SUBMISSION BY

THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

TO THE CENTRAL BANK OF IRELAND

ON THE CBI REVIEW OF THE CONSUMER PROTECTION CODE 2012

24 APRIL 2020

The FSPO notes that, in keeping with the Central Bank's 2019-2021 strategic objective of strengthening consumer protection, a review of the Consumer Protection Code 2012 (the Code) is scheduled. The current Code has been in place since 2012 and has undergone a number of changes and amendments in the intervening years, in the form of periodic Addenda, some of which have been driven by European and domestic legislation, and some of which have come about as a result of Central Bank initiatives to enhance consumer protection. The CBI is now seeking, not only to consolidate the Addenda, but also to take a fresh look at what the Code offers for industry and consumers alike, in an ever-changing consumer environment.

The Financial Services and Pensions Ombudsman has been identified as a relevant stakeholder in the context of this project, taking into account its experience of investigating consumer complaints against financial service providers, and where appropriate directing providers to redress consumers, where there is evidence of wrongful conduct in the provision of financial services. The FSPO welcomes this opportunity to contribute its observations to the CBI.

In many instances, European and domestic legislation control the provision of certain financial products, and can regulate emerging practices. There are also instances where no specialised legislative provisions apply and there is a very particular value in the Codes published by the CBI, as the Regulator of financial service providers, in presenting an encapsulation of the principles of best practice to be adhered to, in the provision of financial products and services. Indeed, it is noted that ***Section 6*** of the ***Consumer Insurance Contracts Act 2019***, when commenced, will give increased effect to any provisions of the Consumer Protection Code insofar as it concerns consumer insurance contracts. This pending legislative provision provides a real opportunity for the CBI, to take account of identifiable issues arising from the evolution in how services are made available to consumers, including the increased digitisation of the provision of such services.

The experience gained by the FSPO in its investigation of financial service complaints, provides a useful insight as to the nature of issues, which give rise to potential discord or misunderstanding between providers and consumers of financial services. The purpose of this submission is to draw attention to such issues, and to assist the CBI in using its current review of the CPC, to anticipate and prevent such issues arising. The comments made below are informed by complaints which have been received by the FSPO from consumers indicating their dis-satisfaction in the context of the provision of a financial service.

The FSPO has noted that many complaints from consumers arise from a misunderstanding or a mis-communication with a financial service provider, leading to a divergence of opinion as to how a service or product was intended to operate. Ensuring that consumers have every opportunity to become adequately informed in their decision making, will in the opinion of the FSPO, significantly reduce the number of complaints which arise from poor communication or the inadequate provision of information.

The FSPO believes that there are a number of contemporary issues worth highlighting:

Online Purchase of Insurance Policies

The FSPO recommends that:

- **All "assumptions" incorporated into an online policy proposal, should be individually accepted by the proposer**
- **Online dropdown menus should include an option to add free text**

There can be considerable confusion surrounding insurance cover which comes into being on foot of an online purchase, where a number of questions specifically put to the proposer are answered as required, and yet the policy comes into being, not only on the basis of the specific information made available by the proposer, but also on the basis of certain "assumptions" which have not been individually reviewed and confirmed by the proposer.

The FSPO takes the view that the obligation for full disclosure is a reciprocal obligation and that every piece of information which is considered suitable for inclusion by a provider, as an "assumption" should be outlined in clear detail to the person proposing, to ensure no misunderstanding. Any such "assumption", if considered by the provider to be fundamental to cover, should therefore require specific acceptance from a proposer for cover, to ensure suitability.

The FSPO is also conscious that whilst dropdown menus are helpful in ensuring the speedy and efficient progression of an online application, such menus should not be prescriptive, and a proposer for cover should be given the opportunity to provide or clarify information considered by that proposer to be relevant to the application.

Auto-Renewal of motor insurance policies

The FSPO recommends that auto-renewal of a policy:

- **Should not be permitted without explicit consent from the policyholder**
- **Should specify the limits of potential premium change, if any**
- **Should make clear what service is being made available, in return for the charging of an "auto-renewal" fee**
- **Should make clear, if the "auto-renewal" process may limit the opportunity of switching cover to an alternative provider at a lower price**
- **Should be clear as to whether the terms of cover will remain identical**

The FSPO has noted significant confusion surrounding the issue of "auto-renewal" of motor policies. The FSPO is aware of a number of instances where a policyholder has agreed to the process of auto-renewal, but is unaware of having done so. The FSPO is also aware of a number of instances where auto-renewal has proceeded without explicit consent; in response to the complaint regarding auto-renewal, each provider has advised that in the particular instance, the automatic renewal procedure was not presented in as clear a fashion, as it ought to have been.

The concept of auto renewal of cover may be perceived as an advantage to policyholders, on the basis that they need not be concerned with renewal options at the end of a 12 month period. The FSPO is also aware of providers taking the position that there is a legitimate interest in ensuring that customers are not left uninsured, at the end of a 12 month period.

The FSPO is of the firm opinion that auto-renewal should be permissible only where there is explicit consent from a policyholder. Secondly, even where consent to "auto renewal" has been explicitly confirmed, and clearly understood, there can nevertheless be significant misunderstanding surrounding what such auto-renewal will encompass. The FSPO has noted a considerable lack of clarity in that regard, as to precisely what auto-renewal entails. The following issues can arise:

- Does the risk necessarily remain with the same insurer?
- If so, will agreement to auto-renewal, prevent a policyholder 12 months later, from switching cover to a cheaper alternative provider?
- If auto-renewal is agreed, is the policyholder entitled 12 months later, to expect the same premium level, or a divergence only within a certain range?
- Will the Terms & Conditions be exactly the same? If not, is this a renewal of cover, or an entirely new policy, which has changed terms and conditions that should be specifically identified?

The concept of auto-renewal is something which the FSPO believes would benefit from a higher level of clarity, and regulatory principles to guide providers as to best practice.

Use of Branding

The FSPO recommends that branding

- **Should not mislead a consumer as to the service or product provider**

The FSPO is aware of the powerful effect of branding. The use of a word or an acronym which is recognised as a familiar brand, has a positive impact on consumers, arising from the level of trust ascribed to a product or service connected with that branding. There is much room for misunderstanding and confusion as a result. The FSPO believes that the use by one provider, of branding associated with another provider, causes very considerable confusion, and can create inaccurate expectations.

The use of such branding agreed between the providers involved, can mislead the consumer as to the identity of the provider making a service available. Indeed, in health insurance situations, when a request for service from a consumer, is transferred from one provider to another provider which uses elements of the same name or acronym in its branding, that consumer is very likely to misunderstand the position. Such a consumer may not understand that the services available from the new entity, may not come within the provisions of the ***Health Acts***, particularly regarding continuity of cover. Likewise, the use of "co-branding" by two different financial service providers, on brochures or information documents, can create a positive impact with a consumer but can also create a potentially unrealistic expectation as to the role of those individual providers within the contractual arrangements in place.

The FSPO believes that the use of branding by a financial service provider should be controlled, to ensure that a consumer is not misled as to the role of a particular financial service provider, if any.

In that vein, where a service is outsourced by a provider, to another separate entity, this should be made clear. By way of example, where the ability to determine a claim, or to void a policy on behalf of an insurer, is outsourced, the FSPO believes that the role of each such provider and the existence of the outsourcing arrangement should be communicated to the policyholder in an unambiguous manner, ideally by both such providers involved.

Dual Pricing

The FSPO recommends regulation as to:

- **The use of data analytics to calculate a premium**

Concerns have been raised that data analysis is being used by financial service providers, to identify customers who are unlikely to switch service provider, so that this information can be taken into account by the provider in its calculation of a premium. Any such practice of price discrimination, effectively punishes customer loyalty and the FSPO is aware that customers falling within such a grouping are likely to be vulnerable for other reasons, whether because of their age or their absence of confidence in embarking on the process of changing provider.

It is entirely a matter for the CBI, as regulator, to determine whether such a practice should be prohibited. In that context however, the FSPO believes that consideration should be given to improved transparency, by requiring insurers to disclose the information and data taken into account, in the calculation of a premium, albeit in a manner protecting commercial sensitivities as to premium formulae used, if any.

Likewise, a loyalty penalty percentage limit, may be appropriate, for those customers who are made aware that their loyalty to a provider is being taken into account, as part of the premium calculation, but who nevertheless wish to remain with that provider.

Communications

The FSPO recommends that:

- **The CPC clarify that its provisions apply to both written and oral communication**
- **Mandatory written communications should disclose that they are issued in compliance with a regulatory obligation**
- **Joint accountholders or joint policyholders should receive clear information about how communications will be issued**

It is clear that Chapter 4.1 requires a regulated entity to ensure that all information it provides to a consumer is clear, accurate, up to date and written in plain English. The FSPO is aware of an argument that this provision applies to written communications only and believes that the current review of the CPC provides an opportunity to ensure that clarity is made available that this provision covers all communications, whether written or oral. The FSPO also believes that the term "*plain language*" rather than "*plain English*" may be suitable.

In addition, the FSPO is aware of many instances, where communications issued by providers to their customers by way of compliance with CPC obligations, gives rise to tremendous annoyance. Such communications issued in the course of negotiations or restructure discussions, tend to create antipathy, because a customer may not understand that the correspondence must be issued by the provider, by way of compliance with regulatory obligations, irrespective of ongoing engagement. Likewise, in the absence of a minimum threshold, for an arrears communication to be sent, the receipt of such communications can have an antagonising effect. Similarly, the FSPO is aware that complaint update letters can cause considerable annoyance to customers, when a complaint investigation is ongoing.

The FSPO believes that the current review of the CPC provides an opportunity to ensure that providers issuing such communications or arrears correspondence, must disclose that the letter is issued as a regulatory requirement, or indeed as a statutory requirement, eg. the now statutory obligation to make reports to the Central Credit Register, which will require an update to provision 4.23.
The current CPC review also presents an opportunity for consideration to be given by the CBI as to whether these regulatory requirements should continue, once legal proceedings have been issued or indeed if a customer is noted to be insolvent. The FSPO is aware of a number of dissatisfied customers who are antagonised by ongoing arrears communications, after being discharged from bankruptcy.

Finally, on the topic of communication, the restrictions and required warnings, set out at Chapter 3.13 regarding Term and Notice Deposit Accounts would be helpful in respect of Current Accounts also. The FSPO also considers that it would be useful for personal customers to be warned that correspondence issued on all joint accounts will issue to the account holders addressed jointly, to one address. A similar recommendation arises in respect of jointly held policies, to ensure that there is no unreasonable expectation of communications being sent to each of the joint policyholders/accountholders whether at the same or different addresses, unless specifically requested and agreed.

Credit Unions

As a final comment, the FSPO notes that the Consumer Protection Code has applied to Credit Unions, only when acting as insurance intermediaries. Given the expanded services being made available by credit unions, there is an argument that the Credit Union Handbook should be complemented by an obligation for credit unions to adhere more generally to the provisions of CPC.

Credit unions are already required to comply with legislative obligations when providing payment services, pursuant to the ***European Communities (Payment Services) Regulations 2018 (S.I. No. 6 of 2018)*** and likewise, when offering loan facilities coming within the provisions of the ***European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. 281/2010)*** and the ***European Union (Consumer Mortgage Credit Agreements) Regulations 2016.*** As the services made available by credit unions are effectively the same services offered by other financial service providers, the review of the CPC provides an opportunity to ensure that all such providers meet compliance and regulatory obligations that are more aligned.

Conclusion

The FSPO is hopeful that the observations above will help in informing the CBI as it undertakes this very welcome review of the Consumer Protection Code, in what is an ever-evolving financial services landscape.

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