once Steve had been reassured, he shared further details about what had been happening at work, the training he had received, the products of concern and why he felt there had been mis-selling. Steve provided all details during one phone call. Although he was initially nervous to speak to the FCA, once Steve had told someone about his concerns, he felt like a weight had been lifted from his shoulders.

### What the FCA did:

**FCA Whistleblowing team:** The Whistleblowing team member explained that, if needed, they would contact Steve again to get any more information they needed. Steve was told that once his report had been reviewed by the most relevant team, he would find out if the FCA had been able to develop upon his concerns. The Whistleblowing team member also advised Steve that they would be his contact throughout the review process.

After a few months, Steve received feedback from the Whistleblowing team member that, following his disclosure, the FCA had made more enquiries with his firm.

**FCA supervisor:** 'We receive information from many different sources, but whistleblowing intelligence is valuable and can help us to get to the heart of an issue quickly. In this case, I used the information provided by the whistleblower, about the mis-selling of insurance and inadequate training being provided to employees, to request information from the firm about their practices and procedures (for advising customers and their training and competence arrangements).

Knowing the nature of the concerns allowed me to ask questions of the firm and to request information without compromising the whistleblower. I was able to do this quickly too. When I had received the information from the firm, it was clear I needed to carry out further work with the firm to address the potential harms, and mitigate the risk to consumers.'<sup>174</sup>

The **Protected Disclosures Act 2014** requires public bodies to publish a report each year relating to the number of protected disclosures made in the preceding year, in addition to detailing the action taken in response to these disclosures. In 2021, the Central Bank received 231 protected disclosures. Each disclosure was assessed and led to enhanced supervision, risk mitigation programmes, inspections, warning notices and enforcement action.<sup>175</sup>

<sup>174</sup> Financial Conduct Authority, 2023. *Whistleblowing in Practice: Case studies*, [www.fca.org.uk](http://www.fca.org.uk)

<sup>175</sup> Central Bank of Ireland, 2022. *Central Bank of Ireland 2021 Report on Protected Disclosures*, [www.centralbank.ie](http://www.centralbank.ie).



The **Whistleblowing Directive 2019** aimed to introduce a Europe-wide standard for the protection of whistleblowers. The **Protected Disclosures (Amendment) Act 2022** transposed this Directive into Irish law and came into effect in January 2023. This Act:

- provides for the creation of the Office of the Protected Disclosures Commissioner
- adds to the list of 'relevant wrongdoings'
- introduces a wider obligation to have a protected disclosures policy
- extends the persons protected and the levels of protection provided
- introduces obligations to facilitate whistleblowing
- extends the definition of penalisation (of whistleblowers)
- introduces penalties for retaliation against whistleblowers.

## E4 Good ethical practice

There should be no inherent difficulty in achieving both ethical and business objectives side by side. Good ethical standards should translate into good business practice.

Good ethical practice within a firm delivers many benefits that:

- Ensure the ongoing trust of customers, employees and investors
- Maintain the firm's good reputation in the market
- Reduce the number of complaints and the resources needed to investigate them
- Demonstrate compliance with regulatory and statutory responsibilities.

On the other hand, poor ethical practice leads to undesirable consequences. For example:

- The cost of doing business increases. It is always more cost-effective to do the job properly first time round rather than having to redo it and rebuild the relationship with the customer.
- The quality of decision-making declines. This creates knock-on effects such as lowering the quality of the firm's culture and staff morale.
- The fairness of the market is compromised. The discovery of a firm's poor ethical practices creates negative publicity, both for the firm and for the industry.
- Litigation increases. Reputations are vitally important and any litigation will have a negative effect on the firm.
- Erosion of trust occurs between parties. This can create distrust in the sector and in the financial system as a whole.

It is important to remember that ethical obligation is not restricted to individual responsibility in a particular situation. The Central Bank approach is to hold the board and management fully accountable for the ethical conduct of a firm. The board of each firm is responsible for its effective, prudent and ethical oversight. Senior management must lead by example, and in doing so, create a powerful culture of compliance and of 'doing the right thing'.

## E5 Ethical scenarios

We will now look at how ethical principles may be tested in practice. Consider carefully the ethical scenarios outlined in Examples 7.4 to 7.6. In each instance, note down the issues they raise, the dilemmas they pose and your own view of what would be the 'right thing to do'. This will enable you to compare your own assessments with those we will make later in Section E6.



### Example 7.4

#### Ethical scenario – client trust

You are an adviser in a firm of insurance brokers. You have recently negotiated what the client believes was a very good deal with an insurer regarding a recent claim under their motor policy. The client now wants to obtain commercial property insurance through your firm.

As you have the trust of your client, they no doubt assume you will recommend an insurance proposition that represents the best value available in the market for the cover required.

However, there are so many other pressures on your time that you hope to place the business quickly. You approach a perfectly sound insurer and obtain a quote. You advise the client that the quote is based on only a limited analysis of the market, with only one insurer. Rightly or wrongly, the client believes you would have approached more insurers to obtain a fair and personal analysis of the market if you had thought it appropriate.

You have complied with the letter of what is required. You have not claimed a fair and personal analysis of the market. You have not been swayed by higher commission earnings. From an ethical perspective, was this the right thing to do?



### Example 7.5

#### Ethical scenario – private health insurance

You are employed by a private health insurer. Peter wishes to arrange a private health insurance policy with your company. He cancelled his previous plan with another insurer at renewal six months ago, because he had been upset by the poor service he received when it settled a claim.

You have discussed his needs and he is pleased that your plans have slightly lower excess levels than his previous plan. However, because you are employed by an insurer, you cannot comment on other differences between the two covers as you cannot give advice on another insurer's products. You are concerned that he does not fully understand the implications of the waiting periods that apply, because of the time lapse between his plans.

How far do you have to go in pointing out the limitations that may arise because of waiting periods (when you know that all private health insurers apply them)?



### Example 7.6

#### Ethical scenario – competitors

You are an adviser in a firm of insurance brokers and have researched the whole of the insurance market for your client, a small firm of printers. The terms and price for the cover they require are the best available in the market, so you are ready for the renewal meeting. However, when you arrive at the meeting the client tells you that another adviser has produced a cheaper quote for a wider range of cover. The other broker has accessed a scheme arrangement. You considered this arrangement but know that, because of the very high business interruption sum insured, the client is not eligible for this scheme.

What should you do?

## E6 Ethical scenarios – assessments

We will now assess the issues involved in each scenario.

### Ethical scenario

#### Assessment (Example 7.4) Ethical scenario – client trust

It would be easy to say that the scenario should never materialise in the first place, and that a fair and personal analysis should have been taken from the beginning. And of course, it is true to say that the firm's systems and procedures should have automatically prevented staff from resorting to this behaviour in response to work pressures.

Also, nothing has been stated to the client that is technically incorrect. But what is the right thing to do now?

The correct ethical approach must be as follows:

- Do not keep quiet in the hope that no one will find out.
- Do not hide the matter. Admit your mistake.
- Put things right as far as possible, whatever stage the matter has reached.

At this stage the following practical steps may be necessary:

- Check the market to see whether a more suitable option is available.
- If it is, admit your mistake to a line manager. Perhaps rectification would be more appropriate coming from that person.

This implies that, for an ethical culture to operate effectively within a firm, it must be a culture in which staff feel free to speak up when pressures mount to the point that they need help to do a fully competent job. Also, when mistakes occur, the culture should allow mistakes to be admitted and dealt with in a positive way.

## Ethical scenario

### Assessment (Example 7.5) Ethical scenario – private health insurance

There may be pressures to make sales – or maybe just the pressure to keep your job! However, the situation in this scenario is relatively straightforward. Whatever the conflicts of interest, the consumer's interests must be put first.

The ethical approach is to emphasise to the client the serious drawbacks of the waiting periods; these cannot be glossed over just because they are likely to apply wherever the client places their insurance. All relevant waiting periods must be disclosed.

## Ethical scenario

### Assessment (Example 7.6) Ethical scenario – competitors

This scenario raises an important question about the extent to which it is ethically appropriate to comment on the practice of a competitor. It requires judgement, as do most ethical decisions. Here are some general guidelines that may be of assistance:

- In general, an adviser (whether advising on behalf of an intermediary or insurer) should not seek to criticise competitors.
- Where there are externally verifiable facts that conflict with advice given by others, it is legitimate to point these out, even if the effect is to appear to criticise another's advice.
- The winning or losing of business must not influence the ethical stance taken.
- Where an adviser has a different view about the basis of advice that others have given to a client, it is reasonable to raise the matter with the client. However, the adviser should not raise the matter in a way that criticises the competitor.

For example, in this scenario you know that further down the line there may be problems for the client if the insurer realises the client's ineligibility. It is perfectly reasonable to identify that there are eligibility requirements you feel the client has not met. Explain these to the client and point out why you did not therefore pursue this option with the insurer.

**F**

# Summary

In this chapter we have considered the practice of insurance in the light of three mutually dependent areas: fitness and probity, minimum standards of competency, and ethics. All three are vital elements in delivering competent, professional and responsible advice and service. The Central Bank's Individual Accountability Framework is expected to have a very significant impact on the promotion of such behaviours by individuals and firms.

## F1 What's next?

In the next (and final) chapter, we will consider the regulatory provisions that apply to disputes between consumers and their firms.

## F2 Study tips

It is important to remember that this textbook is the primary information source for this module. All the questions in your exam will relate directly to information featured in the textbook. Use the 'End of chapter questions', 'Quick questions' and the 'Sample multiple-choice questions' to quickly test what you've learned so far. Make a note of any topics/areas you need to improve in and keep it to hand so you can refer to it when you revise this chapter again before your exam.

In addition to the textbook, your Member Area has many online learning supports that can help you as you study this module.

## F3 Online learning supports

Your Member Area includes a Guide to Success, an automated study planner, an exam countdown timer and study tips guide. These learning supports are invaluable in reinforcing what you have learned from the textbook so far. The webinars, chapter-by-chapter key points and other supports will help you to break down the chapter content when revising.

Completing online mock exams and reviewing the personalised feedback that follows is a great way of testing your knowledge and preparing for exam day.

To access these online learning supports, just log into the Member Area of [www.iii.ie](http://www.iii.ie) and click on the Connect logo.

## Appendix 1: Sample Conflicts of Interest policy

[Name of firm] will strive to avoid any conflicts of interest between the interests of the organisation on the one hand, and personal, professional, client and business interests on the other. This includes avoiding actual conflicts of interest as well as the perception of conflicts of interest.

The purpose of this policy is to protect the integrity of the organisation's decision-making process, to enable our stakeholders to have confidence in our integrity, to protect the integrity and reputation of staff and to protect our client's best interests.

On appointment, each [Name of firm] staff member will make a full, written disclosure of interests, such as relationships and posts held, that could potentially result in a conflict of interest. This written disclosure will be kept on file and updated as appropriate.

[Name of firm] has endeavoured (below) to identify the main conflicts of interest that may arise. However, it is impossible to foresee every eventuality and therefore [Name of firm] relies on voluntary disclosure of potential conflicts of interest by its staff members.

1. [Name of firm] must act with due skill, care, diligence and in the best interests of its clients at all times. [Name of firm] must seek to avoid conflicts of interest between a client and:
  - a. [Name of firm], its managers, employees, appointed representatives and any person directly or indirectly linked to [Name of firm]
  - b. Another [Name of firm] client.
2. For the purpose of identifying the types of conflicts of interest that arise, or may arise, in the course of providing a product to a client, [Name of firm] must take into account, as a minimum, whether [Name of firm] or its staff members:
  - a. Possess outside interests, affiliations or relationships that could create a bias for or against the client (such as family relationships or close friendships, previous employment, past or present business or professional partnership)
  - b. Are likely to make a financial gain, or avoid a financial loss, at the expense of the client
  - c. Have an interest in the outcome of providing a product to the client that is distinct from the client's interest in that outcome
  - d. Have a financial or other incentive to favour the interest of one client over the interests of another client
  - e. Receive or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service.
3. Examples of conflicts of interest for a [Name of firm] staff member include:
  - a. Passing large amounts of business to a particular insurer, because they previously worked for the insurer and still have friends there
  - b. Passing large amounts of business to a particular insurer, because they have a relative or friend working there
  - c. Receiving goods or services in return for agreeing to direct business to a particular insurer.
4. [Name of firm] must take adequate steps to maintain a clear audit trail that evidences both its consideration of the client's needs and the decision-making processes that led to a particular market being chosen.

## Appendix 1: Sample Conflicts of Interest policy (cont)

5. The failure to properly manage and mitigate conflicts of interest potentially increases the likelihood that individual policy placement decisions may be made in the interests of [Name of firm] rather than its clients, which could result in clients:
  - a. Paying more for core insurance products than they need to
  - b. Purchasing add-on insurances and services that they may not need
  - c. Paying more for secondary products like premium finance.
6. Where conflicts of interest arise and cannot be reasonably avoided:
  - a. The [Name of firm] staff member(s) concerned must report the matter to [Name of firm] senior management or compliance function, orally or in writing, within 1 business day of becoming aware of a conflict of interest having arisen or having the potential to arise.
  - b. [Name of firm] must disclose the general nature and/or source of the conflict of interest to the affected client(s) in writing. [Name of firm] will only undertake business with a client with whom it has a direct or indirect conflicting interest, where that client has acknowledged in writing that they are aware of the conflict of interest and still wants to proceed. Such disclosure to the client must include sufficient detail to enable that client to make an informed decision with respect to the service, in the context of which the conflict of interest arises.
  - c. [Name of firm] must ensure that the conflict of interest does not result in damage to the interests of the client.
7. [Name of firm] must ensure that its commission arrangements with product producers:
  - a. Do not impair [Name of firm]'s duty to act in the best interests of clients
  - b. Do not give rise to a conflict of interests between [Name of firm] and the client.
8. [Name of firm] must ensure that its remuneration arrangements with employees, in respect of providing, arranging or recommending a product to a client, are not structured in such a way that will potentially impair [Name of firm]'s obligations to:
  - a. Act in the best interests of clients
  - b. Satisfy the suitability requirements set out in the Central Bank Consumer Protection Code.
9. [Name of firm] must ensure that its staff members do not accept any gifts or rewards (monetary or otherwise) likely to conflict with their duties in relation to their activities in [Name of firm].
10. [Name of firm] must undertake an appropriate analysis of the conflicts of interest situations that have arisen in the past on a regular basis, including investigating whether such conflicts of interest indicate an isolated or more widespread issue.

This policy is meant to supplement good judgement. Staff and management members should respect its spirit as well as its wording.

Date adopted: \_\_\_\_\_

Signed: \_\_\_\_\_







# End of chapter questions

Use these questions to test your understanding of what we've covered in Chapter 7.

1. State what is meant by the term 'probity'.  

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2. With regard to pre-approval controlled functions, briefly explain what is meant by the term 'pre-approval'.  

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3. State the three claims roles included in the Minimum Competency Code 2017 specified functions.  

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4. List any four actions that are specifically excluded from the Central Bank's definition of 'providing information'.  

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5. Briefly describe what a training process for new entrants must include if it is to comply with the Minimum Competency Code 2017.  

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6. Briefly explain the requirements that need to be met for a role to qualify as a 'prescribed script function'.  

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7. Outline a person's position if they fail to complete the required number of CPD hours in a calendar year.  

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8. Outline the most effective solution to avoid conflicts that may otherwise arise for an intermediary that operates a delegated authority scheme.  

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9. State the Consumer Protection Code provision that relates to non-monetary benefits.  

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10. List four examples of actions that would be considered as a 'relevant wrongdoing' under the **Protected Disclosures Act 2014**.  

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11. State the purpose of the **Whistleblowing Directive 2019**.  

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# Answers to end of chapter questions

**Check your answers against those below and make a note of any points you left out. This will highlight some sections you may need to look at more closely during your revision.**

1. The term 'probity' relates to character and refers to a person's honesty, fairness and ethical attitude.
2. Pre-approval means that the Central Bank must approve the person for the function, in writing, before they are appointed to the job.
3. The three claims roles included in the MCC 2017 specified functions are:
  - Assisting in making a claim
  - Determining the outcome of claims
  - Direct management or supervision of those in the firm who carry out those claims functions.
4. Any four actions from the following:
  - Employees pointing out where information can be found
  - Providing information of a general nature
  - Providing a brochure or booklet or similar documents without giving additional information with regard to its content or providing any follow-up advice
  - Information in a newspaper, journal, magazine or other publication (including electronic publications), which is not meant to lead the reader to a specific product or provider
  - Information in a lecture, seminar or similar presentation, which is not meant to lead to a specific product or provider (and where the organisers or presenters earn no remuneration or other reward for sales that might occur because of that information)
  - Information in sound or television broadcasts, which is not meant to lead to a specific product or provider
  - Information provided by back-office employees who do not have direct contact with consumers
  - Information incidental to some other professional activity (not subject to the MCC 2017), where the purpose is not to assist a consumer with a retail financial product.
5. To comply with the MCC, a training process must include:
  - Initial training – a relevant training programme organised by the firm, or obtaining part of a relevant recognised qualification
  - Supervision – acting under the direct supervision of a qualified or grandfathered person, where all documentation relating to offering or arranging a product or specified function must be checked and signed off by a qualified or grandfathered person until obtaining a recognised qualification
  - Working towards a recognised qualification – defined as:
    - Registering for the first exam sitting available and, if failing the examination, each available sitting thereafter until the qualification is obtained
    - Working towards obtaining qualifications on a consistent and timely basis, until completion
    - Maintaining a record of all examinations completed, results obtained and examinations scheduled for completion
  - Timeframe – the maximum period for which a new entrant may participate in the training process is 4 years in total.

6. For a role to qualify as a 'prescribed script function', a person must operate within a narrow and rigid set of criteria and according to a prescribed script and routine, and must meet the following criteria:
  - They must operate according to a script developed by someone who meets the standards set out in the MCC.
  - As part of initial training, they must participate in a training programme organised by the firm, or obtain part of a relevant recognised qualification relevant to the function.
  - They must complete additional training relevant to the function on an ongoing basis, to keep their knowledge up to date.
  - They must refer requests for information and advice that are outside the specific content of the script to a person who is a qualified or grandfathered person for that function.
  - The person must operate under the supervision of a person who is a qualified or grandfathered person for that function.
7. If a person fails to complete 15 CPD hours in any calendar year, they may make up the shortfall by the end of the following year (in addition to the requirement for that CPD year). This is provided the person has not incurred another shortfall within the previous 5 years.
8. The most effective solution is to operate a Chinese wall that separates the functions completely, thus permitting no pressure by other members of staff. This should be backed up by an effective sanctions regime for any attempts to bypass the wall.
9. Under Provision 3.25A of the Central Bank's 2019 *Addendum to the Consumer Protection Code 2012*, non-monetary benefits are allowed only if they enhance the quality of the service to the consumer. Examples of such non-monetary benefits would include training courses or conferences.
10. Any four actions from the following:
  - Commission of criminal offences
  - Failure to comply with legal obligations
  - Endangering the health and safety of individuals
  - Damaging the environment
  - Miscarriage of justice
  - Misuse of public funds
  - Oppressive, discriminatory, grossly negligent or grossly mismanaged acts or omissions by a public body
  - Concealment or destruction of information about any of the above wrongdoing.
10. The **Whistleblowing Directive 2019** aimed to introduce a Europe-wide standard for the protection of whistleblowers.

## Answers to quick questions

1. PCFs incorporate functions that primarily concern the maintenance of good corporate governance or heading up significant functional areas or regulatory roles. Persons in PCFs hold positions and perform tasks that can significantly influence the affairs of a financial service provider.
2. Yes, it is included. The act of explaining or clarifying what is said in the material takes it beyond 'providing a brochure or booklet or similar documents without giving additional information with regard to its content or providing any follow-up advice'.
3. If the rules relating to acquiring a recognised qualification were relaxed to the status of, for example, guidelines, there would be an inevitable reduction in suitably qualified individuals and an undermining of competence which is fundamental to giving advice.
4. The person must refer requests for information and advice that are outside the specific content of the script to a person who is qualified or grandfathered for that function.



# Sample multiple-choice questions

1. In relation to the qualifications that meet the terms of the Central Bank Minimum Competency Code, the role of the Central Bank is to:
- A. work in partnership with the relevant professional bodies to design educational programmes
  - B. monitor the prudential supervision of the professional bodies offering recognised educational programmes
  - C. set and review the competencies and confirm if a professional qualification meets its particular standard
  - D. grant exemptions from recognised educational programmes for programmes taken in another EU member state.

Your answer:

☐

2. Trisha is attending an accredited seminar that is being delivered by DataCon Consultancy. Six hours of the seminar are devoted to data protection and 3 hours to freedom of information. Both topics are directly relevant to her current role. How many hours will count towards Trisha's Continuing Professional Development requirement?
- A. 3
  - B. 5
  - C. 7
  - D. 8

Your answer:

☐

3. Under the Central Bank Consumer Protection Code, in order for a firm to avoid conflicts of interest with respect to gifts and hospitality, it must ensure that:
- A. effective Chinese walls are in place between the firm and its connected parties
  - B. its employees or agents never offer, give, solicit or accept any gifts or rewards
  - C. non-monetary benefits are only allowed if they enhance the quality of the service to the consumer
  - D. its agents introduce a certain level of business from consumers in order to retain an appointment.

Your answer:

☐

# Answers to sample multiple-choice questions

## Question 1

**Chapter reference:** Chapter 7C1

**Question type:** K

**Correct response:** C

**Learning outcome:** Identify the importance of fitness and probity in the insurance market and demonstrate the effect of the **Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2011** and the Central Bank Minimum Competency Code.

## Question 2

**Chapter reference:** Chapter 7C5a

**Question type:** A

**Correct response:** C

**Learning outcome:** Identify the importance of fitness and probity in the insurance market and demonstrate the effect of the **Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2011** and the Central Bank Minimum Competency Code

## Question 3

**Chapter reference:** Chapter 7E2a

**Question type:** U

**Correct response:** C

**Learning outcome:** Explain the importance of ethical standards in the insurance market, particularly in situations involving conflicts of interest or whistleblowing.







# Dispute resolution

## What to expect in this chapter

This chapter will deal with:

- The regulatory requirements concerning errors and complaints
- Some mechanisms for resolving disputes between a consumer and a financial service provider.

Throughout this textbook, we have considered the ways that government, regulators and industry bodies ensure best practice and the fair treatment of consumers. We studied the provisions of the statutory and voluntary codes that aim to protect consumers in their dealings with regulated firms and minimise potential problems or disputes.

However, it is not possible to completely eliminate complaints or disputes about insurance products and services. There may also be situations where, despite a firm's commitment to best practice, errors still occur during the insurance process.

## Learning outcomes for this chapter

Section	Title	At the end of each section you should be able to:
<b>A</b>	<b>Resolving errors and complaints</b>	Demonstrate the effect of the Central Bank Consumer Protection Code on errors and complaints resolution.
<b>B</b>	<b>Financial Services and Pensions Ombudsman</b>	Explain the role of the Financial Services and Pensions Ombudsman in dispute resolution.
<b>C</b>	<b>Insurance Compensation Fund</b>	Explain the role of the Insurance Compensation Fund and the Investor Compensation Scheme and demonstrate the limitations of these schemes.
<b>D</b>	<b>Investor Compensation Scheme</b>	

## A

# Resolving errors and complaints

If an insurer or intermediary discovers an error in dealing with consumers, the Central Bank requires that it takes immediate and appropriate action. Firms must have effective written procedures for dealing with errors and rectifying the causes. Similarly, they must have in place robust procedures for dealing with consumer complaints.

Before we consider the specific rules for errors and complaints, it is worth remembering that Principle 2.8 of the CPC states that a firm, in all its dealings with customers must 'correct errors and handle complaints speedily, efficiently and fairly'.

Chapter 10 of the CPC sets out the requirements for firms in relation to errors and complaints but treats them as two separate issues.



## A1 Errors

The Central Bank reminds boards and senior management on an ongoing basis that they are key to setting the tone and culture in an organisation and to setting the governance processes around the handling of errors.<sup>176</sup>

Errors can arise in a number of ways. For example:

- Incorrect brokerage fee applied
- Wrong or insufficient cover
- Misinterpretation of the policy which negatively affects the claims settlement
- Failing to issue documentation or rebates/refunds
- Wrong no claims discount scale applied
- A system error resulting in a failure to record penalty points
- Omitting an element of cover a client has requested
- A failure to issue Terms of Business Document
- A pricing error leading to overcharging.

<sup>176</sup> Central Bank of Ireland, 'Feedback on Desk-Based Review on Governance of Errors' Processes within Banks and Insurers' (Regulation – Consumer Protection, Compliance Monitoring, Reviews), 2015, [www.centralbank.ie](http://www.centralbank.ie)



### Quick question 1

Does the requirement for a firm to inform the Central Bank that an error has not been fully resolved within 40 business days only apply to errors which impact negatively on consumers and if so, why?

The answer is at the end of this chapter.



### Quick question 2

An insurer discovers, as part of an audit, that claims staff have misinterpreted the private motor policy wording. As a result, they have been applying a higher excess to private motor theft claims than the policy states. What action should the insurer take?

The CPC requires firms to have effective written procedures in place that, at a minimum, allow them to:

- Identify the cause of errors
- Identify all affected consumers
- Analyse patterns of errors and investigate whether they are systemic or isolated
- Properly control the correction process
- Escalate (refer) errors to compliance/risk functions and senior management.<sup>177</sup>

## A1a Resolving errors

A firm must resolve all errors speedily and no later than 6 months after the date the error was first discovered. This includes the following (where possible):

- Correct any systems failures
- Ensure that effective controls are put in place to prevent any recurrence
- Refund (with appropriate interest) all those affected by the error
- As soon as possible, notify all affected consumers (both current and former) of any error that has, or may, impact negatively on the cost of the service or the value of the product provided.<sup>178</sup>

The 6-month period is absolute. However, where an error has not been resolved within 40 business days of the date it was first discovered, the firm must let the Central Bank know, in writing, within 5 business days of that deadline. In addition, a firm must not be allowed to benefit in any way from the error, e.g. a refund that cannot be repaid.<sup>179</sup>

## A1b Record-keeping

A firm must maintain a log of all errors affecting consumers. This log must contain:

- Details of the error, date and means of discovery
- The period over which the error occurred
- The number of consumers affected and the amounts involved
- The status of the error and the date on which it was finally resolved
- The number of consumers refunded and the total amount refunded.<sup>180</sup>

A record must be kept of all steps taken to resolve such errors, including details of the steps taken where:

- Any affected consumers were dissatisfied with the outcome
- There were difficulties contacting affected consumers
- A refund could not be repaid.<sup>181</sup>

<sup>177</sup> Provision 10.1, CPC.

<sup>178</sup> Provision 10.2, CPC.

<sup>179</sup> Provisions 10.3–10.4, CPC.

<sup>180</sup> Provision 10.5, CPC.

<sup>181</sup> Provision 10.6, CPC.

## A2 Complaints

The Central Bank places significant emphasis on the handling of complaints as illustrated by the settlement agreement between the Central Bank and AXA Insurance Ltd in July 2016 (see Example 8.1).



### Example 8.1<sup>182</sup>

In 2016, the Central Bank entered into a settlement agreement with AXA Insurance Ltd (AXA). The Central Bank imposed a penalty of €675,000 for breaches of the **Minimum Competency Requirements 2006**, the **Minimum Competency Code 2011** and the **Consumer Protection Code 2012**.

The Central Bank's Consumer Protection Supervision Division's inspection focused on the firm's claims department, particularly the team processing motor and property claims.

In respect of the CPC, AXA had failed to comply with the Complaints Resolution Provisions 10.9 and 10.10 of the CPC 2012 over a 6-month period from January to June 2014.

The Central Bank's Director of Enforcement, Derville Rowland, said:

The protection of consumers of financial services remains a high-level goal for the Central Bank and compliance with consumer focused legal and regulatory requirements is a key priority.

Non-adherence to the minimum competency standards can affect the quality of service provided to consumers and creates an unacceptable level of risk to consumers in their dealings with regulated entities by, amongst other things, exposing them to unqualified and/or inexperienced staff.

The CPC defines a complaint as an expression of grievance or dissatisfaction by a consumer, either orally or in writing, in connection with:

- The provision, or offer of provision, of a product or service to a consumer by a firm
- The failure or refusal of a firm to provide a product or service to a consumer.<sup>183</sup>

Every firm must have a written procedure for the proper handling of complaints. Whether a complaint is made orally or in writing, the firm must make an offer to the consumer to have it handled according to the complaints process. However, there is no need to follow the full process if the complaint has been resolved to the complainant's satisfaction within 5 business days. Either way, both the complaint and its resolution must be recorded in the complaints log.<sup>184</sup>

<sup>182</sup> Central Bank of Ireland, (News & Media – Press Releases), 'Settlement Agreement between the Central Bank of Ireland and AXA Insurance Limited', 28 July 2016, [www.centralbank.ie](http://www.centralbank.ie).

<sup>183</sup> Chapter 12, CPC, Definitions

<sup>184</sup> Provision 10.9, CPC.

## A2a Complaints handling procedures

There are specific requirements on how a firm should deal with a complaint from a consumer. At a minimum, the procedure must meet the following requirements:

- It must acknowledge each complaint in writing, within 5 business days of it being received.
- It must provide the complainant with the name of the individual(s) appointed by the firm to be the complainant's point of contact, until the complaint is resolved or cannot progress any further.
- It must provide the complainant with a regular update in writing on the progress of the complaint investigation, at intervals of no greater than 20 business days.
- It must attempt to investigate and resolve a complaint within 40 business days of receiving it.
- Where the 40 business days have elapsed and the complaint is not resolved, the firm must inform the complainant of:
  - The timeframe within which it hopes to resolve the complaint
  - Their right to refer the matter to the Financial Services and Pensions Ombudsman (FSPO)
  - The contact details of the FSPO.

Within 5 business days of the completion of the investigation, the firm must advise the consumer in writing of:

- The outcome of the investigation
- Where applicable, the terms of any offer or settlement being made
- The consumer's option to refer the matter to the FSPO
- The contact details of the FSPO.<sup>185</sup>



### Quick question 3

In what timeframe must a firm attempt to investigate and resolve a complaint once received?

<sup>185</sup> Provision 10.9, CPC.

## A2b Complaints - record-keeping and analysis

To comply with the complaints procedure, a firm must maintain an up-to-date log of all complaints from consumers. The log must contain:

- Details of each complaint
- The date the complaint was received
- A summary of firm's response(s), including dates
- Details of any other relevant correspondence or records
- The action taken to resolve each complaint
- The date the complaint was resolved
- Where relevant, the current status of a complaint that has been referred to the FSPO.<sup>186</sup>

Records for each complaint must be up to date and comprehensive.

The firm must undertake an analysis of the patterns of complaints from consumers on a regular basis. This includes an investigation of whether complaints indicate an isolated issue or a widespread pattern. The analysis must be referred to the firm's compliance/risk function and senior management.<sup>187</sup>



### Just think

Why would the Central Bank want the analysis of complaints patterns escalated to senior management?

While each complaint is important in its own right, the Central Bank emphasises that any complaints pointing to systemic weaknesses, or to a wide effect on consumers, must be considered at senior level and appropriate action taken.

Sometimes, disputes between a policyholder and an insurer cannot be resolved through the normal complaints process. For example, there may be a fundamental disagreement about policy cover or the amount of the claim paid.

In this situation, a final response letter should be issued to the complainant. This letter should set out what the firm has done to investigate the complaint through its complaint handling process and should advise the complainant to contact the FSPO if they want to pursue it further.

<sup>186</sup> Provision 10.10, CPC.

<sup>187</sup> Provision 10.12, CPC.

**B**

# Financial Services and Pensions Ombudsman

The Financial Services and Pensions Ombudsman (FSPO) deals independently and impartially with unresolved complaints from consumers about the conduct of a pensions provider or a regulated firm. The FSPO comprises an Ombudsman, a Deputy Ombudsman and any staff members appointed to the office. It is funded through two distinct sources - the financial services complaints are funded by a levy on firms and the pensions complaints are funded by the Exchequer, through the Department of Finance.<sup>188</sup> The service is impartial and free to the complainant.



An tOmbudsman Seirbhísí  
Airgeadais agus Pinsean

Financial Services and  
Pensions Ombudsman

In relation to the scope of the FSPO's current role, the term 'unresolved complaints' is important. The FSPO strongly encourages all parties to meaningfully engage in informal complaints handling processes and to only rely on its involvement as a last resort. Part of the FSPO process requires consumers to first make the complaint to their firm, which must handle the complaint in accordance with its internal complaints procedure (see Section A2).

Failing that the FSPO adopts a mediation-oriented approach to dispute resolution. Mediation, by telephone and email, is the FSPO's preferred approach to resolving complaints.

<sup>188</sup> For additional information, go to the Financial Services and Pensions Ombudsman website: [www.fspo.ie](http://www.fspo.ie).



## B1 Eligible complainants and ineligible complaints

The principal function of the FSPO is to mediate complaints made by eligible complainants about the conduct of regulated firms and, where necessary, to investigate and adjudicate on the complaint.

Eligible complainants (consumers) may be:

1. Private individuals
2. Limited companies
3. Sole traders
4. Trusts
5. Clubs
6. Charities
7. Partnerships.

In the case of 2–7, the annual turnover must not exceed €3 million.

A consumer may not be entitled to make a complaint if the conduct complained of:

- Is or has been the subject of legal proceedings before a court or tribunal
- Is or has been the subject of a decision of the Ombudsman, the Financial Services Ombudsman or the Pensions Ombudsman
- Occurred more than 6 years before the complaint is made (for short-term financial services)
- Was not communicated to the firm, or the firm was not given reasonable time to respond.

The FSPO can decide not to investigate a complaint or to discontinue investigating a complaint on any of the following grounds:

- The complaint is frivolous or vexatious or was not made in good faith.
- The subject matter of the complaint is trivial.
- The conduct complained of occurred too far in the past to justify investigation.
- An alternative and satisfactory means to redress the complaint is (or was) available to the complainant.
- The complainant has no, or insufficient, interest in the conduct complained of.
- The subject matter of the complaint is so complex that it would be more appropriate for the courts to deal with.
- The consumer fails within a reasonable period to comply with a request for further written particulars.

## B2 Decisions of the FSPO

Having investigated a complaint, the FSPO can direct the firm to do one or more of the following:

- Rectify or change the conduct complained of or its consequences.
- Provide reasons or an explanation for that conduct.
- Change the practice that was the subject of the complaint.
- Pay compensation to a maximum of €500,000 lump sum or an annuity payment of €52,000 (per year).
- Take any other lawful action.

The FSPO will send a preliminary decision to both parties after all the evidence has been reviewed. This can only be challenged if there have been possible errors of law or if there are significant additional points of fact to be considered; it is not an opportunity to revisit the complaint. Then a legally binding decision is made. Either party can appeal to the High Court within 35 calendar days of the decision.

Case studies 8.1 and 8.2 show examples of complaints that the FSPO dealt with.

### Case study 8.1

#### Automatic renewal of travel insurance – complaint upheld<sup>189</sup>

In June, Amy took out travel insurance, under the impression that it was a single year policy. A notice that automatic renewal would occur each year at renewal time unless otherwise notified was not included on the quote page. There was a notice at the bottom of the payments page, but Amy did not see it.

In May of the next year, the insurer emailed Amy with the subject line 'due for renewal'. Within the body of this email, it was explained that there was to be an automatic renewal unless she opted out by calling the insurer. Unaware that this was the case and not intending to renew, Amy did not open the email.

In June, the insurer emailed Amy to let her know that her policy had automatically renewed but that there was a 14-day cooling-off period for her to cancel the policy.

A month later, Amy realised that her policy had been renewed and she contacted the insurer to cancel the policy, seeking a refund. This request was denied.

The issue the FSPO had to decide was whether it was reasonable for the insurer to automatically renew Amy's travel insurance and subsequently refuse to cancel the policy and refund the premium paid. The FSPO felt the information relating to the policy's automatic renewal should have been brought to the attention of consumers before the policy was incepted and that it was unacceptable that the only way to 'opt out' of automatic renewal was to telephone the insurer especially given that all other transactions were conducted online. The FSPO found the company's refusal to cancel the policy and provide a refund a month after the renewal 'surprising and most inflexible'.

Considering the entirety of the complaint, the FSPO upheld Amy's complaint and directed the insurer to pay Amy €250 in compensation.

<sup>189</sup> Case study 8.1 and other FSPO decisions can be found on *The Ombudsman's Digest of Legally Binding Decisions Volume 1*, [www.fspo.ie/publications](http://www.fspo.ie/publications).

## Case study 8.2

### Loss of no claims discount following an incident with an uninsured driver – complaint upheld<sup>190</sup>

After an uninsured driver drove into his vehicle, Paul reported the incident to his insurer, with whom he had a commercial vehicle insurance policy. Speaking to a customer service agent working for the insurer, Paul verified that his no claims discount (NCD) would not be affected. He also contacted the Motor Insurers' Bureau of Ireland (MIBI) to ensure that this would be the case.

However, despite this being logged on the insurer's system, when Paul's private car and commercial vehicle policies were up for renewal, he found that his NCD had been reduced and his premiums increased.

Paul spoke with the same agent as before, but this time the agent claimed not to deal with renewals or NCDs and would not accept that what he was telling Paul contradicted what he had told him previously. Paul then rang the MIBI, which confirmed that it had written to the insurer stating that since Paul carried no liability, his NCD would not be affected.

The FSPO found that the service and information provided to Paul 'fell far short of what a consumer is entitled to' and noted the serious consequences for Paul. The FSPO highlighted the 'annoyance, frustration and distress' caused.

In upholding all aspects of Paul's complaint, the FSPO directed the insurer to pay €3,000 in compensation to Paul.

## B3 Reporting on named financial service providers

Section 25 of the **Financial Services and Pensions Ombudsman Act 2017** gives the FSPO 'naming and shaming' powers. If it is believed to be in the public interest, the FSPO may publish the names of those regulated FSPs that have had three or more adverse findings made against them in the previous year.



### Quick question 4

How is the FSPO currently financed?

<sup>190</sup> Case study 8.2 and other FSPO decisions can be found on *The Ombudsman's Digest of Legally Binding Decisions Volume 1*, [www.fspo.ie/publications](http://www.fspo.ie/publications).



### Insurance Compensation Fund

Ireland's insurance guarantee scheme which protects consumers of authorised non-life insurance companies that go into liquidation and are unable to pay insurance claims. Ireland is one of just 13 EU member states to operate guarantee schemes



### Motor Insurers' Bureau of Ireland

a body set up between motor insurers and the government, which aims to ensure that innocent victims of road accidents are properly compensated in circumstances where no effective motor insurance is in force (e.g. uninsured or untraced vehicles)



# Insurance Compensation Fund

The **Insurance Compensation Fund (ICF)** was established under the **Insurance Act 1964** and later amended by the **Insurance (Amendment) Acts 2011 and 2018**.

The ICF provides last-resort protection to policyholders when insurers are unable to fulfil their contractual commitments. Its purpose is to facilitate payments to policyholders in situations where an Irish- or EU-authorised non-life insurer goes into liquidation or is unable to pay valid claims. High Court approval is needed before the ICF can make compensation payments.<sup>191</sup>

The ICF is administered by the Central Bank and financed through contributions from non-life insurers operating in Ireland, including EU branches and non-EU firms. Insurers can be called on to contribute up to 2% of insurance premiums and they are permitted to pass on this charge to policyholders in the form of a levy. However, the levy does not apply to risks that are excluded from the compensation scheme, i.e. reinsurance, life assurance, health insurance, credit insurance and some marine and aviation risks.



The ICF will pay a maximum amount not exceeding 65% of the sum due to the policyholder or €825,000, whichever is less. The ICF will not pay any sum due to a commercial policyholder unless the sum is for a liability to an individual. However, in the case of third-party motor insurance claims where an insurer is in liquidation, the ICF will pay 100% of an award. Having paid 100% of an award, the ICF then recoups the balance (i.e. the amount over the 65% or €825,000) from the **Motor Insurers' Bureau of Ireland (MIBI)** (see Case study 8.4). The MIBI then collects the balance from motor insurers through the Motor Insurers' Insolvency Compensation Fund, which it manages.

There are also restrictions on when the ICF will become involved in compensation arrangements. For non-life insurance companies that are in administration, the ICF must consider the percentage of risks that were held in Ireland over the three years before the administrator was appointed. Payments will only be made if, in the opinion of the Central Bank, at least 70% of the risks held by the insurer were for policyholders in the State. The principal factors that will determine this are whether the:

- insured buildings are located in Ireland
- insured vehicles are registered in Ireland
- insurance was taken out in Ireland (in the case of short-term travel insurance)
- normal residence of the policyholder is in Ireland (in most other cases).

<sup>191</sup> A complainant can also make use of the ICF in circumstances where an administrator has been appointed under the **Insurance Act (No. 2) 1983** and the approval of the High Court has been obtained.

Case studies 8.3 and 8.4 show events that resulted in applications to the ICF.

### Case study 8.3

#### Quinn Insurance Ltd

The well-publicised collapse of Quinn Insurance in 2010 and its resulting losses led to a shortfall in the ICF. In order to meet the losses, the **Insurance (Amendment) Act 2011** was passed. This Act placed a special 2% levy on all insurance policies other than life assurance, all of which goes to the ICF. This levy covers solvency breaches at Quinn Insurance and will be applied to insurance policies for several decades to come.

By May 2016, the ICF had paid out over €1.2 billion to cover claims made by Quinn Insurance policyholders. The final bill is expected to exceed €1.65 billion.

Quinn Insurance administrators are suing the insurer's former auditors, PricewaterhouseCoopers (PwC), for €800 million damages for negligence.<sup>192</sup> If this proves successful, the money will be used to repay the ICF.

In June 2021, the Supreme Court ruled that Quinn Insurance would need to pay €5 million 'interim security' towards PwC's legal costs to avoid the court placing a stay on its action against PwC.<sup>193</sup>

### Case study 8.4

#### Setanta Insurance Company Ltd

Setanta was a Maltese-based insurer, authorised, licensed and prudentially regulated in Malta by the Malta Financial Services Authority (MFSA). The firm passported from Malta into Ireland on a freedom of services basis. Responsibility for prudential supervision rested with the Maltese regulator and with the Central Bank of Ireland for conduct of business rules. Setanta sold both private and commercial motor policies and distributed exclusively through 230 brokers.

Setanta was placed in liquidation by MFSA in April 2014. All policies were cancelled by the liquidator with effect from 29 May 2014.

This affected 75,000 Irish policyholders with mainly car and van insurance. The big question following the collapse was how policyholders' claims would be met - by the insurer, the ICF or the MIBI? This led to concerns about claims on the ICF if Setanta was unable to discharge its liabilities.

A number of legal battles ensued, which resulted in the **Insurance (Amendment) Act 2018**. In June 2020 the High Court approved an €8.35 million payment out of the ICF to meet a 35% shortfall in awards to Setanta policyholders. That was the seventh Setanta-related payment order on the ICF sought by the State Claims Agency.<sup>194</sup>



#### Quick question 5

How is the ICF currently financed?

<sup>192</sup> Mary Carolan, 'PwC says Quinn court case will cost it €30m', *The Irish Times*, 9 May 2016, [www.irishtimes.com](http://www.irishtimes.com).

<sup>193</sup> Mary Carolan, 'Quinn Insurance must pay €5m towards PwC's legal costs, court rules', *The Irish Times*, 29 June 2021, [www.irishtimes.com](http://www.irishtimes.com)

<sup>194</sup> Mary Carolan, 'High Court approves €8.35 million in claims against collapsed Setanta', *The Irish Times*, 16 June 2020, [www.irishtimes.com](http://www.irishtimes.com)



### Investor Compensation Scheme

scheme set up under the **Investor Compensation Act 1998** giving protection mainly for investors whose investments have failed in defined circumstances

# D Investor Compensation Scheme

The **Investor Compensation Scheme** (ICS) protects clients of an investment firm that goes out of business. The scheme pays compensation when an investment firm authorised by the Central Bank is unable to return money or investment instruments it owes to consumers. Such firms can include stockbrokers, investment managers, insurance brokers and agents. In 1997, the **Investor Compensation Directive 1997** set out the basic requirements for a minimum level of investor protection across the EU. This Directive was implemented in Ireland through the **Investor Compensation Act 1998**. The Investor Compensation Company DAC (ICCL) administers the Investor Compensation Scheme and is an independent body set up under the Act.

The scheme pays compensation when:

- The court makes a ruling against a member firm (including where it is put into liquidation or receivership)<sup>195</sup>
- The Central Bank determines that a member firm is unable to meet the claims of clients (see Case study 8.5).

Compensation is limited to 90% of the client's loss, to a maximum of €20,000.

The scheme is funded by way of a levy paid by all participating firms authorised to conduct investment and/or insurance business. The levy differs depending on the investment services provided; in some cases it is based on the number of clients, or it can be based on the amount of regulated income from those services.

## Case study 8.5

### Andrew Casey Life and Pensions

In October 1998 the Central Bank of Ireland made a determination under the ICS that Andrew Casey Life and Pensions was unable to meet its obligations. An administrator was appointed to establish clients' entitlement to compensation for the purposes of the Act.

Nine claims were submitted for compensation. The total amount paid for those claims as determined by the administrator was €20,000.

<sup>195</sup> A 'ruling' is a court decision made in relation to a member firm for reasons directly related to its financial circumstances, that prevents its clients from pursuing claims against it for the return of money or investments, but does not include a court decision made under the Companies Acts appointing an examiner or provisional liquidator.

The scheme is a 'fund of last resort'. This means that the consumer must first exhaust all other avenues of compensation. In most general insurance scenarios, a consumer will have other forms of redress if an insurance intermediary fails or misappropriates their premiums. As we identified in Chapters 3 and 4, an insurance intermediary acts as an agent of the insurer when collecting premiums. This means that any premium paid by a consumer to an intermediary is automatically deemed to have been paid to the insurer. The insurer therefore accepts the risk and responsibility, meaning the consumer suffers no financial loss.

Further information about the scheme, its open and closed cases and levy funding is available on the ICCL website.<sup>196</sup>



### Microlearning resources

In the Member Area of [www.iii.ie](http://www.iii.ie), via the Connect logo and in Your Learning Centre, select the microlearning section of this chapter to access a resource specifically developed to help you better understand this topic.

<sup>196</sup> Investor Compensation Company DAC, [www.investorcompensation.ie](http://www.investorcompensation.ie).



# Summary

In this chapter, we completed our study of compliance and advice by considering the areas of complaints and errors. We also identified the financial protection available to consumers in the event of a regulated firm's failure.

## E1 How to reinforce what you have learned in this chapter

Well done on reaching the end of the textbook! It's now time to begin the final stages of your study and exam preparation.

## E2 Study tips

It is important to remember that this textbook is the primary information source for this module. All the questions in your exam will relate directly to information featured in the textbook. Use the 'End of chapter questions', 'Quick questions' and the 'Sample multiple-choice questions' to quickly test what you've learned so far. Make a note of any topics/areas you need to improve in and keep it to hand so you can refer to it when you revise this chapter again before your exam.

In addition to the textbook, your Member Area has many online learning supports that can help you as you study this module.

## E3 Online learning supports

Your Member Area includes a Guide to Success, an automated study planner, an exam countdown timer and study tips guide. These learning supports are invaluable in reinforcing what you have learned from the textbook so far. The webinars, chapter-by-chapter key points and other supports will help you to break down the chapter content when revising.

Completing online mock exams and reviewing the personalised feedback that follows is a great way of testing your knowledge and preparing for exam day.

To access these online learning supports, just log into the Member Area of [www.iii.ie](http://www.iii.ie) and click on the Connect logo.





# End of chapter questions

Use these questions to test your understanding of what we've covered in Chapter 8.

1. State the timeframe in which a regulated firm must resolve all errors.  
\_\_\_\_\_  
\_\_\_\_\_
2. Outline the procedure if a complaint is resolved within 2 business days.  
\_\_\_\_\_  
\_\_\_\_\_
3. State the main functions of the Financial Services and Pensions Ombudsman.  
\_\_\_\_\_  
\_\_\_\_\_
4. List the categories of an eligible customer in bringing a complaint to the FSPO.  
\_\_\_\_\_  
\_\_\_\_\_
5. State the maximum amount of compensation the FSPO can award.  
\_\_\_\_\_  
\_\_\_\_\_
6. Explain what is meant by the term 'unresolved complaints' and explain its significance.  
\_\_\_\_\_  
\_\_\_\_\_
7. Outline the action the FSPO can take against regulated FSPs that have received three or more adverse findings from the FSPO in the previous year.  
\_\_\_\_\_  
\_\_\_\_\_
8. State the purpose of the Insurance Compensation Fund.  
\_\_\_\_\_  
\_\_\_\_\_
9. Outline the limitations on the amount of compensation payable under the Insurance Compensation Fund.  
\_\_\_\_\_  
\_\_\_\_\_
10. State the maximum amount of compensation available to a client from the Investor Compensation Scheme.  
\_\_\_\_\_  
\_\_\_\_\_

# Answers to end of chapter questions

**Check your answers against those below and make a note of any points you left out. This will highlight some sections you may need to look at more closely during your revision.**

1. All errors must be resolved speedily and no later than 6 months after the date the error was first discovered.
2. If the complaint is resolved in less than 5 business days, the firm is not required to follow the CPC requirement to make an offer to the consumer to have the complaint handled within the firm's full complaints procedures. However, the complaint must still be recorded.
3. The principal functions of the FSPO are to:
  - Deal with complaints made to the FSPO by eligible complainants about the conduct of regulated firms by mediation, and where necessary to
  - Investigate and adjudicate on the complaint.
4. An eligible customer may be any of the following:
  - Private individuals
  - Limited companies
  - Sole traders
  - Trusts
  - Clubs
  - Charities
  - Partnerships.

In all these cases (other than private individuals), the annual turnover must not exceed €3 million.
5. The maximum amount is a lump sum of €500,000 or an annuity payment of €52,000 (per year).
6. This term is important because only 'unresolved complaints' can be referred to the FSPO. Consumers should in the first instance refer their complaint to their firm, which must handle the complaint in accordance with the requirements of the CPC. Only if the complaint remains unresolved can it be referred to the FSPO for investigation.
7. If it is believed to be in the public interest, the FSPO may publish the names of those regulated firm it has made three adverse findings against in the previous year. These are also known as 'naming and shaming' powers.
8. The ICF facilitates payments to policyholders in situations where an Irish- or EU-authorized non-life insurer contributing to the ICF scheme goes into liquidation or is unable to pay valid claims.
9. The total amount payable to a person under a policy shall not exceed 65% of the amount due or €825,000, whichever is less. This may not be payable to a commercial policyholder, unless the amount due is for liability to an individual. However, in the case of third-party motor insurance claims where an insurer is in liquidation, the ICF will pay 100% of an award. Having paid 100% of an award, the ICF then recoups the balance (i.e. the amount over the 65% or €825,000) from the MIBI. The MIBI then collects the balance from motor insurers through the Motor Insurers' Insolvency Compensation Fund, which it manages.
10. A client's right to compensation is limited to 90% of their loss, to a maximum of €20,000.



## Answers to quick questions

1. The requirement that a firm inform the Central Bank that an error has not been fully resolved within 40 business days applies to all errors, i.e. those which negatively or positively affect consumers. The reason for this is that it is important for the Central Bank to be aware of all errors affecting consumers as they may indicate an issue with, for example, systems or procedures.
2. The insurer must (where possible) take the following actions:
  - Correct any systems failures.
  - Ensure that effective controls are implemented to prevent any recurrence of the identified error.
  - Make a refund (with appropriate interest) to all consumers affected by the error.
  - Notify all affected consumers (both current and former) as soon as possible of the error.
  - Log the error in accordance with CPC requirements.
2. The complaint must be investigated and resolved within 40 business days.
4. The FSPO is funded through two distinct sources - the financial services complaints are funded by a levy on firms and the pensions complaints are funded by the Exchequer, through the Department of Finance.
5. The ICF is currently financed through contributions received from non-life insurers operating in Ireland, including EU branches and non-EU firms.



# Sample multiple-choice questions

1. Under the Central Bank Consumer Protection Code, a firm must resolve all errors speedily once discovered and no later than:

- A. 40 business days
- B. 2 months
- C. 6 months
- D. 12 months

Your answer:

☐

2. Aoife made a complaint to ABC Insurance on 1 September. Under the Central Bank Consumer Protection Code, by what **latest** date must ABC Insurance acknowledge Aoife's complaint in writing?

- A. 6 September.
- B. 8 September.
- C. 11 September.
- D. 15 September.

Your answer:

☐

3. Pat has submitted a complaint to the Financial Services and Pensions Ombudsman. However, the FSPO has refused to investigate Pat's complaint. This is because:

- A. the conduct complained of happened two years ago
- B. Pat initially complained to his provider, but the provider rejected the complaint
- C. Pat has already taken legal action in respect of his complaint
- D. Pat has not paid the FSPO the €50 fee required to have the complaint investigated

Your answer:

☐

# Answers to sample multiple-choice questions

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## Question 1

**Chapter reference:** Chapter 8A1a

**Question type:** K

**Correct response:** C

**Learning outcome:** Demonstrate the effect of the Central Bank Consumer Protection Code on errors and complaints resolution.

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## Question 2

**Chapter reference:** Chapter 8A2a

**Question type:** A

**Correct response:** B

**Learning outcome:** Demonstrate the effect of the Central Bank Consumer Protection Code on errors and complaints resolution.

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## Question 3

**Chapter reference:** Chapter 8B1

**Question type:** U

**Correct response:** C

**Learning outcome:** Explain the role of the Financial Services and Pensions Ombudsman in dispute resolution.

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### Study Tip

Do you wish to find a specific website, legal case, key term or legislation within this textbook?

You can do a quick find in the module eBook, which is available on **Connect** via your Member Area Login at [www.iii.ie](http://www.iii.ie).



## Referenced websites, legal cases and legislation

### Websites

Anti-Money Laundering Unit  
[www.amlcompliance.ie](http://www.amlcompliance.ie)

British Broadcasting Service  
[www.bbc.co.uk](http://www.bbc.co.uk)

Central Bank of Ireland  
[www.centralbank.ie](http://www.centralbank.ie)

CNBC  
[www.cnbc.com](http://www.cnbc.com)

Competition and Consumer Protection Commission  
[www.ccpic.ie](http://www.ccpic.ie)

Data Protection Commission  
[www.dataprotection.ie](http://www.dataprotection.ie)

Department of Finance  
[www.gov.ie](http://www.gov.ie)

European Insurance and Occupational Pensions Authority  
[eiopa.europa.eu](http://eiopa.europa.eu)

European Union  
[ec.europa.eu](http://ec.europa.eu)

Financial Action Task Force  
[www.fatf-gafi.org](http://www.fatf-gafi.org)

Financial Conduct Authority  
[www.fca.org.uk](http://www.fca.org.uk)

Financial Services and Pensions Ombudsman  
[www.fspo.ie](http://www.fspo.ie)

Health Insurance Authority  
[www.hia.ie](http://www.hia.ie)

Insurance Institute of Ireland  
[www.iii.ie](http://www.iii.ie)

Insurance Ireland  
[www.insuranceireland.eu](http://www.insuranceireland.eu)

Investor Compensation Company Limited  
[www.investorcompensation.ie](http://www.investorcompensation.ie)

National Fleet Database  
[www.nfd.ie](http://www.nfd.ie)

The Irish Times  
[www.irishtimes.com](http://www.irishtimes.com)

William Fry (Solicitors)  
[www.williamfry.com](http://www.williamfry.com)

### Legal cases

Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des Ministres 2011  
Ross v RSA 2003

### Legislation

Central Bank (Individual Accountability Framework) Act 2023

Central Bank Reform Act 2010

Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2011

Central Bank (Supervision and Enforcement) Act 2013

Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Insurance Requirement) Regulations 2022

Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1) Minimum Competency) Regulations 2017

Companies Act 2014

Consumer Credit Act 1995 (as amended)

Consumer Insurance Contracts Act 2019

Consumer Rights Act 2022

Consumer Rights Directive 2011

Corporate Governance Requirements for Insurance Undertakings 2015	Insurance Acts 1909–2009
Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010–2021	Insurance (Amendment) Act 2011
Data Protection (Access Modification) (Health) Regulations 1989	Insurance (Amendment) Act 2018
Data Protection Acts 1988–2018	Insurance Distribution Directive 2016
Digital Operational Resilience Act (Regulation – EU) 2022	Insurance Distribution Regulations 2018
Directive on the Distance Marketing of Consumer Financial Services 2002	Insurance Mediation Directive 2002
Disability Act 2005	Insurance Mediation Regulations 2005
EC Distance Marketing of Consumer Financial Services (Amendment) Regulations 2005	Investment Intermediaries Act 1995
EC Distance Marketing of Consumer Financial Services Regulations 2004 (as amended)	Investor Compensation Act 1998
ePrivacy Directive 2002	Investor Compensation Directive 1997
Equal Status Acts 2000–2015	Minimum Competency Code 2017
Equal Status (Amendment) Act 2012	Minimum Competency Regulations 2017
EU Consumer Mortgage Credit Agreements Regulations 2016	Non-Life Insurance (Provision of Information) Regulations 2007
EU ePrivacy Regulations 2011	Non-Life Insurance (Provision of Information) (Amendment) Regulations 2018
EU General Data Protection Regulation 2016	Protected Disclosures Act 2014
EU Insurance and Reinsurance Regulations 2015	Protected Disclosures (Amendment) Act 2022
Fifth Anti-Money Laundering Directive 2018	Road Traffic Acts 1961–2016
Financial Services and Pensions Ombudsman Act 2017	Road Traffic (Compulsory Insurance) Regulations 1962
First Non-Life Insurance Directive 1973	Road Traffic (Insurance Disc) Regulations 1984
Fitness and Probity Standards Code 2011	Road Traffic (Insurance Disc) (Amendment) Regulations 1986
Fourth Motor Insurance Directive 2000	Second Non-Life Insurance Directive 1988
Gender Directive 2004	Solvency II Directive 2009
Health Insurance Act 1994 (Minimum Benefit) Regulations 1996 (as amended)	Third Non-Life Insurance Directive 1992
Health Insurance Acts 1994–2022	Treaty of Rome 1957
Health Insurance (Miscellaneous Provisions) Act 2009	Treaty of Lisbon 2007
Horizontal Anti-Discrimination Directive 2008	Unfair Terms in Consumer Contracts Regulations 1995 (as amended)
	Whistleblowing Directive 2019



# Acronyms

Organisations/bodies/regions	
Anti-Money Laundering Authority	AMLA
Consumers Association of Ireland	CAI
Competition and Consumer Protection Commission	CCPC
Data Protection Authority	DPA
Data Protection Commission	DPC
European Banking Authority	EBA
European Commission	EC
European Court of Justice	ECJ
European Economic Area	EEA
European Economic Community	EEC
European Insurance and Occupational Pensions Authority	EIOPA
European Supervisory Authority	ESA
European System of Financial Supervision	ESFS
European Securities and Markets Authority	ESMA
European Systemic Risk Board	ESRB
European Union	EU
Financial Action Task Force	FATF
Financial Conduct Authority	FCA
Financial Services and Pensions Ombudsman	FSPO
Health Insurance Authority	HIA
Institute of Business Ethics	IBE
Investor Compensation Company DAC	ICCL
Investor Compensation Fund	ICF
Investor Compensation Scheme	ICS
Irish Financial Services Appeals Tribunal	IFSAT
Malta Financial Services Authority	MFSA
Motor Insurers' Bureau of Ireland	MIBI
United Kingdom	UK
United Nations	UN
Terminology and legislation	
anti-money laundering	AML
Anti-Money Laundering Directive	AMLD
customer due diligence	CDD
controlled function	CF

Criminal Justice Act	CJA
Consumer Mortgage Credit Agreements Regulations	CMCAR
Consumer Protection Code	CPC
continuing professional development	CPD
Consumer Protection Risk Assessment	CPRA
Consumer Rights Act 2022	CRA
counter-terrorist financing	CTF
Declined Cases Agreement	DCA
data subject access request	DSAR
ePrivacy Regulation	ePR
financial service provider	FSP
fitness and probity	F&P
General Data Protection Regulation	GDPR
Individual Accountability Framework	IAF
information and communication technology	ICT
Investment Intermediaries Act	IIA
Insurance Distribution Directive	IDD
Insurance Distribution Regulations	IDR
Insurance Product Information Document	IPID
Lifetime Community Rating	LCR
long-term agreement	LTA
Minimum Competency Code	MCC
Minimum Competency Regulations	MCR
no claims discount	NCD
National Directory Database	NDD
National Fleet Database	NFD
pre-approval controlled function	PCF
politically exposed person	PEP
professional indemnity insurance	PII
Probability Risk and Impact System	PRISM
Retail Intermediary Annual Return	RIAR
solvency capital requirement	SCR
Senior Executive Accountability Regime	SEAR
Senior Executive Function	SEF
Statutory Instrument	SI
Suspicious Transaction Report	STR
Terms of Business (document)	TOB
Terms of Business Agreement	TOBA



# Glossary of key terms

<b>accredited person</b>	one who satisfies the Central Bank's minimum competency requirements
<b>Act of the Oireachtas</b>	a Bill voted through the Dáil and Seanad (Houses of the Oireachtas) and signed into law by the President
<b>advice</b>	a personal recommendation to a person, whether at their request or at the initiative of the firm, in the course of performing a relevant (controlled) function
<b>adviser (advisor)</b>	one who is involved in the advising process; this may be an employee of an insurer or an intermediary
<b>agent</b>	one who is authorised by a principal to bring that principal into a contractual relationship with a third party
<b>ancillary insurance intermediary</b>	<p>a person, other than a credit institution or an investment firm who, for remuneration, takes up or pursues the activity of insurance distribution on an ancillary basis, provided that all the following conditions are met:</p> <ul style="list-style-type: none"> <li>a. the principal professional activity of that person is other than insurance distribution</li> <li>b. the person only distributes certain insurance products that are complementary to a good or service</li> <li>c. the insurance products concerned do not cover life assurance or liability risks, unless that cover complements the good or service which the intermediary provides as its principal professional activity</li> </ul>
<b>arbitration</b>	a legally binding process whereby cases are heard by an arbitrator (an independent person or body officially appointed to settle a dispute) rather than a judge in court
<b>automated decision-making</b>	a process by which computer programs analyse data and make judgements without human involvement (e.g. online insurance quote)
<b>blanket certificate</b>	certificate of motor insurance that refers to classes of vehicles rather than specific registration numbers
<b>broker</b>	an insurance intermediary that provides their principal regulated activities on the basis of a fair analysis of the market
<b>bundling</b>	the packaging of two or more distinct products into a bundle, where each of these products can be purchased separately from or through the firm
<b>business day</b>	any day of the normal business working week, Monday to Friday inclusive, and excluding weekends, bank or public holidays. Sometimes referred to as 'working day'.
<b>business interruption insurance</b>	insurance that protects a commercial policyholder against loss of profits and other expenses following insured damage to their property
<b>capital adequacy</b>	the appropriate amount of capital required to support the insurer's operations
<b>captive</b>	an authorised insurer that has been formed as a subsidiary of a non-insurance parent company

<b>Certificate of Competency</b>	document issued to a consumer confirming that the person providing advice meets the minimum competency standards
<b>Certificate of Motor Insurance</b>	document required by law, which is issued by an insurer to a policyholder and proves that an acceptable minimum level of cover is provided by a motor insurance policy
<b>Chinese wall</b>	an arrangement within an organisation (or with an associate of the firm) that requires information in one business area to be withheld in certain circumstances from other operating units or from those it deals with in the course of carrying on another part of its business
<b>client</b>	a person, firm or organisation that deals directly with an insurance provider or has appointed a regulated entity/firm to act on their behalf for insurance purposes
<b>compensation scheme</b>	a statutory or voluntary scheme that makes payments to affected persons (subject to limits and eligibility criteria) following the failure of a financial service provider
<b>competence</b>	a defined level of knowledge and ability necessary for the performance of a job
<b>complaint</b>	<p>expression of grievance or dissatisfaction by a consumer, either orally or in writing, in connection with:</p> <ul style="list-style-type: none"> <li>a. the provision or offer of the provision of a product or service to a consumer by a regulated entity</li> <li>b. the failure or refusal of a regulated entity to provide a product or service to a consumer</li> </ul>
<b>conduct of business rules</b>	rules relating to the fair and honest treatment of customers by financial service providers
<b>conflict of interest</b>	situation or circumstance that might lead a firm/individual to take a course of action that is not necessarily in the best interest of their client, but favours the firm/individual
<b>consumer</b>	<p>any of the following:</p> <ul style="list-style-type: none"> <li>a. a person or group of persons, but not an incorporated body with an annual turnover in excess of €3 million in the previous financial year (includes partnerships and other unincorporated bodies such as clubs, charities and trusts)</li> <li>b. incorporated bodies with an annual turnover of €3 million or less in the previous financial year (provided the body is not part of a group with a combined turnover of more than €3 million).</li> </ul> <p>... and includes a potential consumer</p>
<b>Consumer Protection Code</b>	code issued by the Central Bank setting out requirements that regulated entities/firms must comply with in order to ensure a minimum level of protection for consumers
<b>Consumer Protection Risk Assessment model</b>	Central Bank model comprising five modules: governance and controls; people and culture; product development; sales/transactions process; and post-sales handling

<b>continuing professional development</b>	attendance at seminars, lectures, conferences, certified completion of appropriate e-learning tutorials, workshops or courses dealing with a directly relevant topic – related to the competencies set out in the MCC
<b>controlled function</b>	designated role for which the Central Bank requires regulated firms to identify and maintain a record of: <ul style="list-style-type: none"> <li>• those persons performing CFs from the date of application of the Fitness and Probity Standards</li> <li>• due diligence undertaken in respect of those persons</li> </ul>
<b>cooling-off period</b>	a period of time in which a consumer has a right to cancel an insurance contract without any penalty
<b>cover note</b>	document setting out details of temporary cover granted, usually in advance of permanent documentation being issued, e.g. policy or endorsement
<b>credit risk</b>	the risk that a party to a contract will not fulfil its financial obligation under that contract e.g. the risk of a borrower defaulting on a debt
<b>customer</b>	any person, firm or organisation to whom a regulated firm provides or offers to provide an insurance product or service or any person, firm or organisation who requests such a product or service. The terms ‘client’ and ‘customer’ are interchangeable.
<b>customer due diligence</b>	the requirement to obtain a certain level of documentation to confirm identification in order to satisfy anti-money laundering laws
<b>data controller</b>	a natural or legal person who controls and is responsible for the keeping and use of personal information on a computer or in structured manual files (e.g. an insurer)
<b>data processor</b>	a natural or legal person, public authority, agency or any other body that processes personal data on behalf of the data controller (e.g. an outsourced service provider)
<b>Data Protection Commission</b>	commission responsible for monitoring and enforcing the GDPR and the <b>Data Protection Acts 1988–2018</b> in Ireland
<b>data subject</b>	a living individual who is the subject of personal data
<b>data subject access request</b>	a formal request by a person for a copy of information about them that is (or intends to be) kept on computer or in a manual filing system by an entity or organisation
<b>Declined Cases Agreement</b>	an agreement that ensures a designated insurer will provide cover to a motorist seeking insurance if the customer has approached and been declined by at least three insurers
<b>delegated authority</b>	authority granted to the agent of an insurer, usually in the context of a scheme arrangement, to issue policy documentation and possibly carry out limited underwriting and claims functions
<b>designated person</b>	a category of person in a firm or organisation (or the firm itself) as listed in the <b>Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010-2021</b> , who is given responsibility to guard the firm or organisation against being used for money laundering or terrorist financing
<b>differential pricing</b>	where customers with a similar risk and cost of service are charged different premiums for reasons other than risk and cost of service

<b>distance contract for the supply of a financial service</b>	a contract under which a supplier supplies a financial service to a consumer in an organised distance sale (or service provision scheme) operated by the supplier and who, for the purpose of the contract, makes exclusive use of one or more means of distance communication (up to and including when the contract is entered into)
<b>due diligence</b>	enquiries undertaken to assess the fitness and probity of an individual
<b>durable medium</b>	any instrument that allows information to be stored and accessible for future reference, for a required period of time, and prevents the stored information from being changed or reproduced
<b>ethics</b>	practical analysis of objective standards of right and wrong (also known as 'moral philosophy')
<b>EU Decision</b>	a decision that is binding in its entirety, but only on those EU member states to whom it is addressed, usually used in competition law; may be addressed to member states or individuals
<b>EU Directive</b>	legislation that allows EU member states the choice of form and methods of implementation under national law, but is binding in the results to be achieved, i.e. must be transposed into domestic legislation
<b>EU Recommendation/ EU Opinion</b>	a non-binding instrument of EU law, though without any legal force, having political weight and persuasive value
<b>EU Regulation</b>	legislation that is of general application, binding in its entirety and directly applicable in all EU member states without the need for member states to transpose it into domestic legislation
<b>European Systemic Risk Board</b>	an independent EU body responsible for the macro-prudential oversight of the EU financial system
<b>European System of Financial Supervision</b>	the framework for financial supervision in the EU since 2011
<b>exclusion/exception</b>	a policy provision that defines circumstances or types of loss that are not covered
<b>factsheet</b>	an electronic form asking if the statements given onscreen are correct – to which the insured clicks Yes or No (see also 'statement of fact')
<b>fair analysis (of the market)</b>	providing services on the basis of a sufficiently large number of contracts and product producers available on the market to enable the intermediary to make a recommendation in accordance with professional criteria, regarding which contract would be adequate to meet the consumer's needs
<b>fair and personal analysis (of the market)</b>	advice given on the basis of an analysis of a sufficiently large number of contracts available on the market, to enable the intermediary to make a recommendation, in accordance with professional criteria, as to which insurance contract adequately meets the customer's needs
<b>fiduciary relationship</b>	a relationship recognised by the law as being based on trust and responsibility (which, in the insurance context, means that legal duties and obligations are placed on the agent for having undertaken to perform certain activities on behalf of the principal)
<b>financial crime</b>	a wide term embracing money laundering, proceeds of crime, fraud, bribery and corruption



<b>financial sanctions</b>	restrictive financial measures imposed on individuals or entities in an effort to curtail their activities and to exert pressure and influence on them (also includes restrictions on trade, travel or civil aviation)
<b>Financial Services and Pensions Ombudsman</b>	an office that deals independently and impartially with unresolved complaints from consumers about the conduct of a pensions provider or a regulated financial service provider
<b>firm</b>	a regulated entity (used throughout this textbook to refer to regulated entities that provide financial services, including insurers, reinsurers and intermediaries)
<b>fitness</b>	the qualifications, experience, competence and capacity appropriate to the relevant function
<b>fleet policy</b>	a motor policy that covers a collection of vehicles owned by a corporate entity
<b>four freedoms</b>	founding principles of the EU: freedom of movement of goods, persons, services and capital
<b>general good requirements</b>	the right of a host country to apply its own laws on the operations of a foreign insurer in its territory, but only if it is deemed beneficial to the population of the host country
<b>grandfathered person</b>	a person who, on 1 January 2007, was dealing with the retail financial product or specified function in question and had 4 years' relevant experience between 1 January 1999 and 1 January 2007, and who complies with the continuing professional development requirement
<b>home country (state)</b>	the country whose regulator is responsible for the authorisation of firms in its jurisdiction and the prudential supervision of these firms (and from where services are passported)
<b>host country (state)</b>	the country into which services are passported on a cross-border freedom of services basis and whose regulator retains control in certain areas (mainly local conduct of business requirements e.g. consumer protection) but is not the firm's prudential supervisor
<b>information</b>	that which is provided to a person, whether at the person's request or at the initiative of the firm, that may assist the person in the choice of retail financial product
<b>Insurance Compensation Fund</b>	Ireland's insurance guarantee scheme which protects consumers of authorised non-life insurance companies that go into liquidation and are unable to pay insurance claims. Ireland is one of just 13 EU member states to operate guarantee schemes
<b>insurance distribution</b>	any activity involved in advising on, proposing, or carrying out other work in preparation for or conclusion of contracts of insurance, or of assisting in the administration and performance of such contracts
<b>insurance distributor</b>	any insurance intermediary, ancillary insurance intermediary or insurance undertaking
<b>insurance intermediary</b>	any person or firm, other than an insurer/reinsurer or their employees but including an ancillary insurance intermediary, which, for remuneration, takes up or pursues the activity of insurance distribution and is subject to the <b>Insurance Distribution Regulations 2018</b>

<b>insurer</b>	a risk-carrying regulated entity/firm (product producer)
<b>integration</b>	the proceeds of criminal conduct that have been fully laundered and reintroduced into the economy
<b>intermediary</b>	a person or firm that acts between a provider and customer in the provision of services (e.g. see 'insurance intermediary')
<b>Investor Compensation Scheme</b>	scheme set up under the <b>Investor Compensation Act 1998</b> giving protection mainly for investors whose investments have failed in defined circumstances
<b>key information</b>	any information that is likely to influence a consumer's actions with regard to a product or service
<b>layering</b>	attempts by a money launderer to conceal the money's origins by creating a series of complex transactions, thus disrupting the audit trail
<b>liability insurance</b>	insurance that protects the policyholder against the consequences of being held financially responsible for a third party's injury, property damage or financial loss
<b>Lifetime Community Rating</b>	the older a person is when they initially take out private health insurance, the higher the premium they will pay (however, the premium may not subsequently be increased to reflect the person's advancing age)
<b>limited analysis of the market</b>	providing services on the basis of a limited number of contracts and product producers [insurers] available on the market
<b>liquidity risk</b>	the inability of a financial service provider to meet on- and off-balance sheet obligations in a timely fashion, without incurring excessive cost, while continuing to fund its assets and growth
<b>long-term agreement</b>	an agreement whereby an insurer allows a discount if the insured renews the policy for an extended period, e.g. 3 years on the same terms/premium rates
<b>loss assessor</b>	an expert in dealing with insurance claims, appointed by the insured to prepare and negotiate a claim on their behalf
<b>market risk</b>	the risk of losses arising from adverse movements in market prices, e.g. foreign exchange risk
<b>material changes</b>	changes to the risk to the extent that it could be said that the risk is now something which the insurer did not agree to cover
<b>material fact</b>	any fact that would influence an underwriter/insurer in either accepting or rejecting a risk and in deciding what terms to impose
<b>mediation</b>	informal method of dispute resolution involving a neutral mediator, who helps the parties work out their own solutions without apportioning blame
<b>Minimum Competency Code</b>	code issued by the Central Bank of Ireland setting minimum competency standards to be met by those falling within the Code's scope when undertaking certain controlled functions
<b>Minimum Competency Regulations</b>	regulations that, in conjunction with the Minimum Competency Code, impose certain obligations on regulated firms under Section 48 of the <b>Central Bank (Supervision and Enforcements) Act 2013</b>
<b>money laundering</b>	process by which criminals and terrorists convert money that has been obtained illegally into apparently legitimate funds

<b>Motor Insurers' Bureau of Ireland</b>	a body set up between motor insurers and the government, which aims to ensure that innocent victims of road accidents are properly compensated in circumstances where no effective motor insurance is in force (e.g. uninsured or untraced vehicles)
<b>non-monetary benefit</b>	benefit that is capable of enhancing the quality of the service provided to a consumer. If described as 'minor', it is of a scale/nature such that would not impair compliance with a firm's duty to act in the best interest of the consumer
<b>open membership undertakings</b>	undertakings that provide in-patient health insurance cover and must accept (subject to certain limited terms and conditions) all persons who wish to purchase private health insurance; may also provide cash benefit plans
<b>operational risk</b>	the risk of loss resulting from inadequate or failed internal processes, systems and individual behaviours, or from external events, e.g. legal action
<b>operative clause</b>	clause(s) that describes the standard scope of cover of each section of an insurance policy
<b>outsourcing</b>	where another person/firm (other than an employee of the firm) is employed to carry out an activity on behalf of the firm
<b>passporting</b>	EU system whereby an insurer established and authorised in one member state can sell to residents of another member state by either establishing a branch there or by way of cross-border services
<b>personal consumer</b>	a consumer who is a natural person acting in their private capacity outside their business, trade or profession
<b>personal data</b>	data relating to a living individual who can be identified from this data
<b>placement</b>	the placing of proceeds of criminal conduct into the financial system
<b>policyholder/insured</b>	a person/firm that is insured under an insurance policy
<b>power of attorney</b>	statutory authorisation given to an individual to act on behalf of another individual in either all or specified legal or financial matters
<b>pre-approval controlled function</b>	a designated role (mainly to do with executive or senior management, heading up significant functional areas or implementing regulation), whereby the Central Bank must approve the person for the function before they are appointed to the job
<b>pre-existing medical condition</b>	any condition for which the insured has (or should have) sought/received advice, diagnosis, treatment or counselling at any time prior to inception of a policy. This is of relevance to pet, personal accident or private health insurance.
<b>prescribed script function</b>	a controlled function exercised within a narrow and rigid set of criteria and according to a prescribed script and routine
<b>price signalling</b>	when businesses alert their competitors to their intention to increase prices, causing further price increases across the sector. This signalling can be public (through announcements or comments on prices) or private (through direct contacts between businesses).
<b>price walking</b>	where customers are charged higher premiums relative to the expected costs the longer they remain with an insurer
<b>principal</b>	a person for whom another acts as agent

<b>principal regulated activity</b>	at least 75% of a regulated firm's total turnover on an annual basis that comes from regulated activities that are provided on the basis of a fair analysis of the market
<b>PRISM</b>	<b>Probability Risk and Impact System</b> : a formal risk-based framework designed by the Central Bank to provide a structured approach to assessing financial service providers, based on impact and probability
<b>probity</b>	a person's honesty, fairness and ethical attitude
<b>product producer</b>	any regulated entity/firm that produces, manufactures or packages a product of a financial or investment nature, and is not limited to a product producer as defined in the <b>Investment Intermediaries Act 1995</b>
<b>professional indemnity (liability) insurance</b>	insurance that covers claims arising from the professional activities (including negligent or inadequate advice given) of advisers
<b>proposal form</b>	type of questionnaire about the subject matter of insurance before an insurance contract is entered into
<b>proposer</b>	a person, firm or organisation applying for insurance (but not yet a policyholder/insured)
<b>prudential regulation</b>	a type of financial regulation that requires firms to control risks and hold adequate capital as defined by capital requirements
<b>qualified person</b>	person with one or more recognised qualification(s) which are relevant to the function to be exercised
<b>recital clause (preamble)</b>	scene-setting clause that refers to the parties to the contract, premium, indemnity and proposal (if any) as the basis of the contract
<b>regulated entity/firm</b>	a financial service provider authorised, regulated or supervised by the Central Bank or other EU or EEA member state, that is providing regulated activities in the State
<b>regulation</b>	a principle, rule or law designed to control or govern conduct
<b>reinsurance</b>	a form of insurance for an insurer whereby all or part of the risk underwritten by an insurer is transferred to a reinsurer
<b>reinsurance intermediary/broker</b>	any person, other than a reinsurer or its employees, who for remuneration takes up or pursues the activity of reinsurance distribution
<b>restricted membership undertakings</b>	health schemes restricted to a particular class of membership, usually established as 'friendly societies'
<b>retail intermediary</b>	a regulated entity/firm that receives and supplies orders for certain financial products and/or gives advice about those products
<b>risk equalisation</b>	a process that aims to impartially neutralise differences in insurers' costs that arise from differences in the age profile of the persons they insure
<b>schedule</b>	a single page incorporated into a policy booklet to personalise the policy
<b>service level agreement</b>	an agreement made between the intermediary and the client for specific activities over and above the standard agreement in the Terms of Business Document
<b>solvency capital requirement</b>	a level of eligible own funds that Solvency II legislation requires insurers/reinsurers to hold in order to meet liabilities and absorb significant losses

<b>statement of fact</b>	a statement provided by the insurer after confirmation of cover, clarifying the basis on which insurance is accepted and what conditions apply
<b>statutory instrument</b>	a form of delegated legislation providing detailed rules that implement the more general provisions of particular European Directives or Acts of the Oireachtas
<b>structural regulation</b>	regulation designed to ensure that only appropriately structured firms and persons of sufficient financial standing, integrity and experience are authorised to provide financial services
<b>Summary of Commissions (document)</b>	a summary of the details of all arrangements for any fee, commission, other reward or remuneration paid or provided to an intermediary as agreed with product producers
<b>supervision</b>	the act or function of overseeing something or someone
<b>systemic regulation</b>	regulation designed to sustain public and institutional confidence in the stability of the financial system as a whole
<b>technical provisions</b>	reserves held so that assets are matched with known and estimated future claims liabilities and associated expenses; made up of three components: the claims provisions, the premium provisions and the risk margin
<b>Terms of Business (Document)</b>	document in which a regulated entity/firm sets out the basis on which it will conduct business with consumers
<b>territorial limits</b>	those countries or territories where the policy cover will operate
<b>terrorist financing</b>	the provision, collection or receipt of funds with the intent or knowledge that they will be used for the benefit of a terrorist group or to carry out an act of terrorism or any act intended to cause death or serious bodily injury
<b>tied insurance intermediary</b>	any intermediary who: <ul style="list-style-type: none"> <li>a. undertakes insurance or reinsurance distribution for and on behalf of one or more insurer/reinsurer(s) or other intermediaries in the case of insurance products that are not in competition;</li> <li>b. acts under the responsibility of those insurers/reinsurers or other intermediaries, and</li> <li>c. is subject to oversight of compliance with conditions for registration by the insurer/reinsurer or other intermediary on whose behalf it is acting.</li> </ul>
<b>Treaty of Rome 1957</b>	basis of the European Economic Community (EEC), later the European Union (EU), in order to broaden its scope and give recognition to the fact that it was more than simply an economic community
<b>undertaking</b>	regulated entity/firm (e.g. insurer, reinsurer, intermediary) holding an authorisation via the Central Bank
<b>underwriting</b>	process of risk pooling, evaluation, selection and pricing
<b>underwriting risk</b>	the risk of uncontrollable factors or an inaccurate assessment of risks when writing an insurance policy/a class of insurance business
<b>voice recording</b>	the record of a telephone call, which is timed and dated for future verification

<b>vulnerable consumer</b>	<p>a natural person who:</p> <ul style="list-style-type: none"><li>a. has the capability to make their own decisions but who, because of individual circumstances, may require assistance to do so, e.g. hearing-impaired or visual-impaired persons</li><li>b. has limited capacity to make their own decisions and who requires assistance to do so, e.g. persons with intellectual disabilities or mental health difficulties</li></ul>
<b>whistleblower</b>	<p>anyone who, in good faith, discloses information to the Central Bank that they reasonably believe is proof of an offence or the concealing of evidence relating to an offence</p>
<b>whistleblowing</b>	<p>raising or reporting a reasonable concern to an employer, regulator, the police or the media, about serious wrongdoing, misconduct or illegal activity in an organisation (e.g. a violation of the law or internal rules/regulations) or a direct threat to the public interest</p>
<b>whitelisting</b>	<p>a mechanism which explicitly allows access to a particular privilege, service, mobility, or recognition. It is a list of things allowed when everything is denied by default. It is the opposite of a blacklist which is list of things denied when everything is allowed by default.</p>